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Countering terrorism in the maritime domain: a contemporary evaluation of the international legal framework

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**Countering Terrorism in the Maritime Domain: A
Contemporary Evaluation of the International Legal
Framework**

**A thesis submitted in fulfilment of the requirements for the
award of the degree of**

Doctor of Philosophy

from

University of Wollongong

by

Robin Bowley

Australian National Centre for Ocean Resources of Security

Faculty of Law, University of Wollongong

2013

Certification

I, Robin Bowley, declare that this thesis, submitted in fulfilment of the requirements for the award of Doctor of Philosophy, at the Australian National Centre for Ocean Resources of Security, Faculty of Law, University of Wollongong, is wholly my own work unless otherwise referenced or acknowledged. The document has not been submitted for qualifications at any other academic institution.

.....

Robin Bowley

1 October 2013

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To the best of my knowledge this thesis is current as at 1 October 2013. It also incorporates information from some more recent sources following the thesis examination process.

Abstract

Following the 9/11 attacks, concerns about maritime terrorism prompted several international legal developments. These included amendments to the 1974 SOLAS Convention introducing the ISPS Code, and the Long Range Identification and Tracking of ships, with amendments to the 1958 Seafarers Identity Documents Convention also occurring. 2005 also saw the finalisation of amendments to the 1988 SUA treaties to better facilitate the interdiction of suspected terrorist vessels. Additionally, the US-led Proliferation Security Initiative has prompted critical re-thinks about the interdiction powers of States under the 1982 UN Law of the Sea Convention, and in exceptional cases, under Article 51 of the UN Charter.

This Study examines the extent to which the above international agreements are likely to succeed in enabling the prevention of contemporary post-9/11 forms of maritime terrorism. It formulates the Maritime Terrorism Threat Matrix to statistically analyse all the ways in which maritime terrorism incidents have occurred, and might occur in future. The study combines these findings with analyses of how the ISPS Code and LRIT measures have developed since their entry into force, and also examines the debate amongst international legal scholars about the legality of vessel interdictions in the post 9/11 maritime security context.

Through considering how the above international agreements might apply in practice, the Study highlights the importance of continual and rigorous application of ISPS Code security measures both by contracting governments and at operational levels within maritime industries. Whilst it identifies scope for flexible interpretations of UNCLOS (and possibly Article 51 of the UN Charter) relating to the interdiction of suspected terrorist vessels, it argues for increased ratification of the 2005 SUA Convention to reduce the scope for uncertainty and conflict. Overall the Study demonstrates that the international legal framework for preventing maritime terrorism incidents has been improved since 9/11. Going forward, it argues that instead of further reforms or new instruments, the international community's focus should be on continually refining the prospects for the existing instruments to succeed, and outlines recommendations for how this might be achieved.

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ACRONYMS AND ABBREVIATIONS

9/11	September 11, 2001 terrorist attacks
AEO	Authorised Economic Operator
AIS	Automatic Identification System
ASD	Anticipatory Self Defence
ASG	Abu Sayyef Group
AU	African Union
BMP	Best Management Practices
CARICOM	Caribbean Community and Common Market
CGPCS	Contact Group on Piracy off the Coast of Somalia
CIA	Central Intelligence Agency
CSI	Container Security Initiative
CSO	Company Security Officer
CTF	Combined Task Force
C-TPAT	Customs and Trade Partnership Against Terrorism
DCoC	Djibouti Code of Conduct
DRC	Democratic Republic of the Congo
EEZ	Exclusive Economic Zone
ETA	Euskandi Ta Askatasuna ‘Basque Homeland and Freedom
EUNAVFOR	European Union Naval Force Somalia
FAL	IMO Facilitation Committee
FARC	Fuerzas Armadas Revolucionarias de Colombia (‘Revolutionary Armed Forces of Colombia’)
GAM	Gerakan Aceh Merdeka ‘(Free Aceh Movement)’
GDP	Gross Domestic Product
GRT	Gross Registered Tonnes
GISIS	Global Integrated Shipping Information Service
GTD	Global Terrorism Database
ICJ	International Court of Justice
ICS	International Chamber of Shipping
IED	Improvised Explosive Device
IMB	International Maritime Bureau
IMO	International Maritime Organisation

IMSO	International Mobile Satellite Organisation
INS	Israeli Naval Ship
IRA	Irish Republican Army
ISP	International Standards Organisation
ISPS Code	International Ship and Port Facility Security Code
LNG	Liquefied Natural Gas
LRAD	Long Range Acoustic Devices
LRIT	Long Range Identification and Tracking
LRIT DC	LRIT Data Centre
LRIT IDE	LRIT International Data Exchange
LRIT IDF	LRIT Information Distribution Facility
LTTE	Liberation Tigers of Tamil Eelam
MEND	Movement for the Emancipation of the Niger Delta
MILF	Moro Islamic Liberation Front
MODU	Mobile Offshore Drilling Unit
MOWCA	Maritime Organization of West and Central Africa
MRA	Mutual Recognition Arrangement
MSC	Maritime Safety Committee of the International Maritime Organisation
MSCHOA	Maritime Security Centre – Horn of Africa
MTTM	Maritime Terrorism Threat Matrix
MV	Merchant Vessel
OECD	Organisation for Economic Cooperation and Development
PCASP	Privately Contracted Armed Security Personnel
PFSA	Port Facility Security Assessment
PFSO	Port Facility Security Officer
PFSP	Port Facility Security Plan
PLF	Palestinian Liberation Front
PLFP	Popular Front for the Liberation of Palestine
PFLP–GC	Popular Front for the Liberation of Palestine – General Command
PLO	Palestinian Liberation Organisation
PSI	Proliferation Security Initiative
RAN	Royal Australian Navy
RDWTI	RAND Database of Worldwide Terrorism Incidents

ReCAAP	Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia
ReCAAP ISC	ReCAAP Information Sharing Centre
SID	Seafarers Identification
SOLAS	Safety of Life at Sea Convention
SS	Steam ship
SSAS	Ship Security Alert System
SSA	Ship Security Assessment
SSO	Ship Security Officer
SSP	Ship Security Plan
SUA	Suppression of Unlawful Acts
SVS-IP	Small Vessel Security Implementation Plan
UCLAs	Unilaterally Controlled Latino Assets
UKMTO	UK Maritime Trade Operations Centre
UN	United Nations
UNCLOS	United Nations Law of the Sea Convention
UNGA	United Nations General Assembly
UNSC	United Nations Security Council
US	United States of America
USS	United States Ship
VCLT	Vienna Convention on the Law of Treaties
VHF	Very High Frequency (radio)
WCO	World Customs Organisation
WMD	Weapons of Mass Destruction

CHAPTER 1 INTRODUCTION

[1.1] BACKGROUND

Over the last two decades, and particularly following the devastating 9/11 attacks in the United States, contemporary forms of terrorism have been recognised as a very serious threat to international peace and security. In comparison to older forms of terrorism, proponents of contemporary forms of terrorism have perpetrated several significant indiscriminate mass-casualty attacks, frequently involving suicide tactics, being largely unidentifiable and unamenable to negotiation, and privately financed without the active support of states. The vulnerabilities of the maritime domain to targeting and/or utilisation by contemporary terrorist groups¹ have been recognised by States, international organisations and scholarly commentators. Incidents such as the bombings of the *USS Cole* in Yemen in 2000, the *MV Limburg* off Aden in 2002, and *Super Ferry 14* in the Philippines in 2004, as well as attacks on shipping around Sri Lanka by the Liberation Tigers of Tamil Eelam (LTTE),² contrast markedly to incidents such as the 1985 *Achille Lauro* hijacking, and have demonstrated the capabilities and resolve of contemporary terrorist groups to target vulnerable shipping and other maritime infrastructure.³ Furthermore, concerns have been widely expressed that terrorist might seek to utilise vessels to transport weaponry, including both conventional weapons and Weapons of Mass Destruction (WMD) materiel,⁴ persons connected with terrorist groups, and as a means of terrorist fundraising. It has been reasoned that a significant maritime terrorist attack could have a more disruptive effect on the global economy than the 9/11 attacks;⁵ and that terrorist attacks on land enabled through weaponry or operatives transported by sea could (and indeed have) been very deadly. Whilst the frequency of maritime terrorist attacks has been dwarfed by pirate attacks since around 2005, there are no grounds to conclude the threat has

¹ Chapter 2 explains the reasoning for this Study's use of the terms "contemporary terrorism" and "pre-contemporary terrorism"

² Chapters 2 and 3 explain that whilst the LTTE is regarded by many as more of an insurgent group than a terrorist organisation, as Appendix A shows, the LTTE has been designated as a terrorist organisation by several States including the United States, the United Kingdom and Canada; and its attacks have been widely recorded as terrorist incidents

³ For example offshore platforms, submarine cables, ports and navigational facilities

⁴ Whilst the PSI Interdiction Principles (discussed in [7.2]) use the terms 'WMD and related materials', the term 'WMD materiel' has been used extensively by international legal scholars, and is used within this Study for the sake of brevity

⁵ Given that an major terrorist attack affecting ports or key navigational chokepoints could impact on the real economy (involving the physical movement of goods) rather than the financial economy (involving the flow of funds)

entirely disappeared. Recognition of these increased threats prompted several significant developments to the international legal framework following 9/11 to better enable the prevention of contemporary forms of maritime terrorism.

On the one hand, amendments to the Safety of Life at Sea Convention 1974 (SOLAS)⁶ have mandated certain “preventative measures”⁷ to reduce the scope for terrorists to target and/or utilise vessels in the first instance. First, through amendments to SOLAS Chapter XI-2,⁸ the International Ship and Port Facility Security (ISPS) Code was developed to provide an internationally consistent maritime security risk management framework. SOLAS Chapter XI-2 and the ISPS Code have mandated and recommended physical and organisational security measures for (at least) “SOLAS vessels”, the port facilities that interface with them, the shipping companies that operate them, and have also imposed supervisory and oversight obligations upon SOLAS contracting governments. Second, amendments to SOLAS Chapter V⁹ have mandated the fitting of Automatic Identification Systems (AIS) to certain vessels since 2004, and more recently, the Long Range Identification and Tracking (LRIT) of certain larger vessels engaged on international voyages (which has been progressively implemented since 2006) in order to facilitate the identification and tracking of vessels, and thereby contribute to improved Maritime Domain Awareness.¹⁰ Additionally, the 2003 amendments to the 1958 Seafarers Identity Documents Convention¹¹ (2003 SID Convention) have required state parties to mandate secure forms of seafarer identification documentation to reduce the scope for seafarer identification to be fraudulently utilised for nefarious purposes.¹²

⁶ *International Convention for the Safety of Life at Sea*, opened for signature 1 November 1974, 1184 UNTS 278 (entered into force 25 May 1980)

⁷ The usage of this term to describe the focus of these amendments is consistent with Natalie Klein *Maritime Security and the Law of the Sea* (Oxford University Press, 2011), 211 – who uses the term ‘preventative actions’

⁸ ‘Special Measures to Enhance Maritime Security’

⁹ ‘Safety of Navigation’

¹⁰ The term ‘Maritime Domain Awareness’ has been widely used following 9/11, and was recently defined by the IMO as ‘the effective understanding of any activity associated with the maritime environment that could impact upon the security, safety, economy or environment’: International Maritime Organisation Amendments to the International Aeronautical and Maritime Search and Rescue (IAMSAR) Manual IMO Doc MSC.1/Circ.1367 24 May 2010

¹¹ *Seafarers Identity Documents Convention*, opened for signature 13 May 1958, ILO Convention No. 108 (entered into force 19 February 1961)

¹² Including for example the movement of persons connected with terrorist organisations, criminal groups and illegal immigration

On the other hand, there have been several developments relating to the interdiction¹³ of suspected terrorist vessels. Concerns about the possible maritime trafficking of Weapons of Mass Destruction (WMD) and related materiel (WMD materiel) by terrorists have provided the most significant (but not sole) impetus for these developments. First, between 2002 and 2005 the International Maritime Organisation (IMO) facilitated negotiations to amend the 1988 Convention on the Suppression of Unlawful Acts Against the Safety of Maritime Navigation¹⁴ (1988 SUA Convention), and the 1988 Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf¹⁵ (1988 SUA Platforms Protocol), (collectively the ‘1988 SUA treaties’). Since their entry into force in 1992, the 1988 SUA treaties have enabled state parties to arrest, prosecute or extradite persons who have been involved in the commission of acts prejudicing the safety of maritime navigation and offshore platforms respectively. However following 9/11, several limitations of the 1988 SUA treaties were recognised. These included not addressing the utilisation of ships as weapons, acts of violence against persons on board vessels that do not compromise the safety of navigation, deliberate pollution of the marine environment, the dumping of hazardous or nuclear material or waste, and the maritime smuggling of potential terrorist persons and biological, chemical and nuclear weapons. These IMO negotiations resulted in the 2005 Protocol to the 1988 SUA Convention¹⁶ (2005 SUA Convention) and the 2005 Protocol to the 1988 SUA Platforms Protocol¹⁷ (2005 SUA Platforms Protocol) (collectively the ‘2005 SUA treaties’). The 2005 SUA treaties addressed the above limitations through expanding the range of offences covered by the SUA treaties, and including new provisions for interdicting suspected terrorist vessels. However to date the 2005 SUA treaties have only achieved a very marginal level of acceptance internationally.

Second, following the interdiction of the *So San* freighter off Yemen in December 2002, in May 2003 the United States, in partnership with several other states, announced the formation

¹³ Chapter 6 explains there are various definitions of the term ‘interdiction’ – including whether it is limited to the arrest of the vessel, or might also encompass the disabling of the vessel

¹⁴ *Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation*, opened for signature 10 March 1988, 1678 UNTS 221 (entered into force 1 March 1992)

¹⁵ *Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf*, opened for signature 10 March 1988, 1678 UNTS 304 (entered into force 1 March 1992)

¹⁶ *Protocol of 2005 to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation*, opened for signature 14 October 2005, IMO Doc. LEG/CONF.15/21 (entered into force 28 July 2010)

¹⁷ *Protocol of 2005 to the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf* opened for signature 14 October 2005, IMO Doc. LEG/CONF.15/22 (entered into force 28 July 2010)

of the Proliferation Security Initiative (PSI) as a cooperative effort to facilitate the interdiction of suspected shipments of WMD materiel to and from ‘states and non-state actors of proliferation concern’. The PSI involves “participant” states expressing their political “support” for the loosely-worded PSI Statement of Interdiction Principles (‘PSI Interdiction Principles’). Whilst not being a formal instrument creating new forms of jurisdiction, the PSI Interdiction Principles have come to be regarded as a non-binding, political expression of how “participants” might consider exercising their jurisdictional rights under the United Nations Law of the Sea Convention¹⁸ (UNCLOS).

The measures alluded to in the PSI Interdiction Principles have prompted debate about their legality. International legal scholars have been divided on the extent to which key post-9/11 counter-terrorism Security Council Resolutions¹⁹ might add further justification to interdictions of vessels suspected of illicitly transporting WMD materiel. Several uncertainties regarding the vaguely-expressed Interdiction Principles have also been highlighted, in particular the question of what “support” for the PSI actually entails.²⁰

Furthermore, since 2004 the United States has also progressively concluded nine formalised PSI ship boarding agreements with significant registry states²¹ to facilitate the interdiction of suspected shipments of WMD materiel (PSI ship boarding agreements),²² with four of these ship boarding agreements providing for enforcement by (undefined) ‘third states’ by agreement of the parties, thereby potentially increasing the overall “reach” of the PSI.

Additionally following 9/11 several studies have identified shortcomings in the various UNCLOS provisions enabling States to protect offshore platforms, submarine cables and pipelines from terrorist attacks.

¹⁸ *United Nations Convention on the Law of the Sea*, opened for signature 10 December 1982, 1833 UNTS 3 (entered into force 16 November 1994)

¹⁹ As Chapter 2 explains, these UN Security Council Resolutions have affirmed and re-affirmed the seriousness of the contemporary threat of terrorism as a threat to international peace and security, and both obliged and invited UN member states to take a range of measures to counter terrorist threats

²⁰ Chapter 7 explains that whilst the United States lists over 100 States as “supporting” or “endorsing” the Interdiction Principles, the question of what “support” for the PSI actually entails – as States are only indicating their political support, rather than formally committing to treaty obligations

²¹ As explained in Chapter 7, these key registry states are (in order of the formalisation of the PSI ship boarding agreements) Liberia, Panama, the Marshall Islands, Croatia, Cyprus, Belize, Malta, Mongolia and the Bahamas

²² As Chapter 7 explains - the US State Department terms these agreements as ‘PSI Bilateral Ship Boarding Agreements’

Finally several post-9/11 policy statements have suggested, and international legal scholars have argued, that in exceptional circumstances where there was no other jurisdictional basis, States might interdict suspected terrorist vessels through exercising their the ‘inherent’ rights of self-defence, recognised under Article 51 of the Charter of the United Nations.²³ However since 1945, and particularly following 9/11, opinion has been divided about precisely when an ‘armed attack’ occurs; what degree of force will constitute an ‘armed attack’; whether ‘armed attacks’ may be perpetrated by non-state actors such as terrorists as well as by States, and what amounts of force States may use to counter ‘armed attacks’.

[1.2] THE QUESTION INVESTIGATED BY THIS STUDY

This Study examines the extent to which the international agreements noted in [1.1] above are likely to be successful in enabling the prevention of contemporary post-9/11 forms of maritime terrorism. It uses the “umbrella” term ‘maritime terrorism incident’ to encompass both maritime terrorist attacks, and the utilisation of vessels to enable the perpetration of subsequent terrorist attacks on land through transporting weaponry, operatives or financing terrorist activities.

[1.2.1] Existing literatures

Since 9/11, *discrete aspects* of the threat of maritime terrorism, and the international agreements noted in [1.1] that enable States to prevent the occurrence of such threats, have been studied to various degrees.

On the one hand, studies by terrorism and maritime security specialists have examined the profiles of terrorist and insurgent groups known to possess maritime attack capabilities. Other studies have examined the vulnerabilities of particular states, geographical regions and maritime industry sectors (for example, shipping containers, passenger vessels and cruise ships, and Liquefied Natural Gas tankers) to terrorist attacks.²⁴ Whilst some of these studies have formulated insightful scenarios as to how terrorists might target and/or utilise vessels, these scenarios tend to be specifically focused towards particular maritime industry sectors or

²³ *Charter of the United Nations*, opened for signature 26 June 1945, 59 Stat 1031 (entered into force 24 October 1945)

²⁴ The existing literature on these fields is examined in [3.3] and [3.4]

geographical regions. None of the studies within this literature as yet provides the foundations for a generalised framework which allows us to statistically analyse all of the ways in which maritime terrorism threats have been successfully perpetrated, attempted and planned by various terrorist groups.

On the other hand, several international legal studies have comprehensively examined discrete aspects regarding the development and uncertain aspects of the international agreements noted in [1.1].

Around the time of its entry into force in 2004, several studies examined the negotiating processes for the ISPS Code, and the economic and operational impacts it was expected to have on the world's shipping industries. A number of shorter studies have examined the legislative and policy arrangements for implementing the ISPS Code by States.²⁵ However since the ISPS Code's entry into force, no study has undertaken a detailed examination of how the Code's limitations²⁶ have been addressed within the IMO, nor examined how the security measures mandated and recommended by the Code might enable the prevention of maritime terrorism incidents. Similarly, whilst a handful of studies have examined the development of the AIS and LRIT amendments to the SOLAS Convention²⁷ and the 2003 SID Convention²⁸ around the time of their entry into force, the progress of implementing the LRIT vessel tracking requirements by States has not at yet been studied comprehensively.

A smaller number of studies have examined the jurisdictional gaps under UNCLOS and the ISPS Code in enabling the protection offshore platforms and submarine cables from terrorist attacks;²⁹ and the negotiating process for the 2005 SUA treaties has been also been analysed in detail.³⁰

By far the largest number of international legal studies have focused on analysed the legality under UNCLOS of the PSI Interdiction Principles as a response to the maritime proliferation

²⁵ These existing literatures are reviewed in [4.2]

²⁶ The limitations of the ISPS Code include its limited application to the ship-port interface (and not to supply chains more broadly); its limited application to large SOLAS Ships and the port facilities servicing them; inconsistencies in the ISPS Code's application to offshore platforms; and uncertainties regarding the operation of Ship Security Alert System arrangements mandated by SOLAS Chapter XI-2 Regulation 6

²⁷ These existing literatures are reviewed in [4.3]

²⁸ These existing literatures are reviewed in [4.4]

²⁹ These existing literatures are reviewed in [6.3]

³⁰ See [6.2.5]

of WMD materiel.³¹ These studies have been divided in their assessments of the legality of the vaguely-described PSI Interdiction Principles. They have also highlighted several uncertain aspects of how the PSI Interdiction Principles might apply in practice, and questioned the long term viability of the PSI. Some of these studies have briefly noted that in exceptional cases, interdictions of suspected shipments of WMD materiel might be justified under Article 51 of the UN Charter, or the doctrine of Necessity – but have not examined this question in detail. Although these studies have comprehensively examined the legality of the maritime interdiction of suspected shipments of WMD materiel, these studies have not focused in detail on the legality of interdicting other utilisations of vessels to enable subsequent terrorist attacks – including through transporting conventional weaponry, terrorist persons or financing terrorist activities.

Whilst very thorough and insightful, the existing studies overviewed have tended to be discretely focused on examining either the specific aspects of the threat of maritime terrorism on the one hand, or particular aspects of the international agreements on the other. No in-depth study has yet drawn together these bodies of knowledge to undertake an overall assessment of the extent to which the international agreements noted in [1.1] are likely to succeed in enabling the prevention of contemporary post-9/11 maritime terrorism incidents, and the factors that will determine their success.

[1.2.2] Thesis Aims

The central research question examined in this Study is “To what extent are the international agreements noted at [1.1] likely to be successful in enabling the prevention of contemporary forms of maritime terrorism?”

To investigate the above research question, the chapters of this Study progressively consider the following sub-questions:

- (1) How should the threat of contemporary post-9/11 forms of maritime terrorism be understood?
- (2) What are the limitations of the international agreements, and how have these limitations been addressed to date?

³¹ These existing literatures are reviewed in [7.2]

- (3) What factors are likely to influence the prospects of the international agreements being successful in preventing maritime terrorism incidents?
- (4) Considering how maritime terrorism incidents have previously occurred, and might occur in the future, how might the international agreements apply in practice in preventing maritime terrorism incidents?
- (5) Going forward, what should be done to maximise the prospects for the international agreements being successful in preventing contemporary post-9/11 maritime terrorism incidents?

[1.3] ARGUMENT OF THIS STUDY

This Study argues that the international legal framework enabling the prevention of maritime terrorism has been expanded and improved following the 9/11 attacks. However, due to the very low frequency and unpredictability of contemporary post-9/11 forms of maritime terrorism, and the restricted nature of ISPS Code security measures and details about vessel interdictions, it is not possible to make an overall assessment of how *effective* the international agreements *have been*. Therefore, through analysing both IMO proceedings and scholarly analyses relating to various aspects of the international agreements since their entry into force, it enunciates the factors upon which the prospects for the instruments to succeed in preventing maritime terrorism incidents will depend. These factors include the rigor of continuous application of the ISPS Code by contracting governments and the maritime industry, the flexibility in the interpretation of UNCLOS (and possibly Article 51 of the UN Charter) in relation to interdiction of suspected terrorist vessels, and the extent of international support for agreed vessel interdiction procedures – such as those contained in the 2005 SUA Convention. Then, through taking account of how maritime terrorism incidents have previously occurred, and might occur in future, the Study shows how these factors could apply in practice to prevent the occurrence of maritime terrorism incidents. Overall the Study demonstrates that the international legal framework for preventing maritime terrorism is adequately developed. Going forward, it argues that instead of further reforms or new instruments, the international community's focus should be on continually refining the prospects for the existing instruments to succeed, and outlines recommendations for how this might be achieved.

[1.4] OUTLINE OF THE STRUCTURE OF THIS STUDY

Chapter 2³² outlines the threat of post-9/11 contemporary terrorism globally.³³ It explains the challenges of defining terrorism and illustrates the variances in international and national designations of terrorist groups. It shows how over the last two decades, contemporary forms of terrorism³⁴ - most significantly evidenced by the 9/11 attacks³⁵ have, in contrast to older, more restrained and “negotiable” forms of terrorism, come to be characterised by very well planned and coordinated mass-casualty suicide attacks, driven by extremist, non-negotiable ideologies, and perpetrated by groups with a globalised focus.³⁶ The chapter explains how recognition of the serious threat of contemporary terrorism to international peace and security has resulted in a paradigm shift in post 9/11 counter-terrorism Security Council Resolutions – which have imposed obligations on States that are neither geographically nor temporally limited. Chapter 2 concludes that more than ten years after the 9/11 attacks and even following the 2011 death of Osama bin Laden, the threat of contemporary terrorism remains and must be continually and proactively prevented.

Chapter 3³⁷ analyses the threat of contemporary terrorism in the maritime domain. It shows how maritime terrorist attacks over the last two decades reflect the global trend articulated in Chapter 2 towards creative and carefully-planned significant-casualty³⁸ suicide attacks, and away from older, more restrained and negotiable forms of terrorism. The chapter explains how the disruptive effect of terrorist attacks on significant port facilities or navigational choke-points could well be profound, and that terrorist attacks on land enabled through weaponry or operatives transported by sea, or financed by the terrorist utilisations of vessels, could also be

³² ‘The threat of contemporary terrorism globally’

³³ Chapter 2 provides context for Chapter 3’s analysis of the threat of contemporary terrorism in the maritime domain - with maritime terrorist attacks only account for around two per cent of all recorded terrorist attacks since 1968 when terrorism statistics began to be methodically recorded

³⁴ Which have been largely driven by Islamic extremism and the Al Qaeda movement, and also practiced by the LTTE

³⁵ Chapter 2 explains that the terms ‘contemporary’ and ‘pre-contemporary’ terrorism are used in preference to ‘pre- and ‘post-9/11’ terrorism because terrorism did not suddenly “change overnight” on 9/11. Rather, the 9/11 attacks were the most significant manifestation to date of ‘fourth wave terrorism’ which has progressively developed since the early 1980s. Chapters 2 and 3 also explain that the term ‘contemporary’ terrorism also enables us to simultaneously examine terrorist attacks both by Al Qaeda-influenced Islamic groups, and by the (non-Islamic) LTTE – which has perpetrated a significant proportion of maritime terrorist attacks

³⁶ Chapter 2 explains the linkages that have developed between like-minded groups, with significant attacks occurring in many locations around the world

³⁷ ‘The threat of contemporary terrorism in the maritime domain’

³⁸ Chapter 2 explains that this Study uses the term ‘Mass casualty’ to refer to attacks with more than 50 casualties; and Chapter 3 explains that due to the comparatively lower occurrence of maritime terrorist attacks, it uses the term ‘Significant casualty’ attack to refer to maritime terrorist attacks resulting in more than ten fatalities

(and have been) very devastating. It also notes indications of contemporary terrorist groups having the intent and capabilities to perpetrate such attacks. Chapter 3 formulates the Maritime Terrorism Threat Matrix³⁹ – which provides the most structured generic framework to date to statistically analyse all of the conceivable ways in which terrorists might⁴⁰ seek to target and/or utilise vessels.⁴¹ The chapter concludes by emphasising the importance of preventing maritime terrorism incidents, rather than responding after attacks have occurred.

Chapter 4 analyses developments relating to the post-9/11 maritime security and vessel tracking amendments to the SOLAS Convention (including the ISPS Code under Chapter XI-2, and the AIS and LRIT regulations under Chapter V) and the 2003 SID Convention (all of which have a “preventative” focus)⁴² since their entry into force.⁴³ The chapter examines how the identified limitations of these instruments⁴⁴ have been addressed within the IMO,⁴⁵ and

³⁹ The Maritime Terrorism Threat Matrix is depicted in Table 10 in [3.5.1]. It enables the recording of all previous instances where maritime terrorism incidents have been successfully perpetrated, attempted, planned by terrorist groups, and postulated by maritime security specialists. It examines maritime terrorism incidents under five broad headings. First, ‘the vessel as a target’ – encompassing terrorist attacks on vessels from other vessels, from the land, from beneath the surface, from within the target vessel and from the air. Second, ‘the vessel as a weapon’ – encompassing the use of vessels either as kinetic “ramming” weapons, or as “weapons launching platforms” to attack other vessels, land targets, offshore platforms or aircraft. Third, ‘the vessel as a bomb’ – encompassing the detonation of vessels within proximity to other vessels, land targets, offshore platforms, and also causing the explosion of offshore platforms. Fourth, ‘the vessel as a disruption tool’ – encompassing the utilisation of vessels to disrupt to the free flow of maritime traffic through disabling vessels near critical navigational “choke-points”, laying sea mines, causing deliberate pollution, or causing damage to with submarine cables. Fifth, ‘the vessel as a means’ – encompassing the use of vessels as a means to enable the perpetration of subsequent terrorist attacks on land through transporting weaponry, operatives or financing terrorist activities.

⁴⁰ Given the cunning, innovative and unpredictable operational profile of contemporary terrorist groups demonstrated in attacks such as 9/11, which contrasts to the more predictable operational profile of pirate groups, Chapter 3 reasons that it is very important to examine planned and postulated maritime terrorism incidents as well as successful and attempted ones. Chapter 2 also notes that the *9/11 Commission Report* at 339 – 348 cited the lack of imagination and the failure to “think outside the box” as a contributing factor to the failure to pre-empt the 9/11 attacks

⁴¹ Chapters 5, 6 and 7 shows how the Maritime Terrorism Threat Matrix “captures” all of the maritime terrorism scenarios that have been postulated by maritime security specialists since 9/11 - thereby demonstrating how it is the most structured framework developed to date.

⁴² These instruments have a “preventative” focus because the measures they mandate and recommend are aimed at preventing maritime terrorism incidents occurring in the first instance – through ship and port security measures, vessel identification and tracking, and seafarer identification

⁴³ As noted in Chapter 4, the ISPS Code entered into force on 31 July 2004; the AIS requirements under SOLAS Chapter V, Regulation 19/2.4, para .1 - .4 have applied to all ships over 300 gross tonnes engaged on international voyages, cargo ships over 500 gross tonnes not engaged on international voyages, and all passenger ships irrespective of size since 31 December 2004; the LRIT regulations entered into force on 1 January 2008; and the Revised *Seafarers Identity Documents Convention* entered into force 9 February 2005)

⁴⁴ As noted in [1.2.1], the limitations of the ISPS Code include its limited application to the ship-port interface (and not to supply chains more broadly); its limited application to large SOLAS Ships and the port facilities servicing them; inconsistencies in the ISPS Code’s application to offshore platforms; and uncertainties regarding the operation of Ship Security Alert System arrangements mandated by SOLAS Chapter XI-2 Regulation 6

⁴⁵ Chapter 4 explains that whilst numerous journal articles and similar studies examined the new measures introduced by ISPS Code around the time of its entry into force in 2004, and whilst several other studies have examined its operational and economic impact on specific maritime industry sectors, no major study to date has

considers the extent to which these amendments have become ingrained throughout the maritime sector. It shows how contracting governments have preferred to address the limitations of the ISPS Code through developing non-mandatory guidance rather than extending its mandatory application, and explains the challenges of assessing how well ingrained⁴⁶ ISPS Code security measures have become amongst SOLAS contracting governments,⁴⁷ ships and port facilities.⁴⁸ Chapter 4 articulates the factors likely to influence whether “best case” or “worst case” scenarios of ISPS Code measures lessening the scope for the occurrence of maritime terrorism incidents might apply.⁴⁹ The chapter examines how the requirements for SOLAS ships to be equipped with AIS and tracked through LRIT have contributed to increased maritime security levels, and examines how the shortcomings and uncertainties of AIS⁵⁰ and LRIT⁵¹ have been addressed by the IMO. Finally Chapter 4 considers the extent to which the 2003 SID Convention has lessened the scope for terrorists to travel under fraudulent seafarer identification documentation.⁵²

Through undertaking the first major investigation of the “post entry into force status” of the above instruments, Chapter 4 provides an informed foundation for Chapters 5, 6 and 7 to

examined how its identified limitations have been addressed within the IMO since its entry into force on 31 July 2004

⁴⁶ Chapter 4 explains how details of ISPS Code security arrangements and compliance are kept confidential for commercial and national security reasons

⁴⁷ Chapter 4 discusses how the IMO has noted with concern significant delays in the provision of information by SOLAS Contracting Governments regarding their implementation of SOLAS Chapter XI-2 and the ISPS Code, and low response rates from SOLAS contracting governments to voluntary IMO surveys about national maritime security arrangements

⁴⁸ Chapter 4 explains how the ISPS Code is a security risk management framework applicable (through various national implementing laws and regulations) to States, shipping companies, port facilities and ships, any assessment of the likely success of the ISPS Code must also consider how it is applied at operational levels by operators of ships and port facilities

⁴⁹ These factors include the size and type of vessels involved in maritime terrorism incidents; whether terrorists controlled the vessel involved in a maritime terrorism incident in the first instance; the rigour of the continual application of the ISPS Code security measures by ships and entities interfacing with them (including port facility operators and government authorities); whether a maritime terrorism incident involved an entity subject to the ISPS Code such as a security-regulated port facility or offshore platform; the form of a maritime terrorist attacks; and the effectiveness of government oversight and response capabilities

⁵⁰ Chapter 4 explains the improvements achieved through AIS include reduced collision risks and improved situational awareness for ships’ bridge teams; and that the shortcomings include risks of unauthorised access to AIS transmissions for nefarious purposes; and the lack of uniform coverage of AIS within certain parts of the world.

⁵¹ Chapter 4 explains that in the short time since becoming operational in early 2011, LRIT arrangements have been shown to function as required, and LRIT information has proven to be very valuable in counter-piracy operations around the Gulf of Aden. However it also explains that uncertainties still remain regarding the enforcement actions that States might take based on LRIT information

⁵² Whilst Chapter 4 explains how the 2003 SID Convention has lessened the scope for terrorists to travel under fraudulent seafarer identification, and has been ratified by States from which significant numbers of seafarers originate; Chapter 7 explains these improved identification measures would be of less preventative security value if terrorists sought to access to land territories through clandestine landings rather than at major ports

examine how these instruments might apply in practice in preventing maritime terrorism incidents. These chapters examine how different forms of maritime terrorism incidents have previously occurred, been attempted or planned, and postulated by maritime security specialists in order to establish the “threat context” – that is, the types of maritime terrorism threats that might have to be prevented.

Chapter 5⁵³ analyses the prospects for the ISPS Code and other SOLAS maritime security and vessel identification measures to succeed in preventing terrorist targeting of vessels (that is, attacks on vessels)⁵⁴ from the five sources noted in the Threat Matrix.⁵⁵ The contrasts between contemporary and pre-contemporary forms of terrorism articulated in Chapters 2 and 3 are highlighted, with the chapter reasoning that the prevention of terrorist attacks on vessels will very much depend on the rigour with which ISPS Code security measures are continually applied within ships, port facilities and by contracting governments. The effectiveness of rigorously-applied preventative security measures in deterring (comparatively far more prevalent and predictable) vessel-based attacks on commercial vessels by pirates since 2005 is also shown.⁵⁶ However the chapter reasons that it would be erroneous to uncritically assume fanatical terrorists prepared to martyr themselves (as in the USS *Cole* and MV *Limburg* attacks) would be deterred by the prospects of apprehension to the same extent as economically-motivated pirates,⁵⁷ and argues there are both positive and negative inferences that can be drawn from the international community’s experience in countering pirate attacks around the Gulf of Aden since 2005. Chapter 5 concludes by emphasising the importance of the continual rigorous application of ISPS Code measures by contracting governments, ships and port facilities.

⁵³ ‘Countering terrorist targeting of vessels’

⁵⁴ Chapter 5 explains that terrorist attacks on vessels have accounted for at least 85 per cent of all maritime terrorism incidents recorded since 1968

⁵⁵ That is, from other vessels, from the land, from beneath the surface, from within the vessel and from the air

⁵⁶ Chapter 5 explains that whilst the ISPS Code was introduced following the 9/11 attacks with the aim of lessening the scope for terrorists to target or utilise vessels, the IMO has acknowledged ISPS Code security measures are equally applicable to preventing attacks on vessels by pirates and armed robbers. Also, whilst the focus of this Study is on maritime terrorism, it significantly is the first to undertake a methodical assessment of the effectiveness of the SOLAS Chapter XI-2 (ISPS Code) and other preventative security arrangements in preventing attacks on commercial vessels to by pirates since the ISPS Code’s entry into force in July 2004

⁵⁷ Chapter 5 explains that because vessel-based attacks by pirates around the Gulf of Aden since around 2005 have been far more prevalent and predictable than vessel-based attacks by terrorists, they provide a useful point of comparison to maritime terrorist attacks

Chapter 6⁵⁸ analyses the prospects for the international agreements to succeed in preventing terrorists from utilising vessels in an offensive manner.⁵⁹ This could involve the perpetration of dangerous acts through using vessels as “weapons” (either as launching platforms or as kinetic ramming weapons) or as “floating bombs” against other vessels, land targets and offshore platforms; or the perpetration of other disruptive acts.⁶⁰ In addition to examining how the ISPS Code and other SOLAS maritime security and vessel identification measures might succeed in preventing such offensive acts, Chapter 6 analyses the extent to which UNCLOS and the SUA treaties would enable States interdict vessels suspected of being about to perpetrate offensive acts. This analysis highlights the jurisdictional gaps in the provisions of UNCLOS enabling States to protect offshore platforms and submarine cables from terrorist attacks, the limitations of 1988 SUA treaties, and the consequences of the current low ratification of the 2005 SUA treaties. The chapter concludes by arguing for greater ratification of 2005 SUA Convention, and for more IMO guidance on ensuring the security of offshore platforms and submarine cables.

Chapter 7⁶¹ analyses the prospects for the international agreements to succeed in preventing terrorists from utilising vessels to enable subsequent terrorist attacks on land through transporting weaponry (conventional and WMD materiel) or terrorist operatives to a land location to perpetrate attacks, or utilising vessels to finance terrorist activities. As well as examining how the ISPS Code and other SOLAS maritime security and vessel identification measures might lessen the scope for vessels to be so utilised,⁶² the chapter also examines the extent to which UNCLOS and the 2005 SUA Convention might enable States to interdict vessels suspected of being utilised for such purposes. Whereas Chapter 6 examines the interdiction of vessels suspected of being about to perpetrate offensive terrorist acts *within* maritime zones, Chapter 7 examines the interdiction of “laterally transiting” vessels *passing through* maritime zones. It explains how the WMD interdiction measures described in the PSI

⁵⁸ ‘Countering offensive terrorist utilisations of vessels’

⁵⁹ Although Chapter 6 notes that in comparison to terrorist targeting of vessels, there are far fewer examples of terrorists utilising vessels in an offensive manner, because contemporary forms of terrorism (such as those demonstrated in the 9/11 attacks) have proven to be extremely innovative and deadly, it is very important to examine both “routine” attack types and also the extraordinary and unconventional ones

⁶⁰ Including through disabling the vessel near critical navigational chokepoints, causing deliberate pollution, facilitating the laying of sea mines, and interfering with submarine cables

⁶¹ ‘Countering the utilisation of vessels to enable subsequent terrorist attacks’

⁶² Chapter 7 notes several reported instances of rigorously-applied ISPS Code and other maritime security measures preventing weaponry and operatives being transported aboard vessels

Interdiction Principles⁶³ have prompted considerable debate about the legality of interdicting “laterally transiting” vessels under UNCLOS. From its analysis of this scholarly debate, Chapter 7 is the first study to articulate the “restrictive” and “liberal” views about the legality of interdicting laterally transiting vessels suspected of illicitly transporting WMD materiel, with these two views diverging on assessments of the influence that UN Security Council resolutions⁶⁴ have on the interdiction powers of States under UNCLOS.⁶⁵ Whilst it reasons the liberal view better enables States to (unilaterally) interdict suspected WMD shipments,⁶⁶ it argues in favour of formalising specific agreements between States to facilitate vessel interdictions,⁶⁷ and reduce the scope for disagreement and conflict.⁶⁸ Chapter 7 also explains that whilst the legality of interdicting vessels suspected of transport transporting conventional weaponry or terrorist operatives to enable attacks on land, and utilising vessels to finance terrorist activities⁶⁹ has not received as much scholarly analysis as interdicting suspected shipments of WMD materiel, there is similar scope for restrictive and liberal views of States’ interdiction powers under UNCLOS albeit with other Security Council resolutions being involved.⁷⁰ It notes several reports of States interdicting terrorist shipments of conventional weaponry outside their territorial seas without protest about the legality of such actions.

The ordering of Chapters 5, 6 and 7 is structured according to two criteria – first the decreasing imminence of the forms of maritime terrorism incidents, and second, the increasing “lead warning time” in which the maritime terrorism incidents would typically become apparent. Vessel targeting by terrorists (examined in Chapter 5) would be the most imminent threat to maritime security (that is, an attack about to occur), and involve the shortest “lead warning time” of minutes or even seconds (for example an explosives-packed speedboat approach a

⁶³ Whilst the PSI is not a formal international agreement conferring jurisdiction, Chapter 7 explains that as an informal political expression of how ‘participants’ indicate they might consider exercising their jurisdictional rights under UNCLOS, the PSI has prompted considerable debate about States’ interdiction powers under UNCLOS. Chapter 7 also discusses the uncertainties about how the PSI interdiction measures might be applied against vessels of non-consenting states; how many states “support” the PSI; and what “support” for the PSI actually entails

⁶⁴ Particularly Security Council Resolution 1540

⁶⁵ Chapter 7 explains that although the very small number of publicised WMD interdictions have all been carried out in a compliant and cooperative manner, it is still necessary need to consider less straight forward hypothetical scenarios where a vessel might not consent to interdiction

⁶⁶ Following recent arguments by scholars for greater flexibility in understanding the law of the sea as a balancing mechanism between inclusive and exclusive uses of oceans – particularly Natalie Klein *Maritime Security and the Law of the Sea* Oxford Monographs in International Law (Oxford University Press, 2011)

⁶⁷ Chapter 7 explains that specific agreements between States regarding vessel interdictions can reduce the scope for disagreement and conflict through specifying standards and procedures

⁶⁸ Chapter 9 discusses possible options for achieving such agreements between States

⁶⁹ Chapter 7 terms such activities as “Other than WMD transporting” terrorist utilisations of vessels

⁷⁰ Particularly UN Security Council Resolution 1390

target vessel at high speed). The offensive utilisation of vessels by terrorists (examined in Chapter 6) would constitute a less imminent threat to maritime security after terrorist targeting of vessels, and could involve a longer “lead warning time” in terms of hours (for example a hijacked merchant vessel travelling at abnormally high speeds towards a target such as a port facility or offshore platform). The utilisation of vessels to enable subsequent terrorist attacks on land (examined in Chapter 7) would not involve an imminent threat to the security of the maritime areas the vessel was transiting through – with subsequent terrorist attacks on land enabled through the provision of weaponry, operatives or funding on land possibly occurring months or even years after being transported to a land location by the vessel.⁷¹ Additionally, the utilisation of vessels to enable subsequent terrorist attacks could well involve lengthy “lead warning times” of several days or even weeks – for example the *So San* freighter was tracked by the US Navy for several weeks before its interdiction.

Chapter 8⁷² examines the international legal options available to States in exceptional circumstances⁷³ where neither UNCLOS nor the 2005 SUA Treaties (or other specific international agreements) would enable the interdiction of suspected terrorist vessels. These options include interdicting such vessels on the basis of States’ ‘inherent’ rights of self-defence recognised under Article 51 of the UN Charter, and somewhat less clearly, the doctrine of Necessity. Chapter 8 examines the development of the meaning of ‘armed attack’,⁷⁴ and explains that while the Article 51 self-defence rights of States have traditionally been understood in the context of “State vs State” conflicts, since 9/11 Article 51 has been increasingly invoked⁷⁵ to justify self-defence measures against non-state terrorists, including the interdiction of suspected terrorist vessels. Through focusing on three questions - the materiality threshold for an ‘armed attack’; the temporal threshold (at what point in time an ‘armed attack’ occurs); and whether an ‘armed attack’ may originate from non-state actors as

⁷¹ Although subsequent terrorist attacks on land which have been “enabled” through the provision of weaponry could, and have indeed been, deadly. Chapter 7 notes that the explosives used for the 1998 US embassy bombings in East Africa and the 2002 Bali bombings were both reported to have been transported by sea

⁷² ‘Countering maritime terrorism in exceptional circumstances under UN Charter Article 51 and the doctrine of Necessity’

⁷³ Chapters 6 and 7 identify the circumstances in which neither UNCLOS or the 2005 SUA treaties would enable the interdiction of suspected terrorist vessels

⁷⁴ Including the Caroline criteria; the foundational academic writings on the temporal aspects of Article 51 (the debate between Ian Brownlie and Derek Bowett); pre-9/11 State Practice and the 1974 UNGA Definition of Aggression; ICJ Jurisprudence (including *Nicaragua v United States of America* (1986), *Oil Platforms* (2003), *Palestinian Walls* (2003) and *DRC v Uganda* (2003)); post-9/11 state practice and reactions; the 2004 UN High Level Report on Threats, Challenges and Changes, and post-9/11 scholarly arguments about how the Caroline Principles should be understood in the context of countering contemporary terrorism.

⁷⁵ However Chapter 8 also notes the application of Article 51 against non-state actors has been criticised

well as states - Chapter 8 enunciates restrictive and liberal views on how Article 51 might apply in relation to the interdiction of suspected terrorist vessels. Significantly, Chapter 8 is the first study to articulate these two possible interpretations of Article 51 in the maritime terrorism context. Similarly to Chapter 7, it reasons that a liberal view of Article 51 would better enable States to interdict suspected terrorist vessels; but also argues that the invocation of self-defence rights should be an absolute last resort option. Chapter 8 also examines the possibility of States interdicting suspected terrorist vessels on the basis of the doctrine of Necessity.

Chapter 9⁷⁶ summarises the findings of the above chapters and outlines proposals for further refinement of the international agreements. In relation to the ISPS Code, these include the continual rigorous application of security measures, timely reporting by contracting governments about maritime security arrangements to the IMO, and the development of further IMO guidance on the protection of offshore platforms and submarine cables. The scope for the IMO to facilitate increased coordination between States in responding to Ship Security Alert System activations, and to facilitate international efforts to increase security of AIS information is also discussed. In relation to vessel interdictions, Chapter 9 argues for increased ratification of the 2005 SUA Convention as a first preference,⁷⁷ for the further development of bilateral ship-boarding agreements similar to the PSI bilateral ship-boarding agreements as a second preference, for increased formal institutionalisation of the PSI (which has been called for by several scholars, and by President Obama) as a third preference, and for developing greater support for liberal views of UNCLOS and Article 51 of the UN Charter as a fourth preference. The chapter concludes by outlining directions for future research based on the conclusions of this Study.

[1.5] SCOPE OF THIS STUDY

The scope of how this Study examines the threat of maritime terrorism, and the likely success of the international agreements in enabling the prevention of maritime terrorism incidents, is deliberately limited in several respects.

⁷⁶ ‘Conclusion and Proposals for Reform’

⁷⁷ Chapter 7 explains how the 2005 SUA Convention objectively defines key terms, and clearly specifies interdiction procedures – including appropriate safeguards

[1.5.1] Scope of analysis of maritime terrorism threats: This Study is confined to analysing the maritime threats posed by non-state actor terrorist groups. Chapter 2 explains that contemporary forms of terrorism are far less, if at all, attributable to States,⁷⁸ so this Study does not examine state responsibility for the actions of terrorist groups. The Maritime Terrorism Threat Matrix focuses on conceptualising *all the conceivable ways* in which terrorists might seek to target and/or utilise vessels. Whilst some of the maritime terrorism incidents considered in this Study might sound melodramatic or far-fetched, this Study does not seek to rank the likelihood of certain maritime terrorism incidents actually occurring, as other maritime security specialists have undertaken such inquiries.⁷⁹ Finally, its focus is on the contemporary threat of terrorism *in the maritime domain*. Whilst port facilities and their supply chains are significant components of maritime trade, the Study only examines attacks on land targets (such as port facilities) executed *from the maritime side* (through the use of vessels), as opposed to the *landward side* (for example through explosives-laden vehicles), as this would involve considerations of *terrestrial*, as opposed to *maritime*, security.

[1.5.2] Scope of analysis of the international agreements: As [1.2] explained, numerous studies have comprehensively examined the negotiating processes involved in developing SOLAS Chapter XI-2 and the ISPS Code, the LRIT amendments to SOLAS Chapter V and the 2005 SUA treaties at around the time of their entry into force. Therefore, this Study instead focuses on analysing developments relating to these instruments since their entry into force, which [1.7] explains has not yet been studied comprehensively. Secondly, Chapters 6 and 7 only analyse the likely success of UNCLOS and the 2005 SUA treaties in enabling States to interdict suspected terrorist vessels – they do not examine national laws and processes relating to the subsequent prosecution of persons aboard interdicted vessels; nor the confiscation of materials found aboard. Nor does this Study examine the liability of States for wrongful interdiction, or loss, damage or delay to cargoes aboard interdicted vessels.⁸⁰ Furthermore,

⁷⁸ Chapter 2 explains the consensus amongst terrorism specialists that the “controlling minds” of contemporary terrorist groups such as the late Osama Bin Laden and other Al Qaeda leaders are essentially “invisible”. This Study proceeds on the assumption that it is fanatical, irrational and non-law-abiding persons that are involved in the planning and perpetration of terrorist acts within the maritime domain that are acting outside of the direct or indirect control of states.

⁷⁹ Sam Bateman ‘Maritime Terrorism: Issues for the Asia-Pacific Region’ (October 2006) 2(3) *Kokoda Foundation Security Challenges* 77 - 91 provides a very insightful analysis of the likelihood of “less likely” and “more likely” categories of maritime terrorist attacks. Peter Lehr ‘Maritime Terrorism: Locations, Actors and Capabilities’ in Rupert Herbert-Burns, Sam Bateman and Peter Lehr (eds) *Lloyds MIU Handbook of Maritime Security* (CRC Press, 2009) also makes similar observations

⁸⁰ For comprehensive analyses on these points, see Craig Allen *Maritime Counter-proliferation Operations and the Rule of Law* (London: Praeger Security International, 2007); Douglas Guilfoyle *Shipping Interdiction and the*

apart from some illustrative references to provide context, this Study does not focus on examining the domestic legislative and institutional arrangements that have implemented the requirements of SOLAS Chapter XI-2 and the ISPS Code, AIS, LRIT and the 2003 Amendments to the 1958 Seafarers Identity Documents Convention. As Chapter 9 explains, it is hoped the findings of this Study will stimulate other shorter studies to undertake such inquiries. For similar reasons, this Study does not examine the political influences on the positions of States regarding UNCLOS or Article 51 of the UN Charter.⁸¹ Finally, Chapter 7 focuses on examining *counter*-proliferation measures, rather than *non*-proliferation measures;⁸² and although several of the post 9/11 counter-terrorism Security Council resolutions examined in Chapter 2 have obliged and invited States to implement various measures to counter terrorism within their territories, this Study does not examine the domestic implementation of such measures.

[1.6] METHODOLOGY, INFORMATION SOURCES AND THEIR RELIABILITY

[1.6.1] Regarding maritime terrorism incidents

As Chapters 2 and 3 explain, terrorism is an inherently unpredictable “low frequency / high impact” phenomenon – with the contemporary post-9/11 forms of terrorism being extremely irregular, unpredictable and innovative. Chapter 3 explains that although maritime terrorist attacks are very infrequent (accounting for around only 2 per cent of all recorded terrorist attacks since 1968),⁸³ the disruptive effect of such attacks could well be very profound. It therefore draws on the widest possible range of information sources to develop the “threat

Law of the Sea (Cambridge University Press, 2009); and Phillip Wendel *State Responsibility for Interferences with the Freedom of Navigation in Public International Law* Hamburg Studies on Maritime Affairs (Springer, 2007)

⁸¹ For example, Mark Valencia *The Proliferation Security Initiative: Making Waves in Asia* Adelphi Papers (International Institute for Strategic Studies, 2005) analyses the political motives that have been alleged to be behind the US lead PSI – and the reactions of certain states to it; See also Chris Rahman ‘The International Politics of Combating Piracy in South East Asia’ in Peter Lehr (ed) *Violence at Sea: Piracy in the Age of Global Terrorism* (Lloyds Marine Intelligence Unit, 2007)

⁸² And so the Study does not focus on examining instruments such as the Nuclear Non-Proliferation Treaty, the Chemical Weapons Convention and the Biological Weapons Convention, and arrangements such as the Wassenaar Agreement, and the Australia Group – which impose various obligations on states to implement appropriate preventative measures to safeguard against unauthorized transfers of WMD materiel. As Chapter 7 explains, these international agreements do not focus specifically towards the maritime domain. For a succinct explanation as to the differences between non-proliferation and counter-proliferation, see Craig Allen *Maritime Counter-proliferation Operations and the Rule of Law* (London: Praeger Security International, 2007), pp. 27-29 and Daniel Joyner ‘The Proliferation Security Initiative: Non-proliferation, Counter-Proliferation and International Law’ (2005) 30 *Yale Journal of International Law* 512 - 521

⁸³ Chapter 2 explains that the continuous recording of terrorism statistics commenced in 1968

context”⁸⁴ described in [1.4] – including terrorism databases,⁸⁵ journal and book articles and media reports.⁸⁶ These information sources vary in terms of the detail reported about previous maritime terrorism incidents, with several sources being quite generalised (for example *‘terrorist group xxx launched an armed assault aboard ship xxx on date xxx’*). Whilst every effort was made to ascertain further details about all maritime terrorism incidents, this was not possible in all cases.⁸⁷ It is also possible that terrorists may have attempted or planned other maritime attacks, with these attempts and plans either failing, being abandoned or being disrupted by authorities and not publicised. As this Study examines many statistics about terrorist attacks, statistical trends and notable case studies are discussed in the chapters to illustrate the arguments of the Study, with complete details being recorded in the appendices.

[1.6.2] Regarding the international agreements

Because official intelligence about terrorist activities, and the details of arrangements that States and maritime industries have in place to address terrorist threats are almost entirely classified and confidential, this Study has been limited to publicly-available secondary information sources. For example, Chapter 7 notes several international legal scholars pointing out that interdictions by PSI participants of vessels suspected illicitly transporting WMD materiel might not be publicised for national security reasons. Similarly, Chapter 4’s analysis of how the identified limitations of the ISPS Code have been addressed following its entry into force, and how international LRIT arrangements have functioned since progressively becoming operational from early 2011 onwards, is based the analysis of publicly-available reports of IMO proceedings.

Chapters 5, 6, 7 and 8 explain that many reports of previous interdictions of suspected terrorist vessels, have also tended to be quite vague and generalised (for example, *‘Ship xxx was interdicted in international waters off State xxx carrying explosives’*). Whilst every effort was made to ascertain further details about previous interdictions, this was not possible in all cases.

⁸⁴ As [1.4] explained, the threat contexts examine the range of ways in which the relevant maritime terrorism incidents have previously occurred, been attempted or planned, or postulated by maritime security specialists

⁸⁵ Chapter 2 explains the terrorism databases that were utilised

⁸⁶ As [1.2] noted, because discrete aspects of the threat of maritime terrorism, and the international agreements that enable States to counter such threats have to varying degrees been studied in considerable detail, this Study generally utilises more journal and book articles than media reports as information sources

⁸⁷ In some cases, individual studies were the only source of information about particular maritime terrorism incidents

Given the vagueness and ambiguity of many provisions of UNCLOS, and of Article 51 of the UN Charter, this Study reasons that states would be unlikely to specifically publicise their interpretations of, or policy in relation to, those instruments in order to maintain maximum flexibility in their response options.⁸⁸ Furthermore, since 9/11 there have not been any international disputes about the interdiction of suspected terrorist vessels heard in either the International Tribunal for the Law of the Sea or the International Court of Justice providing authoritative guidance on the legality of interdicting suspected terrorist vessels.⁸⁹ As a result, assessments of the likely success of the international agreements in enabling the prevention of maritime terrorism incidents involve the making of suppositions and the drawing of inferences from hypothetical scenarios based on scholarly arguments, and inferences drawn from the most relevant international legal cases.

[1.7] SIGNIFICANCE OF THIS STUDY

As [1.2] noted, since 9/11 discrete aspects of both the contemporary threat of maritime terrorism, and the international agreements that enable the prevention of such threats, have been studied to varying extents. This is the first major study to undertake an overall assessment of the extent to which the international agreements are likely to succeed in enabling the prevention of contemporary post-9/11 maritime terrorism incidents.

Through developing the Maritime Terrorism Threat Matrix in Chapter 3, this Study provides the most structured general framework to date for statistically analysing all of the conceivable ways in which contemporary maritime terrorism incidents might occur. The Threat Matrix provides the foundations for a structured database on maritime terrorism that can be regularly updated database over future years. Additionally, the successful, attempted, planned and postulated (“SAPP”) approach used in the Threat Matrix to record statistics about maritime terrorism statistics is likely to be of relevance to terrorism studies more generally.

⁸⁸ For example, Chapters 6 and 7 reason that it would be unlikely that States would specify their interpretations of what might and might not be involved with ‘taking the necessary steps ... to prevent non-innocent passage’ under UNCLOS Article 25

⁸⁹ Donald Rothwell ‘The Proliferation Security Initiative: Amending the Convention on the Law of the Sea by Stealth?’ in David Caron and Harry Scheiber (eds) *Oceans in the Nuclear Age: Legacies and Risks* (Martinus Nijhoff, 2010), 286

As explained in [1.4], the Threat Matrix enables the evaluation of the international agreements to proceed from the most informed threat context, through firstly considering ‘How have terrorists successfully perpetrated such actions, attempted and planned to do so, and how have maritime security specialist postulated they might do so?’; and then considering ‘Given this threat context, how might the international agreements succeed in preventing the occurrence of maritime terrorism incidents?’

As Chapter 2 explains, this Study is the first to develop the terms “contemporary terrorism” and “pre-contemporary terrorism” to distinguish the dominant forms of terrorism that have been perpetrated by both Al Qaeda-influenced groups, and the LTTE over the last two decades from “older”, more restrained forms of terrorism.

As Chapter 4 explains, this Study is the first to undertake a detailed analysis of how the recognised limitations of the ISPS Code (being the first line of defence against maritime terrorism) have been addressed within the IMO since its entry into force in 2004. It is also the first to enunciate the factors likely to influence the prospects for ISPS Code security measures to prevent maritime terrorism incidents through developing the “best case / worst case” scenarios. It is also the first study to examine how international LRIT arrangements have functioned since progressively becoming operational from early 2011 onwards.

As Chapter 7 explains, this Study is the first to specifically articulate the contending “restrictive” and “liberal” views on the legality of WMD interdictions under UNCLOS that have been made by international legal scholars. It is also the first study to apply these contending views firstly to the analysis of the legality of interdicting other terrorist utilisations of vessels to enable subsequent terrorist attacks. It is also the first study to undertake a detailed analysis of the legality of interdicting suspected terrorist vessels under Article 51 of the UN Charter, through articulating “restrictive” and “liberal” views of the meaning of ‘armed attack’ in the contemporary maritime terrorism context. As [9.4] explains, it is also expected this Study will provide the foundations of further analyses on these issues.

CHAPTER 2

THE THREAT OF CONTEMPORARY TERRORISM GLOBALLY

[2.1] INTRODUCTION

This chapter outlines the contemporary threat of post-9/11 terrorism globally.¹ It firstly discusses the challenges of defining terrorism and the variances in the designations of terrorist groups between the UN and selected States. The chapter then explains how since the mid-1990s and particularly following the 9/11 attacks, the most serious forms of terrorism have moved away from restrained tactics such as targeted assassinations and “negotiable” hostage takings perpetrated by identifiable groups with defined political motives, and towards the perpetration of carefully planned and coordinated mass casualty attacks, frequently involving the suicide of the attackers, driven by extremist non-negotiable ideologies. Through this process, the chapter shows that terrorism did not suddenly change overnight on 9/11, nor were the 9/11 attacks an aberration; but rather that such religiously-driven forms of terrorism have come to be the now-more-dominant forms of terrorism globally. Lastly, the chapter explains how the UN Security Council has recognised the serious threat of contemporary terrorism to international peace and security in several post- 9/11 counter-terrorism resolutions, which have imposed obligations on States that are neither geographically nor temporally limited.² The chapter concludes that more than ten years after the 9/11 attacks and even following the 2011 death of Osama bin Laden, the threat of contemporary terrorism remains and that it must be continually prevented.³

¹ ‘Globally’ means all terrorist attacks perpetrated on land, sea and air. This chapter provides context for Chapter 3 to address the first of the sub-questions posed in [1.2.2] – namely ‘(1) How should the threat of contemporary post-9/11 forms of maritime terrorism be understood?’ As Chapter 1 noted, because maritime terrorist attacks only account for around two per cent of all recorded terrorist attacks since 1968, it is important to view the potential threat of maritime terrorism from the basis of its global context

² As [1.4] explained, Chapter 7 analyses the assessments that have been made by international legal scholars about the implications of these Security Council resolutions on the powers of States under UNCLOS to interdict laterally transiting vessels suspected of transporting WMD materiel

³ In particular, this chapter outlines the increasing prevalence of mass casualty attacks, frequently involving the suicide of the perpetrators – thereby highlighting the importance of preventing such attacks from occurring in the first instance – rather than responding after attacks have been perpetrated

[2.2] THE CHALLENGES OF DEFINING TERRORISM

Although more than a thousand definitions of terrorism have been explored, proposed and/or adopted by States, international bodies and scholars, there is no universally agreed definition of terrorism.⁴ Indeed some scholars have concluding that a universally agreed definition of terrorism may be unattainable.⁵ After reviewing the variances in the definitions of terrorism at international law and by scholars, and the variances in the designation of terrorist organisations, [2.2.4] explains why this Study utilises the broad definition of terrorism set out 2011 Revised Academic Consensus Definition of Terrorism.

[2.2.1] International legal definitions

International counter-terrorism conventions have generally taken a “sectoral” approach through proscribing and dealing with the apprehension, prosecution or extradition in relation to specific acts of terrorism - as opposed to proscribing (or defining) ‘terrorism’ per se.⁶ These conventions proscribe terrorist acts⁷ including the hijacking and acts of violence involving aircraft and international airports;⁸ crimes against internationally protected persons such as diplomatic agents;⁹ the taking of hostages;¹⁰ unlawful acts involving nuclear materials;¹¹ the

⁴ On the challenges of defining terrorism, see Boaz Ganor, ‘Defining Terrorism: Is One Man’s Terrorist Another Man’s Freedom Fighter?’ (2002) 3(4) *Police Practice and Research* 287 – 304 and Alex Schmid (ed) *The Routledge Handbook on Terrorism Research* (Routledge, 2011), 43 – 44

⁵ Omar Malik *Enough of the Definition of Terrorism* (Royal Institute of International Affairs, December 2002), cited in Schmid et al, above n 4, 42

⁶ Schmid et al, above n 4, 50 provides an overview of the historical development of these sectoral counter-terrorism conventions

⁷ Schmid et al, above n 4, 58 – 59; *Terrorism and International Law: Accountability, Remedies and Reform* A Report of the International Bar Association Taskforce on Terrorism (2011), 1

⁸ These include the *Convention on Offences and Certain Other Acts Committed On Board Aircraft*, open for signature 14 September 1963, 704 UNTS 219 (entered into force 4 December 1969); *Hague Convention for the Suppression of Unlawful Seizure of Aircraft*, opened for signature 16 December 1970, 860 UNTS 105 (entered into force 14 October 1971); *Montreal Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation*, opened for signature 23 September 1971, 974 UNTS 177 (entered into force 26 January 1973); and the *Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation*, opened for signature 24 February 1988, 1589 UNTS 474 (entered into force 6 August 1989)

⁹ *Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents*, opened for signature December 1973, 1035 UNTS 15410 (entered into force 20 February 1977)

¹⁰ *International Convention against the Taking of Hostages*, opened for signature 17 December 1979, 1316 UNTS 205 (entered into force 3 June 1983)

¹¹ *Convention on the Physical Protection of Nuclear Material*, opened for signature 3 March 1980, 1456 UNTS 101 (entered into force 8 February 1987); *International Convention for the Suppression of Acts of Nuclear Terrorism*, opened for signature 13 April 2005, 2445 UNTS 89 (entered into force 7 July 2007)

marking of plastic explosives for the purposes of detection;¹² the illegal bombing of public places and critical infrastructure;¹³ the financing of terrorism;¹⁴ and illegal interference with maritime navigation and offshore platforms.¹⁵ Of these sixteen globally-focused sectoral conventions and protocols, only the 1999 International Convention for the Suppression of the Financing of Terrorism proffers a generalised definition of terrorism, with Article 2(1)(b) proscribing: ‘any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or to abstain from doing any act’.¹⁶

Following the 9/11 attacks, the Ad Hoc Sixth Committee of the UN General Assembly attempted to formulate a comprehensive general definition of terrorism. Article 2(1) of the Draft Comprehensive Convention on International Terrorism provides that ‘Any person commits an offence within the meaning of this Convention if that person, by any means, unlawfully and intentionally, causes: (a) Death or serious bodily injury to any person; or (b) Serious damage to public or private property, including a place of public use, a State or government facility, a public transportation system, an infrastructure facility or the environment; or (c) Damage to property, places, facilities, or systems referred to in paragraph 1 (b) of this article, resulting or likely to result in major economic loss, when the purpose of the conduct, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or abstain from doing any act’.¹⁷

¹² *Convention on the Marking of Plastic Explosives for the Purpose of Detection*, opened for signature 1 March 1991, 2122 UNTS 359 (entered into force 21 June 1998)

¹³ *International Convention for the Suppression of Terrorist Bombings*, opened for signature 15 December 1997, 2149 UNTS 284 (entered into force 23 May 2001)

¹⁴ *International Convention for the Suppression of the Financing of Terrorism*, opened for signature 9 December 1999, 39 ILM 270 (entered into force 10 April 2002)

¹⁵ *Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation*, opened for signature 10 March 1988, 1678 UNTS 221 (entered into force 1 March 1992); *Protocol of 2005 to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation* (opened for signature 14 October 2005, entered into force 28 July 2010) IMO Doc. LEG/CONF.15/21; *Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf*, opened for signature 10 March 1988, 1678 UNTS 304 (entered into force 1 March 1992); and the *Protocol of 2005 to the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf* (opened for signature 14 October 2005, entered into force 28 July 2010) IMO Doc. LEG/CONF.15/22

¹⁶ Schmid et al, above n 4, 55 - 56

¹⁷ Ben Golder and George Williams ‘What is “Terrorism”? Problems of Legal Definition’ in VB Malleswari (ed), *Anti-Terrorism Laws: Global Scenario* (Amicus Books, 2008), 1 - 37; Schmid et al, above n 4, 51

As at 1 October 2013, whilst this Draft Comprehensive Convention has been the subject of continuous discussion within the UN, it remains finalised.¹⁸ The key points of contention preventing States from reaching a consensus on the definition of terrorism include the application of the term ‘terrorism’ to the actions of governments and states (and their armed forces) in the same way it applies to non-State actors, and the question of whether it should differentiate between violent actions taken by certain peoples engaged in self-determination struggles and/or the combating of foreign occupation.¹⁹

In addition to the above sectoral counter-terrorism treaties, several UN declarations, resolutions and reports by the UN have come close to proffering generalised definitions of terrorism. On 17 December 1996, the non-binding UN Declaration to Supplement the 1994 Declaration on Measures to Eliminate International Terrorism, which was annexed to UN General Assembly Resolution 51/210, condemned terrorist activities by declaring in the following broad terms, inter alia that: ‘3. Criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes are in any circumstance unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or any other nature that may be invoked to justify them’.²⁰ On 4 October 2004, following several bombings attributed to Al Qaeda-linked groups, the Security Council passed Resolution 1566, which in operative paragraph 3, whilst not specifically defining terrorism, noted that: ‘... criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organization to do or to abstain from doing any act, which constitute offences within the scope of and as defined in the international conventions and protocols relating to terrorism, are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature’.²¹ Also in 2004, the UN High Level Report on Threats, Challenges and Changes proposed that a definition of terrorism for a future comprehensive international convention on

¹⁸ United Nations *Report of the Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996 Sixteenth Session* (8 to 12 April 2013) UN Doc A/68/37; United Nations ‘Measures to Eliminate International Terrorism: Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996, <http://www.un.org/law/terrorism/> Last updated 15 April 2013, Accessed 1 October 2013

¹⁹ Schmid et al, above n 4, 51 – 58

²⁰ United Nations ‘Measures to eliminate international terrorism’ UN Doc A/RES/51/210 88th plenary meeting 17 December 1996

²¹ UNSC Res 1566, (4 October 2004) UN Doc S/RES/1566, para 3

terrorism should include, inter alia: ‘Description of terrorism as any action, in addition to actions already specified by the existing conventions on aspects of terrorism, the Geneva Conventions and Security Council Resolution 1566 (2004), that is intended to cause death or serious bodily harm to civilians or non-combatants, when the purpose of such an act, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or to abstain from doing any act’.²² Similarly to the lack of consensus on the definition of terrorism at international levels, there are also variations between national definitions of the term.²³

[2.2.2] Designated terrorist organisations: International and National Approaches

Similar to the lack of international consensus on defining terrorism, there are also significant variations in the designation of terrorist organisations between the UN and amongst States. At the UN level, in 1999 Security Council Resolution 1267²⁴ mandated a wide range of sanctions²⁵ against designated individuals and groups associated with Al Qaeda, the late Osama bin Laden and the former Taliban government of Afghanistan. As [2.7] explains, since 1999 this sanctions regime has been re-affirmed in nine further resolutions, with the ‘1267 List’ of designated terrorist groups and individuals having been progressively updated. As [2.7] explains, the Security Council’s counter-terrorism activities expanded significantly following 9/11, with Resolution 1373 in 2001²⁶ establishing of a Counter Terrorism Committee, and Resolution 1535 in 2004 establishing a Counter Terrorism Committee Executive Directorate to monitor the implementation of Resolution 1373 and to facilitate the provision of technical assistance to

²² United Nations *A More Secure World: Our Shared Responsibility* - Report of the Secretary-General High-level Panel on Threats, Challenges and Change GA 59th session, Agenda Item 55 UN Doc A/59/565 (2 December 2004) at [164]

²³ Examples of studies that have comprehensively examined national definitions of terrorism include Schmid et al, above n 4, 44 – 49; Ben Golder and George Williams ‘What is Terrorism? Problems of Legal Definition’ in V. B. Malleswari (ed) *Anti-Terrorism Laws: Global Scenario* (ICFAI Amicus Books, 2008), 1 - 37; Kent Roach *The 9/11 Effect: Comparative Counter-Terrorism* (Cambridge University Press, 2011); and Kent Roach (ed) *Global Anti-Terrorism Law and Policy* 2nd edition (Cambridge University Press, 2012)

²⁴ UNSC Res 1267 (15 October 1999) UN Doc S/RES/1267

²⁵ These UNSC Resolutions have obliged States to freeze without delay the funds and other financial assets or economic resources, including funds derived from property owned or controlled directly or indirectly; prevent the entry into or the transit through their territories; and prevent the direct or indirect supply, sale, or transfer of arms and related material, including military and paramilitary equipment, technical advice, assistance or training related to military activities, with regard to the individuals, groups, undertakings and entities placed on the Al-Qaida Sanctions List

²⁶ Which obliges Member States to take a number of measures to prevent terrorist activities and to criminalize various forms of terrorist actions, as well as to take measures that assist and promote cooperation among countries including adherence to international counter-terrorism instruments

Member states. As at 1 October 2013, the UN's Al Qaeda Sanctions List designates 63 entities and 220 individuals²⁷ - with Appendix A²⁸ listing these entities.

There are significant variations amongst States in the designation of terrorist organisations, in addition to the 63 entities designated in the UN's Al Qaeda Sanctions List.²⁹ Appendix A lists the groups which as at 1 October 2013 were designated as terrorist organisations by the UN under the Al Qaeda Sanctions List, and by Australia, the United States, the United Kingdom and Canada – showing considerable variations amongst between the UN and amongst these four States. However, as [2.6.4] explains, since around 2005, significant terrorist attacks have been perpetrated by “home grown” terrorist groups which might not as yet have been formally designated as terrorist organisations.

[2.2.3] Academic definitions of terrorism

Given the inconsistencies in the definition of terrorism and the designation of terrorist organisations, academic definitions of terrorism are also helpful to examine for several reasons. First, they may be both more objective and candid, and less constrained by political considerations. Second, and following on from the first point, they may be more thoroughly reasoned and based on many years of consistent observation of the phenomena of terrorism – as opposed to being hastily developed in response to political pressures. Third, and both following on from the second point (and in contradistinction to it), academic definitions are more easily able to be amended to better account for changes in terrorist activity in comparison to the complex and time-consuming processes for amending official legal definitions.

Three key studies have reviewed the significant number of academic definitions of terrorism developed over the last three decades. A widely cited survey by Schmid and Jongman in 1988³⁰ analysed the frequency of 22 definitional elements of terrorism from 109 academic definitions. In their 2004 study, Weinburg, Pedahzur and Hirsch-Hoefler undertook an empirical analysis

²⁷ ‘The List established and maintained by the Committee pursuant to resolutions 1267 (1999) and 1989 (2011) with respect to individuals, groups, undertakings and other entities associated with Al-Qaida’ Last updated on 20 September 2013

http://www.un.org/sc/committees/1267/eq_sanctions_list.shtml; Accessed 1 October 2013

²⁸ ‘Designations of terrorist groups by the UN and by selected States as at 1 October 2013’

²⁹ It should be noted that the UN has to “tread a very fine line” and balance numerous and divergent national interests, so it will be necessarily constrained in terms of those groups it might designate as terrorist

³⁰ Alex Schmid and Albert Jongman *Political Terrorism: A New Guide to Actors, Authors, Concepts, Databases, Theories and Literature* (Transaction Books, 1988)

of 73 academic definitions of terrorism drawn from 55 articles published in three journals between 1977 and 2001,³¹ and contrasted the frequency of the occurrence of these definitions under the 22 definitional elements noted by Schmid and Jongman in 1988. Figure 1 (which has been widely cited in studies on definitions of terrorism) shows the list of the most common elements included in the academic definitions of terrorism. Similar to the variances in definitions of terrorism noted in [2.2.1], and the variances in the designation of groups as terrorist organisations noted in [2.2.2], the considerable variations between academic definitions of terrorism further indicate the challenges of conclusively defining terrorism.

³¹ The three journals these authors examined were *Terrorism* (New York: Crane Russak & Company), from 1977 to 1991 and then (Minneapolis, MN: John Scherer), 1982–1983, 1986–1989; *Terrorism and Political Violence* (London: Frank Cass) from 1990 to 2001; and *Studies in Conflict and Terrorism* (London: Taylor and Francis) from 1992 to 2001: Leonard Weinburg, Ami Pedahzur and Sivan Hirsch-Hoefler ‘The Challenges of Conceptualizing Terrorism’ (2004) 16(4) *Terrorism and Political Violence*, 780

Figure 1: Frequency of Definitional Elements of “Terrorism”**Table 1. Frequencies of definitional Elements of “Terrorism”**

Element	Schmid & Jongman Survey (1988) frequency (%)	Our survey (2002) frequency (%)
1. Violence, Force	83.5	71
2. Political	65	60
3. Fear, Terror emphasized	51	22
4. Threat	47	41
5. Psychological effects and (anticipated) reactions	41.5	5.5
6. Victim-Target differentiation	37.5	25
7. Purposive, Planned, Systematic, Organized action	32	11
8. Method of combat, strategy, tactic	30.5	31.5
9. Extranormality, in breach of accepted rules, without humanitarian constrains	30	0
10. Coercion, extortion, induction of compliance	28	5.5
11. Publicity aspect	21.5	18
12. Arbitrariness, impersonal, random character, indiscrimination	21	0
13. Civilians, noncombatants, neutrals, outsiders as victims	17.5	22
14. Intimidation	17	11
15. Innocence of victims emphasized	15.5	10
16. Group, movement, organization as perpetrator	14	29
17. Symbolic aspect, demonstration to others	13.5	5.5
18. Incalculability, unpredictability, unexpectedness of occurrence of violence	9	1
19. Clandestine, covert nature	9	7
20. Repetitiveness, serial or campaign character of violence	7	0
21. Criminal	6	5.5
22. Demands made on third parties	4	1

Note: The Schmid & Jongman survey consists of 22 elements drawn from 109 definitions. Our survey consists of 73 definitions drawn from 55 articles collected from three journals.

Source: Alex Schmid (ed) *The Routledge Handbook of Terrorism Research* (Routledge, 2011), 85

Third and most recently, the comprehensive *Routledge Handbook on Terrorism Research* (‘Schmid et al’) reviewed a wide range of academic, national and international legal definitions of terrorism, and also sought feedback from terrorism academics. Drawing together the commonalities of these definitions, Schmid et al developed a twelve point “Revised Academic

Consensus Definition of Terrorism 2011” (Rev ACDT 2011), with the first paragraph of the Rev ACDT 2011 presenting the most comprehensive “model” definition of terrorism to date:

‘Terrorism refers on the one hand to a *doctrine* about the presumed effectiveness of a special form or tactic of fear-generating, coercive political violence and, on the other hand, to a conspiratorial *practice* of calculated, demonstrative, direct violent action without legal or moral restraints, targeting mainly civilians and non-combatants, performed for its propagandistic and psychological effects on various audiences and conflict parties’.³² [Emphasis in original]

The remaining paragraphs 2 to 12 of the Rev ACDT 2011 serve an explanatory purpose by further amplifying the definitional boundaries of terrorism.³³ Relevantly for this Study (as [5.2.2] distinguishes between the patterns of attacks on vessels by terrorists and from attacks by pirates), Paragraph 9 of the Rev ACDT 2011 explains: ‘While showing similarities with methods employed by organised crime, as well as those found in war crimes, terrorist violence is predominantly political – usually in its motivation but nearly always in its societal

³² Schmid et al, above n 4, 86

³³ The remaining paragraphs of the Rev ACDT 2011 specified that **(2)** Terrorism is a tactic employed in *three man contexts*: (i) illegal state repression; (ii) propagandistic agitation by non-state actors in time of peace or outside zones of conflict and (iii) as an illicit tactic of irregular warfare employed by state and non-state actors; **(3)** The physical *violence* or threat thereof employed by terrorist actors involves single-phase acts of lethal violence (such as bombings and armed assaults), dual-phase life-threatening incidents (like kidnapping, hijacking and other forms of hostage taking for coercive bargaining), as well as multi-phase sequences of actions (such as “disappearances involving kidnapping, secret detention, torture and murder); **(4)** Public(-ized) terrorist victimisation initiates *threat-based communication processes* whereby, on the one hand, conditional demands are made to individuals, groups, governments, societies or sections thereof, and, on the other hand, the support of specific constituencies (based on ties of ethnicity, religion, political affiliation and the like) is sought by the terrorist perpetrators; **(5)** At the origin of terrorism stands *terror* – instilled fear, dread, panic or mere anxiety – spread among those identifying, or sharing similarities, with the direct victims, generated by some of the modalities of the terrorist act – its shocking brutality, lack of discrimination, dramatic or symbolic quality and disregard for the rules of warfare and the rules of punishment; **(6)** The main direct victims of terrorist attacks are in general not any armed forces but are *usually civilians, non-combatants and other innocent and defenceless persons* who bear no direct responsibility for the conduct that gave rise to acts of terrorism; **(7)** The *direct victims are not the ultimate target* (as in a classical assassination, where the victim and target coincide) but serve as message generators, more or less unwittingly helped by the news values of the mass media, to reach various audiences and conflict parties that identify either with the victims’ plight or the terrorists’ professed cause; **(8)** Sources of terrorist violence can be individual *perpetrators*, small groups, diffuse transnational networks as well as state actors or state-sponsored clandestine agents (such as death squads and hit teams); **(paragraph 9 is discussed above in the body)**; **(10)** The immediate *intent* of acts of terrorism is to terrorise, intimidate, antagonise, disorientate, destabilise, coerce, compel, demoralise or provoke a target population or conflict party in the hope of achieving from the resulting insecurity a favourable power outcome, for example obtaining publicity, extorting ransom money, obtaining submission to terrorist demands and/or immobilising sectors of the public; **(11)** The *motivations* to engage in terrorism cover a broad range, including redress for alleged grievances, personal or vicarious revenge, collective punishment, revolution, national liberation and the promotion of diverse ideological, political, social, national or religious causes and objectives; and **(12)** Acts of terrorism rarely stand alone, but rather form part of a *campaign* of violence which alone can, owing to the serial character of acts of violence and threats of more to come, create a pervasive climate of fear that enables the terrorists to manipulate the political process.

repercussions'.³⁴ Similarly, based on a review of numerous previous studies on the question³⁵ Schmid et al also summarised a list of acts that *should be* excluded from a “model” definition of terrorism.³⁶

There has been extensive debate on whether politically-motivated non-state actors who perpetrate violent actions should be characterised as terrorists rebels, insurgents or guerrillas – even though the activities of such groups might fall within the Rev ACDT 2011 noted above. Stepanova classifies politically-motivated violence as “insurgent terrorism” according to whether it is global or local, and whether or not the campaign of terror is part of a broader political conflict;³⁷ whereas Schmid et al regard terrorism as a tactic which might be utilised by a range of politically-motivated non-state actors including rebels, insurgents and guerrillas.³⁸ As the following sections reason, the inclusive definition developed by Schmid et al enables the inclusion of attacks by groups which might also be characterised as insurgents within conflict zones such as Iraq, Afghanistan and (within the 1980s) Nicaragua as “terrorist attacks” – an approach which has been taken by the two leading international terrorism databases which this Study draws upon to identify and analyse patterns in terrorist attacks over time. The broad Rev ACDT definition of terrorism could also capture the “home-grown” terrorist groups not yet officially designated as terrorist organisations – with [2.6.4] explaining how such groups have perpetrated a significant number of major attacks since around 2005.

³⁴ Schmid et al, above n 4, 87

³⁵ Ben Saul *Defining Terrorism in International Law* (Oxford University Press, 2006) – whilst not specifically referenced by Schmid et al, above n 4 – is a very comprehensive study on the definitional aspects of terrorism

³⁶ These acts included mere acts of property damage, as well as sabotage such as interrupting the flow of an oil pipeline, even where the saboteurs are engaging in acts of terrorism on other occasions; attacks on military installations, aircraft, navy vessels, barracks and the like, which are guarded, even when those who attack military installations or personnel are otherwise also engaging in acts of terrorism; attacks on police stations and armed police on patrol during armed conflict in zones of combat; cases of collateral damage where the targeting of civilians was not deliberate (eg when an attack on a police station misfires and civilians are (also) victims; cases of attacks on secular or religious symbols unless such an attack is combined with the victimisation of people (an attack on a church known to be empty would not qualify; an attack on a church, mosque or synagogue where people are sheltering would); certain types of assassinations, for example when the direct victim is the only target, as opposed to de-individualise murder where the victim serves only as a message generator to reach a wider audience; acts which if a situation of war existed would not qualify as war crimes, nor be crimes against humanity or grave breaches of the laws of war; guerrilla warfare activities that are not war crimes, crimes against humanity or grave breaches of humanitarian law; acts of legal use of force by legitimate authorities to impose public order when acting with restraint and in proportion to the threat and within the boundaries of the rule of law; and acts of (collective) political violence which are spontaneous, as in riots, demonstrations and other forms of public protest and dissent; industrial action (strikes) and revolts.

³⁷ See for example Ekaterina Stepanova *Terrorism in Asymmetrical Conflict: Ideological and Structural Aspects* Stockholm International Peace Research Institute Research Report No 23, 13 March 2008, 9 – 11

³⁸ Schmid et al, above n 4, 645 defines insurgency as ‘An armed uprising, revolt or rebellion by a political group or party against a domestic or foreign ruling regime in order to subvert, overthrow, expel it or to break away from it; or simply to enhance the group’s bargaining power for subsequent political compromises. *Acts of terrorism are frequent occurrences in many insurgencies*’. [Emphasis added]

[2.2.4] Rationale for this Study's use of the broad Rev ACDT definition of terrorism

As Chapter 1 explained, this Study examines the full gamut of ways in which terrorists might conceivably target and/or utilise vessels. It also noted that successful maritime terrorist attacks have accounted for only two per cent of all recorded terrorist attacks since 1968.³⁹ Based on a thorough review of all terrorism databases and other information sources, [3.3.1] explains that 228 maritime terrorist attacks have been recorded as having been successfully⁴⁰ perpetrated since 1968.⁴¹ A significant number of these attacks have been perpetrated by groups also characterised as insurgents and/or rebels – particularly the LTTE⁴² and the Movement for the Emancipation of the Niger Delta (MEND). Furthermore, [5.2.2.1] notes there is some overlap between maritime terrorism and other forms of maritime violence perpetrated by non-state actors such as insurgents, pirates and other criminal groups. Given this scope for overlap, in order to gauge the widest number of previous maritime terrorist attacks, this Study proceeds from the broad Rev ACDT definition of terrorism in order to “capture” the widest number of politically- or ideologically-motivated illegal maritime actions perpetrated by non-state actors. As Chapter 1 explained, this Study does not examine the subsequent prosecutions or other legal proceedings which States might take against suspected terrorist vessels once interdicted, so questions regarding the terrorist status of interdicted vessels could be determined during subsequent investigations and prosecutions on land.⁴³

³⁹ As [2.3] explains, terrorism statistics have been methodically recorded since 1968

⁴⁰ The National Consortium for the Study of Terrorism and Responses to Terrorism Global Terrorism Database <http://www.start.umd.edu/gtd/> (GTD) from which many of the statistics utilised in this Study have been derived defines a terrorist attack as being “successful” according to the tangible effects of the attack. For example, in a typical successful bombing, the bomb detonates and destroys property and/or kills individuals, whereas an unsuccessful bombing is one in which the bomb is discovered and defused or detonates early and kills the perpetrators. Success is *not* judged in terms of the larger goals of the perpetrators. For example, a bomb that exploded in a building would be counted as a success even if it did not, for example, succeed in bringing the building down or inducing government repression.

⁴¹ With the full list being provided in Appendix G ‘Detailed summary of all successful maritime terrorism incidents 1968 – 2012’

⁴² However as Appendix A shows, the LTTE has been designated as a terrorist organisation by several States including the United States, the United Kingdom and Canada

⁴³ This approach contrasts to many international legal studies which have sought to narrow and refine defensible and justifiable definitions of terrorism. See for example Ben Saul *Defining Terrorism in International Law* (Oxford University Press, 2006)

[2.3] THE EVOLUTION OF TERRORISM: RAPAPORT'S FOUR WAVES THESIS

Before reviewing the evolution of terrorism, it is helpful to briefly consider the underlying causes of terrorism. As at 1 October 2013 the most comprehensive examination on the underlying causes of terrorism is a 2005 Norwegian study by Brynjar and Skjolberg.⁴⁴ Based on their review of 115 studies on the psychological, societal and international political causes of terrorism, Brynjar and Skjolberg distilled 13 factors as contributing to the prevalence of terrorism. These 13 factors were relative deprivation and inequality (particularly amongst culturally defined groups) encouraging participation in acts of political violence and terrorism; rejectionist groups seeking to “spoil” negotiated settlements to political conflicts through acts of political violence; the “contagion effect” of terrorism in one country leading to terrorism in neighbouring countries – with terrorists learn from the tactics of other groups; *mass media* enhancing the agenda-setting function of terrorism, increasing its lethality, and expanding its transnational character; rapid modernisation making societies more exposed to ideological terrorism – through increasing inequalities, and improving communications and access to audiences; poverty and weakness in state structures leaving such States more exposed to political violence; democratisation processes – with totalitarian states and fully democratic states being less exposed to terrorism – and with semi-authoritarian states (especially when undergoing a democratisation process) being more exposed to terrorism; lack of legitimacy of governing regimes – particularly the lack of integration of those at the political fringes of the society; technological developments offering new and more efficient means and weapons for terrorist groups; the global power balance – with an international system characterised by strong hegemonic power(s) being more exposed to international terrorism than a more multi-polar system; economic and cultural globalization encouraging acts of terrorism, especially against US targets; the proliferation of weak and collapsed states – which have experienced civil wars, under-development, and corrupt elites providing ideal “breeding grounds” for terrorist groups; and ongoing and past armed conflicts providing “rallying points” of justification for acts of terrorism.⁴⁵ Whilst the above-mentioned factors have been noted to have contributed to the causation of terrorism over the last two centuries, as the following sections explain over recent years terrorism has taken on an increasingly more lethal profile.

⁴⁴ Lia Brynjar and Katja Skjolberg *Causes of Terrorism: An Expanded and Updated Review of the Literature* (Norwegian Defence Research Establishment, 2005)

⁴⁵ Brynjar and Skjolberg, above n 44, 71 – 72

Whilst numerous studies have overviewed the evolution and development of terrorism,⁴⁶ Rapoport's "four waves" thesis⁴⁷ has been described as the closest we may come to a general theory on the evolution of terrorism.⁴⁸ As depicted in Figure 2, Rapoport conceptualises four "waves" in the history of terrorism, with differing motives and energies driving each wave over certain time periods. Figure 2 provides a succinct generalised overview of the primary strategies and targets of groups that have characterised these waves, and the events regarded as the starting points for these four waves of terrorist activity. Rapoport's 'four waves' thesis provides a useful conceptual starting point for this Chapter's analysis of how terrorism has developed, and what the contemporary forms of terrorism may be historically compared to.

Figure 2: High-level summary of Rapoport's Four Waves of Terrorism

Table 2. Rapoport's four waves of terrorism

Focus	Primary strategy	Target identity	Precipitant	Special characteristics
Anarchists 1870–1910s	Elite assassinations Bank robberies	Primarily European states	Failure/slowness of political reform	Developed basic terrorism strategies and rationales
Nationalist 1920s–1960s	Guerrilla attacks on police and military	European empires	Post-1919 delegitimization of empire	Increased international support (UN and diasporas)
New Left/ Marxist 1960s–1980s	Hijackings, kidnappings, assassination	Governments in general; increasing focus on U.S.	Viet Cong successes	Increased international training/cooperation/sponsorship
Religious 1970s–2020s	Suicide bombings	U.S., Israel, and secular regimes with Muslim populations	Iranian Revolution, Soviet invasion of Afghanistan	Casualty escalation, Decline in the number of terrorist groups

Source: Based on the discussion in David C. Rapoport, "The Four Waves of Modern Terrorism," in Audrey K. Cronin and James M. Ludes, eds., *Attacking Terrorism: Elements of a Grand Strategy* (Washington, D.C.: Georgetown University Press, 2004).

Source: Karen Rasler and William Thompson 'Looking for Waves in Terrorism' (2009) 21(1) *Terrorism and Political Violence* 28 at 31

⁴⁶ See for example Gerard Chaliand and Arnaud Blin (eds), *The History of Terrorism: From Antiquity to Al Qaeda*, translated by Edward Schneider, Kathryn Pulver, and Jesse Browner (Berkeley: University of California Press, 2007)

⁴⁷ David Rapoport 'The Four Waves of Modern Terrorism' in Audrey Cronin and James Ludes (eds) *Attacking Terrorism: Elements of a Grand Strategy* (Washington D.C Georgetown University Press, 2004)

⁴⁸ Schmid et al, above n 4, 228 – 235

It has been recognised that Rapaport's four waves theory is a broad generalisation⁴⁹ – which has both empirically validated⁵⁰ and criticised.⁵¹ It would be erroneous and over-simplified to specify arbitrary “start” and “finish” dates for the above waves of terrorism, and as explained below, the forms of terrorism perpetrated by groups such as Al Qaeda have not entirely replaced older forms of terrorism.⁵² Rather, like waves of the ocean, different waves of terrorism can be seen to have co-existed over recent decades – with one wave becoming less prominent at the same time as the next wave has developed momentum as the more prevalent form of terrorism.⁵³

[2.3.1] The first, second and third of Rapaport's waves

According to Rapaport's four waves theory, the first anarchist wave existed from the late 1800s until the second decade of the twentieth century. Consisting of a variety of Russian, Balkan and other European groups,⁵⁴ many groups comprising this wave had intentions of overthrowing nation states; however none were successful in achieving such goals.⁵⁵ The second nationalist / anti-colonial wave had its initial genesis in the 1920s following the de-legitimisation of colonial empires, which has been attributed to the ideals enunciated by US President Woodrow Wilson following the First World War.⁵⁶ This second wave became most prominent following the end of the Second World War with the rise of national liberation movements seeking independence and the establishment of their own nation states.⁵⁷ Although Figure 2 above describes this wave as being most prominent from the 1920s to the 1960s, Appendix B⁵⁸ shows that many “second wave groups” such as the Irish Republican Army

⁴⁹ Schmid et al, above n 4, 233

⁵⁰ Karen Rasler and William Thompson ‘Looking for Waves in Terrorism’ (2009) 21(1) *Terrorism and Political Violence*, 31; Schmid et al, above n 4, 186

⁵¹ However, Rapaport's waves characterisation has been challenged in Mark Sedgwick ‘Inspiration and the Origins of Global Waves of Terrorism’ (2007) 30(2) *Studies in Conflict & Terrorism*, 97

⁵² Paul Wilkinson *Terrorism versus Democracy: The Liberal State Response* Second Edition (Routledge, 2006), 37

⁵³ Schmid et al, above n 4, 348

⁵⁴ See for example Ersel Aydinli ‘Before Jihadists There Were Anarchists: A Failed Case of Transnational Violence’ (2008) 31(10) *Studies in Conflict & Terrorism* 903

⁵⁵ Schmid et al, above n 4, 229 – 230

⁵⁶ Schmid et al, above n 4, 230

⁵⁷ Schmid et al, above n 4, 230

⁵⁸ Based on a review of attacks by the 2,222 terrorist groups listed in the Global Terrorism Database maintained by National Consortium for the Study of Terrorism and Responses to Terrorism (START) based at the University of Maryland (with [2.5.1] discussing this database), Appendix B ‘Terrorist Groups: Attacks and Fatalities 1968 – 2011’ summarises the total number of recorded attacks by each group, the years in which each group committed

(IRA), the Palestinian Liberation Organisation (PLO) and Euskandi Ta Askatasuna ‘Basque Homeland and Freedom (ETA) continued to be active over subsequent decades. The objectives of such groups have been noted to be clearly defined and limited to the liberation of certain peoples and areas, with many such groups seeking to legitimise themselves as “freedom fighters”. Assassinations and targeted bombings have been noted as common tactics of such groups.⁵⁹ The third new left wave developed as a result of adverse public reactions to the Vietnam War, and the successes of the Viet Cong during the late 1960s. Groups such as the West German Red Army Faction, the Italian Red Brigades and the Japanese Red Army saw themselves as “vanguards” for oppressed Third World masses, and perpetrated attacks against government officials and property. As noted above, longer-established second wave groups such as the IRA and PLO continued to perpetrate attacks in furtherance of their objectives.⁶⁰ Also, from the 1970s onwards, terrorism began to take on a more international profile, with a growing number of (frequently high profile) aircraft hijackings involving movements between States.⁶¹

[2.3.2] The fourth (and contemporary) of Rapaport’s waves

The fourth ideological / religious wave has been, and continues to be, the most deadly of all of the four waves of terrorism conceptualised by Rapaport. The 1979 Iranian revolution, which overthrew the former royal government and replaced it with an Islamic fundamentalist theocracy, and the Soviet invasion of Afghanistan in the early 1980s, are cited as providing the impetus for the development of this wave.

As Figure 2 notes, attacks by fourth wave terrorist groups have been characterised by significant escalations in casualty numbers. [2.5.1] explains how mass casualty attacks (which this Study defines as attacks resulting in more than fifty casualties),⁶² frequently involving

attacks and the total fatalities resulting from all attacks by the group. Also, Appendix B excludes attacks where the perpetrators were listed as ‘Unknown’.

⁵⁹ Schmid et al, above n 4, 230

⁶⁰ For an overview of the objectives commonly shared by such groups, see Richardson, above n 58, 95 - 113

⁶¹ For example, Bruce Hoffman *Inside Terrorism* Revised and Expanded Edition (New York: Columbia University Press, 2006), 63 describes the advent of “modern terrorism” being the 1968 hijacking of an Israeli airliner by the Popular Front for the Liberation of Palestine en route from Rome to Tel Aviv – which he describes as being one of the first truly international acts of terrorism records attacks resulting in over fifty fatalities, and attacks resulting in over 100 fatalities – which this Study terms ‘major mass casualty attacks’

⁶² Although the present author’s research could not locate any definitions of the term ‘mass casualty attack’, as [2.5.1] explains, the Global Terrorism Database records attacks as causing more than 50 fatalities (which this

suicide bombings, have typified fourth wave terrorism.⁶³ Religious (and particularly Islamic) extremism has been the driving influence behind the vast majority of such attacks, which have been directed towards US and Israeli interests, and secular regimes within Muslim-dominated States – a significant distinguishing factor to previous waves of terrorism.⁶⁴ Other extremist religious ideologies have also driven significant fourth wave attacks - including Aum Shinrikyo's nerve gas attack on the Tokyo subway in 1995, the Oklahoma City bombing by Timothy McVeigh in 1995, and several attacks by extremist Jewish and Christian groups.⁶⁵

Fourth wave attacks were first perpetrated in Lebanon during the 1980s by Islamic groups such as Hezbollah. Hezbollah's 1983 suicide bombing of a US military base in Beirut, which killed 241 US and 58 French soldiers⁶⁶ and led to the withdrawal of Western troops from Lebanon was the first major mass casualty suicide attack, has been described as the most important significant development in international terrorism.⁶⁷ From the early 1990s until its military defeat in mid-2009,⁶⁸ the LTTE (which has also been influenced by extremist religious ideologies)⁶⁹ perpetrated numerous suicide and mass casualty attacks – including five out of the ten recorded suicide maritime attacks.⁷⁰ Therefore, attacks by the LTTE are still examined in this Study because they “set the bar” in terms of the deadliness of maritime attacks that non-state actors might perpetrate, and which other terrorist groups might seek to emulate.

[2.3.3] Factors facilitating development of Fourth Wave terrorism

Several factors have facilitated the development of fourth wave terrorism to the point where terrorist groups have been able to perpetrate attacks such as those of 9/11. First, the transnational Al Qaeda movement has been widely credited as being the major driving force behind the growth of the deadly contemporary forms of fourth wave terrorism over the last two

Study terms ‘mass casualty attacks’), and those causing more than 100 fatalities (which this Study terms ‘major mass casualty attacks’)

⁶³ Rapaport, above n 45, 62

⁶⁴ Wilkinson, above n 52, 32; Rapaport, above n 47, 63

⁶⁵ Rapaport, above n 47, 61

⁶⁶ National Consortium for the Study of Terrorism and Responses to Terrorism Global Terrorism Database <http://www.start.umd.edu/gtd/>

⁶⁷ Gerard Chaliand and Arnaud Blin ‘From 1968 to Radical Islam’ in Gerard Chaliand and Arnaud Blin *The History of Terrorism: From Antiquity to Al Qaeda* (University of California Press, 2007), 222; Wilkinson, above n 52, 6

⁶⁸ Although as [2.4.2] notes, concerns have been expressed since 2009 that the LTTE could resurge in the future

⁶⁹ Michael Roberts ‘Tamil Tiger “Martyrs”: Regenerating Divine Potency?’ (2005) 28(6) *Studies in Conflict & Terrorism* 493

⁷⁰ These statistics are shown in Appendix G ‘Chronology of successful maritime terrorism attacks: 1968 – 2013’

decades.⁷¹ Al Qaeda and many of the groups influenced by it⁷² adhere to extreme fundamentalist interpretations of Islam. While the development of Al Qaeda has been extensively studied,⁷³ for present purposes⁷⁴ it will suffice to note that under the leadership and patronage of the late Osama bin Laden (hereafter ‘bin Laden’), Al Qaeda initially developed out of the mujahedeen movement that opposed the Soviet military during Afghan civil war of the 1980s – which provided a central rallying point for many Islamic fundamentalists from around the world to join the struggle against the Soviets. The Afghan War provided a valuable training ground for Al Qaeda to develop its irregular combat capabilities, which were further developed in training camps under both the Taliban government in Afghanistan during the 1990s, and in Sudan between 1992 and 1996. Many thousands of individuals from numerous countries are estimated to have passed through these training camps – and were inculcated with Al Qaeda’s philosophy of radical Jihad and knowledge and skills in irregular warfare. As [2.5.1] explains, these skills have been utilised with devastating effect in terrorist attacks from the mid-1990s onwards. Second, the end of the Cold War in the early 1990s, which transformed the international security environment,⁷⁵ further facilitated the development of the Al Qaeda movement. The downfall of formerly powerful Communist regimes such as the Soviet Union and Yugoslavia lifted the “coercive lid” of state control over previously-suppressed ethno-religious tensions, and also lead to a number of “black markets” for military weaponry. Following the end of the Cold War, ethno-religious wars occurred in Kosovo and Chechnya. Similarly to the Afghan Civil War of the 1980s, these conflicts served as rallying points for radical Islamic fighters from around the world, – enabling Al Qaeda to further develop its irregular combat capabilities.⁷⁶ Third, the growth of internet and other communications technology enabled Al Qaeda to connect with Islamic groups with a similar outlook in a number of countries – leading to the development of what has variously been described as the ‘Al Qaeda-linked movement’,⁷⁷ and from around 2005, the development of “home-grown” terrorist groups examined in [2.6.4].

⁷¹ Rapaport, above n 47, 61 - 65

⁷² Including as [2.6.4] explains, a potentially significant number of “home-grown” radical Islamic groups

⁷³ See generally Rohan Gunaratna *Inside Al Qaeda: Global Network of Terror* (Scribe Publications, 2005); and Wilkinson, above n 52, 39 - 49

⁷⁴ That is, to explain the development of contemporary terrorism

⁷⁵ That is, transforming the international security environment from a bi-polar “East vs West” confrontation to a multi-polar security environment

⁷⁶ David Rapaport ‘The Four Waves of Modern Terrorism’ in Audrey Cronin and James Ludes (eds) *Attacking Terrorism: Elements of a Grand Strategy* (Georgetown University Press, 2004), 62

⁷⁷ [2.4.1] shows there is debate regarding the groups which do, and do not, comprise “the Al Qaeda organisation” or “the Al Qaeda-linked movement”

[2.3.4] Statements of Al Qaeda's ideology

The Al Qaeda movement is noted to have assumed its current anti-Western outlook after 1990 when bin Laden's offer of the services of his Mujahedeen fighters to the Saudi Arabian government to repel invading forces of Saddam Hussein was refused, with the Saudi government instead allowing an international coalition lead by the United States (to bin Laden's disgust), causing him to turn against Saudi Arabia and the United States.⁷⁸ This anti-Western outlook has influenced Al Qaeda's thinking ever since. Similar to a jigsaw puzzle, the ideology that influences and directs many terrorist groups influenced by Al Qaeda may be "pieced together" from declarations made by senior Al Qaeda figures, notwithstanding the variances in its public rhetoric.⁷⁹ The most widely cited declaration is bin Laden's Fatwa 'Jihad Against the Jews and Crusaders' Fatwa issued on 23 February 1998, declaring that:

'The ruling to kill the Americans and their allies - civilians and military - is an individual duty for every Muslim who can do it in any country in which it is possible to do it, in order to liberate the al-Aqsa Mosque and the holy mosque from their grip, and in order for their armies to move out of all the lands of Islam, defeated and unable to threaten any Muslim'

Numerous similar pronouncements and communiqués by bin Laden before his death in 2011, and by his former deputy and since bin Laden's death, current leader of Al Qaeda, Ayman al-Zawahiri (hereafter 'al-Zawahiri') have served as "rallying calls" for the perpetration of attacks against the interests of the United States, Israel, secular Muslim regimes and states linked to them.⁸⁰ [3.3.1] discusses the "maritime-specific" pronouncements by Al Qaeda's - evidencing its thinking about maritime terrorism.

In generalised contrast to the "more attainable" objectives of many second and third wave groups⁸¹ Al Qaeda's desired "end objective" has been described as being the establishment of

⁷⁸ David Rapaport 'The Four Waves of Modern Terrorism' in Audrey Cronin and James Ludes (eds) *Attacking Terrorism: Elements of a Grand Strategy* (Georgetown University Press, 2004), 64

⁷⁹ Jonathon Stevenson 'Counter-Terrorism: Containment and Beyond' (2006) 44(367) *Adelphi Papers* 10

⁸⁰ For a summary of pronouncements issued by bin Laden and Ayman al-Zawahiri between 1991 and 2008, see Schmid et al, above n 4 Appendix 4.3 at 280

⁸¹ As [2.3.1] noted, the desired "end objectives" of most second and third wave groups were clearly defined and limited to the liberation of certain peoples and areas - with many such groups seeking to legitimise themselves as "freedom fighters".

a fundamentalist pan-Islamic Caliphate.⁸² [2.6] explains how particularly following the military defeat of the former Taliban government in Afghanistan, Al Qaeda has progressed from being a “controlling force” to being an “inspiring force” for extremist Islamic terrorist groups worldwide, which since 2005 have come to include “home grown” extremist Islamic groups. However several of the Islamic terrorist groups which are not considered to be associated with Al Qaeda that have perpetrated “fourth wave” mass casualty and/or suicide attacks over recent decades include Hamas,⁸³ Hezbollah⁸⁴ and the Kurdistan Workers Party (PKK).⁸⁵ These groups are noted to have more localised, territorial objectives compared to Al Qaeda’s grandiose “end objectives”.⁸⁶ Furthermore, the LTTE is a non-Islamic terrorist group that has also perpetrated a significant number of “fourth wave” mass casualty and/or suicide attacks (including 105 suicide terrorist attacks between 1990 and 2009, five mass casualty attacks and two major mass casualty attacks) with its motives noted as being localised and territorial. As Chapters 5 and 6 explain, several of these “non-Al Qaeda” fourth wave groups have also perpetrated several significant maritime terrorist attacks. Therefore, as [2.4] explains, an “umbrella term” is needed to distinguish Al Qaeda-influenced groups, “more traditional” Islamic groups, and the LTTE which have actively perpetrated “fourth wave” attacks, from “older and more restrained” terrorist groups.

[2.4] DISTINGUISHING CONTEMPORARY AND OLDER FORMS OF TERRORISM

Over the last two decades, and particularly following the 9/11 attacks, the seriousness of fourth wave terrorism outlined in [2.3] above has been widely recognised by scholars, states and international bodies as one of the most serious threats to international peace and security. As [2.7.1] explains, around 27 UN Security Council resolutions have re-affirmed the seriousness of contemporary transnational terrorism as a threat to international peace and security; and the UN Secretary-General’s 2004 High Level Report on Threats, Challenges and Changes recognising the global reach and sophisticated capacity of the Al Qaeda terrorist network.⁸⁷

⁸² Stevenson, above n 79, 10

⁸³ Hamas has been responsible for perpetrating 59 suicide terrorist attacks between 1995 and 2002

⁸⁴ Hezbollah has been responsible for perpetrating 15 suicide terrorist attacks between 1981 and 1999 – including two mass casualty attacks and one major mass casualty attack

⁸⁵ The PKK has been responsible for perpetrating 11 suicide terrorist attacks between 1996 and 1999

⁸⁶ Wilkinson, above n 52, 48

⁸⁷ United Nations *A More Secure World: Our Shared Responsibility* - Report of the Secretary-General High-level Panel on Threats, Challenges and Change GA 59th session, Agenda Item 55 UN Doc A/59/565 (2 December 2004) at [146] noted that: ‘Al-Qaida is the first instance — not likely to be the last — of an armed non-State network

However, similarly to the variations in the designation of terrorist groups noted in [2.2], a variety of terms have been used to distinguish ‘fourth wave’ forms of terrorism (largely driven by Al Qaeda) from “older” forms of terrorism – and indeed, the further that we progress after 9/11, such variations that are increasingly emerging.⁸⁸

[2.4.1] Existing distinguishing terminologies

First, many governments and scholars have talked of “pre-9/11” and “post-9/11” terrorism. Whilst the 9/11 attacks were by far the most deadly terrorist attacks in history, and following 9/11 a marked increase in both mass casualty and suicide attacks is clearly evident, a significant number of mass casualty and suicide attacks had occurred in the years before 9/11, with the LTTE having perpetrated six mass casualty suicide attacks.⁸⁹

Second, whilst the term “new terrorism” has been widely used by terrorism scholars⁹⁰ to distinguish forms of terrorism perpetrated by Al Qaeda-influenced groups from “traditional” or “old” terrorism, the validity of the term “new terrorism” has been debated. Duyvesteyn⁹¹ and Crenshaw⁹² criticise the making of arbitrary distinctions between “new” and “old” terrorism as over-simplified - pointing out several similarities between Al Qaeda linked groups and “older” terrorist groups.⁹³ Other terrorism scholars such as Kurtulus have counter-

with global reach and sophisticated capacity. Attacks against more than 10 Member States on four continents in the past five years have demonstrated that Al-Qaida and associated entities pose a universal threat to the membership of the United Nations and the United Nations itself. In public statements, Al-Qaida has singled out the United Nations as a major obstacle to its goals and defined it as one of its enemies’

⁸⁸ Schmid et al, above n 4 Appendix 4.3 at 280 estimated that since the 1980s there have been almost 5,000 publications with the title ‘Terrorism’ published

⁸⁹ These statistics are based on the author’s analysis of the terrorism databases discussed in [2.5.1] below

⁹⁰ See for example, Russell Howard ‘The New Terrorism’ in Russell Howard, Reid Sawyer and Natasha Bajema (eds) *Terrorism and Counter-Terrorism: Understanding the New Security Environment* (McGraw Hill, 3rd ed, 2009), 113 – 114 argues that the “old” and “new” styles of terrorism are distinguishable in at least eight ways: First, that the 9/11 attacks shattered the illusion of an invulnerable US homeland; second, the increased violence and propensity of new terrorists to perpetrate mass-casualty attacks; third, the transnational, non-state actor organisational profile of new terrorists – as well as their intent to destroy the West and secular Islamic states; fourth, the independent financing of new terrorists – who are not accountable to state sponsors; fifth, new terrorists being better trained; sixth, the networked, cellular structures of Al Qaeda-linked groups being more difficult to penetrate in comparison to the structures of previous generations of terrorist groups; seventh, widespread concerns that new terrorists might seek to acquire and utilise weapons of mass destruction; and eighth, the elusiveness of victory in the struggle against the new terrorists

⁹¹ Isabelle Duyvesteyn ‘How New is the New Terrorism?’ (2004) 27(5) *Studies in Conflict & Terrorism*, 439 – who also notes the “New Terrorism” term was used extensively by former US President George W Bush

⁹² See for example Martha Crenshaw ‘New vs Old Terrorism: A Critical Appraisal’ in Rik Coolsaet (ed) *Jihadi Terrorism and the Radicalisation of Europe* (Aldershot: Ashgate Publishing, 2008), 25 – 36

⁹³ Isabelle Duyvesteyn ‘How New is the New Terrorism?’ (2004) 27(5) *Studies in Conflict & Terrorism* 439 for example points out that several older terrorist groups such as the IRA, the PLO, the Red Army Faction and the Basque ETA on several occasions cooperated and perpetrated attacks at considerable distances from their main

criticised critics of the term “new” terrorism.⁹⁴ In spite of this terminological debate, more than ten years after the 9/11 attacks, the question arises as to when “new terrorism” ceases to be “new”? Furthermore, the term ‘new terrorism’ does not “capture” the LTTE – which as [2.3.4] noted, perpetrated numerous mass-casualty and suicide attacks (including several maritime attacks) from the mid-1980s until its military defeat in 2009.

Third, the terms “Al Qaeda Network”, “Al Qaeda Movement” and “Al Qaeda-linked movement” have been used interchangeably by terrorism commentators and governments when discussing various Islamic groups since 9/11.⁹⁵ As [2.2.3] noted, a number of “Al Qaeda linked” groups have been proscribed under the Security Council Resolution 1267 list,⁹⁶ with these groups being listed in Appendix A.⁹⁷ However there is no clear consensus amongst terrorism scholars about the groups that do, and do not, constitute “the Al Qaeda organisation”⁹⁸ – with particular conjecture regarding the linkages of the Abu Sayyaf Group⁹⁹ and the Free Aceh Movement (GAM)¹⁰⁰ to Al Qaeda. Adding further complexity to these variations is the questioning by several terrorism scholars since around 2008 of the continuing influence of Al Qaeda as a movement,¹⁰¹ with such questioning increasing following the 2011

support bases; secondly that several “older” groups were religiously motivated; and thirdly that several “older” terrorist groups perpetrated attacks involving considerable fatalities

⁹⁴ Ersun Kurtulus ‘New Terrorism and its Critics’ (2011) 34(6) *Studies in Conflict & Terrorism* 476, after criticising several of the arguments underlying critics of the term “new terrorism” points out that the contemporary terrorism is not only religious, but is also characterized by the absence of several ideological and political imperatives for centralized and hierarchical organizational structures and for using discriminate violence that characterized left wing and ethno-nationalist terrorism of the past; and that critics of the term ‘new terrorism’ also ignore the fact that there is a declared intention on the part of new terrorists to organize horizontally through networks and to kill indiscriminately among civilians

⁹⁵ See for example Rohan Gunaratna *Inside Al Qaeda: Global Network of Terror* (Columbia University Press, 2002); Wilkinson, above n 52, Chapter 1; Yoram Schweitzer and Shaul Shay *The Globalisation of Terror: The Challenge of Al Qaida and the Response of the International Community* (Herzliya: The International Policy Institute for Counter-Terrorism, 2004, 61 ‘The Islamic Front and Bin Laden’s Global Terror Network’; Figure 2.3 ‘Al Qaeda Links in Southeast Asia’ (at 89); and Figure 2.4 “International Islamic Terror Worldwide – 2002’ (at 123); Akiva Lorenz *Al Qaeda’s Maritime Threat* (International Institute for Counter Terrorism, 15 April 2007)

⁹⁶ ‘The List established and maintained by the Committee pursuant to resolutions 1267 (1999) and 1989 (2011) with respect to individuals, groups, undertakings and other entities associated with Al-Qaida’ Last updated on 20 September 2013

http://www.un.org/sc/committees/1267/aq_sanctions_list.shtml; Accessed 1 October 2013

⁹⁷ ‘Designations of terrorist groups by the United Nations and Selected States as at 1 October 2013’

⁹⁸ Schmid et al, above n 4, 242

⁹⁹ See for example Wilkinson, above n 52, 41 – 42. Wilkinson does not include Abu Sayyaf Group under the Al Qaeda heading but does include Jemaah Islamiyah

¹⁰⁰ Martin Murphy *Small Boats, Weak States, Dirty Money: Piracy & Maritime Terrorism in the Modern World* (Hurst & Company, 2009), 306 notes reports that al-Zawahiri and Mohammed Atef visited Aceh in 2000 – but that GAM rejected their invitation to establish links with Al Qaeda; that GAM recruits trained at Moro Islamic Liberation Front camps in Philippines; that it has been reported to have connections with the LTTE; and that the group has received arms and training from Iran and Libya

¹⁰¹ See for example Paul Pillar ‘Jihadi Terrorism: A Global Assessment of the Threat in the Post Al Qaeda Era’ in Rik Coolsaet (ed) *Jihadi Terrorism and the Radicalisation of Europe* (Ashgate Publishing, 2008)

death of bin Laden. On this point there has also been extensive debate between Bruce Hoffman¹⁰² - who argues that Al Qaeda is likely to remain a significant threat as a group, and Marc Sageman¹⁰³ - who argues that contemporary Islamic extremism has become “leaderless”, with future terrorist attacks more likely to be perpetrated by self-organised Islamic extremist groups than being driven by Al Qaeda as an organisation.¹⁰⁴

Fourth, terms such as “Islamic terrorism”, “Islamic extremism”, “Radical Islamism”, and over more recent years “Jihadi terrorism” and “Radical Jihadism” have been utilised interchangeably to refer to Islamic terrorist groups that have actively perpetrated significant terrorist attacks over the last two decades including Al Qaeda, Hamas and Hezbollah.¹⁰⁵ Such terms could also encompass smaller, grass roots / home-grown terrorist groups – which as [2.6.4] explains are not controlled by Al Qaeda, but are influenced by its ideologies. However as noted in the third point above, several terrorism commentators have critically questioned whether certain Islamic terrorist groups do in fact have any linkages with Al Qaeda; or alternatively point out that such groups are more “traditional” and territorial in their foci – and are not motivated by the radical jihad ideals of Al Qaeda and similar groups. Furthermore, such descriptors would not “capture” the LTTE.

Finally, other descriptors that have been used to distinguish between contemporary and older forms of terrorism include “Corrigible” vs “Incorrigible” terrorism,¹⁰⁶ and terrorism that is motivated by “temporal goals” (which would encompass groups such as the IRA) as opposed to “transformational goals” (which would encompass groups such as Al Qaeda).¹⁰⁷

[2.4.2] Rationale: Contemporary and Pre-Contemporary Terrorism

To address the first question of this Study stated in [1.2.2], namely ‘how should the threat of contemporary post-9/11 forms of maritime terrorism be understood?’, this Study seeks to

¹⁰² Bruce Hoffman ‘The Myth of Grass-Roots Terrorism’ (2008) 87(3) *Foreign Affairs* 133

¹⁰³ Marc Sageman *Leaderless Jihad: Terror Networks in the Twenty-First Century* (University of Pennsylvania Press, 2008)

¹⁰⁴ Manni Crone and Martin Harrow ‘Home-grown Terrorism in the West’ (2011) 23(4) *Terrorism and Political Violence*, 523

¹⁰⁵ For example, Wilkinson, above n 52, 32 talks of ‘... the militant Islamist movements – inclined to martyr themselves’ as Al Qaeda, Hamas, Hezbollah in the same sentence

¹⁰⁶ Wilkinson, above n 52, 4

¹⁰⁷ Richardson, above n 58, 30

overcome the terminological variances outlined in [2.4.1] through the use of the generalised terms “Contemporary Terrorism” and “Pre-Contemporary Terrorism”.

The generalised term ‘contemporary terrorism’¹⁰⁸ encompasses those terrorist groups, and the individuals influenced by their ideologies,¹⁰⁹ that have actively perpetrated the dominant forms of fourth wave terrorism - being mass casualty and/or suicide attacks since 1998. The year 1998 is selected firstly because as [2.3.4] noted, it was on 23 February 1998, that bin Laden issued his Fatwa, and secondly because it was on 7 August 1998 that Al Qaeda and its associated group Egyptian Islamic Jihad perpetrated two coordinated suicide bombings of the US embassies in Kenya and Tanzania which killed 223 and injured more than 4,000.

The term ‘contemporary terrorism’ encompasses Al Qaeda and associated groups, Hezbollah,¹¹⁰ Hamas¹¹¹ and the LTTE¹¹² (which as [2.3] noted, has been a significant perpetrator of mass-casualty and suicide attacks, and a very significant perpetrator of maritime attacks). It also includes ‘those individuals inspired and/or influenced by their ideologies’ because as [2.6.4] explains, home grown terrorism has assumed increasing significance over the last decade, with several “home-grown” terrorist groups perpetrating significant attacks. Conversely, the generalised term “pre-contemporary terrorism” is used to the numerous terrorist groups (such as the IRA, PLO and ETA) that would not fall within the description of ‘contemporary terrorism’ enunciated above - either because the group was no longer active

¹⁰⁸ Audrey Kurth Cronin ‘Sources of Contemporary Terrorism’ in Audrey Cronin and James Ludes (eds) *Attacking Terrorism: Elements of a Grand Strategy* (Washington D.C Georgetown University Press, 2004) used the term ‘contemporary terrorism’; as did Schmid et al (2011)

¹⁰⁹ This would therefore incorporate Home Grown terrorist groups, which are discussed in [2.6.4]. A definition of Grass-root Jihadi Networks is provided in Javier Jordan, Fernando Manas and Nicola Horsburgh ‘Strengths and Weaknesses of Grassroots Jihadist Networks: The Madrid Bombings’ (2008) 31(1) *Studies in Conflict & Terrorism*, 18

¹¹⁰ Graham Allison *Nuclear Terrorism: The Ultimate Preventable Catastrophe* (Times Books, 2004) at 35 includes a good summary of Hezbollah’s extremist ideology, including its desire for the destruction of Israel, and its hostility towards the USA. Hezbollah perpetrated three mass casualty suicide attacks in 1983, and also 1996 attack in Argentina resulting in 96 fatalities: National Consortium for the Study of Terrorism and Responses to Terrorism Global Terrorism Database <http://www.start.umd.edu/gtd/>

¹¹¹ Kurtulusthe, above n 94, 488 describes Hamas and Hezbollah as “hybrid” groups between extremist Jihadi terrorist groups and “more traditional” terrorist groups such as the IRA and the PLO. Whilst Hamas has not perpetrated mass casualty attacks, it has perpetrated several suicide attacks since the mid-1990s

¹¹² Although the LTTE was militarily defeated by the Sri Lankan government in May 2009, the Sri Lankan Defence Secretary has expressed concerns it could re-emerge in the future. See for example ‘Possible Re-Emergence of the LTTE: Gotabhaya Rajapaksa’ *Times of Sri Lanka* 19 February 2012 <http://www.timesofsrilanka.com/Politics/possible-re-emergence-of-the-ltte-gotabhaya-rajapaksa.html>; ‘Defence Secretary Warns of LTTE Re-Emergence’ *News.LK* 24 October 2011 <http://www.news.lk/news/sri-lanka/582-defence-secretary-warns-of-ltte-re-emergence>

after 1998, or because the group has not perpetrated “fourth wave” mass casualty and/or suicide attacks.

Although the terms contemporary and pre-contemporary terrorism involve broad generalisations, they provide a basis for distinguishing the “worst possible extents” of terrorism in contemporary times from the “worst possible extents” of terrorism in “previous” times. As noted in Chapter 1, and reinforced in the following chapters, this Study argues that the success of the international agreements must be assessed in terms of ensuring the prevention the “now more dominant” forms of terrorism – being very lethal “9/11 style” terrorist attacks – rather than arresting and/or prosecuting the perpetrators of “more restrained” assassinations, hijackings and hostage-takings. The next sections illustrate the generalised contrasts between contemporary and pre-contemporary terrorism. [2.5] compares the operational profiles of attacks by contemporary and pre-contemporary terrorist groups, and [2.6] examines the contrasts in the organisational profiles of contemporary and pre-contemporary terrorist groups (that is, their structures and supporting infrastructure).

[2.5] CONTEMPORARY vs PRE-CONTEMPORARY TERRORISM: COMPARISON OF OPERATIONAL PROFILES

In generalised comparison to the “more restrained” tactics used by pre-contemporary terrorist groups (for example “negotiable” hostage-takings), the worst extents of contemporary terrorism have been characterised by indiscriminate mass-casualty attacks, frequently involving suicide tactics. This section utilises charts to depict patterns in the very large number of terrorist attacks since the early 1970s, and also discusses some of the most notable attacks perpetrated by contemporary terrorist groups. [3.3]¹¹³ undertakes a similar, but more detailed, comparative analysis of the operational profiles of maritime attacks perpetrated by contemporary and pre-contemporary terrorist groups, showing how maritime attacks reflect the global trends outlined in this chapter.

The terrorism statistics discussed in this Chapter are derived from the two most commonly used international terrorism databases – the Global Terrorism Database maintained by National Consortium for the Study of Terrorism and Responses to Terrorism (START) based at the

¹¹³ ‘Comparison of contemporary and pre-contemporary maritime terrorism’

University of Maryland (GTD)¹¹⁴ and the RAND Database of Worldwide Terrorism Incidents (RDWTI).¹¹⁵ Whilst both GTD and RDWTI record statistical information on terrorist attacks between since 1968, they have both have different strengths and shortcomings.

First, the GTD records a total of 106,546 attacks between 1970 and 2011 - more than twice those recorded by the RDWTI which lists 40,129 attacks between 1968 and 2010. The GTD incorporates statistics about attacks by groups more commonly regarded as insurgents and rebels rather than strictly “terrorists” - including the Hutu and Tutsi groups in Rwanda, and various combatant groups in the Nicaraguan civil war of the early 1980s. Whilst the GTD’s inclusion of statistics about attacks by such groups might distort statistical trends in terrorist attacks, the GTD nevertheless still demonstrates how terrorist attacks have become increasingly lethal since the mid-1990s. Second, the GTD more readily enables high-level comparisons of trends in statistics over longer periods than the RDWTI. Third, whilst both databases contain similar categories of attack types¹¹⁶ the GTD is more specific in its definition of the nine ‘attack types’ about which it records statistical information - these being assassinations,¹¹⁷ armed assaults,¹¹⁸ bombings/explosions,¹¹⁹ hijackings,¹²⁰ hostage-takings

¹¹⁴ RAND Database of Worldwide Terrorism Incidents http://smapp.rand.org/rwtid/search_form.php

¹¹⁵ National Consortium for the Study of Terrorism and Responses to Terrorism Global Terrorism Database <http://www.start.umd.edu/gtd/>

¹¹⁶ The ‘Attack Types’ recorded in RAND are Armed Attack; Arson; Assassination; Barricade/Hostage’ Bombing; Hijacking; Kidnapping; Missing/Unknown and Unconventional Attack.

¹¹⁷ Which the GTD defines as ‘An act whose primary objective is to kill one or more specific, prominent individuals; Usually carried out on persons of some note, such as high-ranking military officers, government officials, celebrities, etc. Not to include attacks on non-specific members of a targeted group. The killing of a police officer would be an armed assault unless there is reason to believe the attackers singled out a particularly prominent officer for assassination’

¹¹⁸ Which the GTD defines as ‘An attack whose primary objective is to cause physical harm or death directly to human beings by any means other than an explosive’

¹¹⁹ Which the GTD defines as ‘An attack where the primary effects are caused by an energetically unstable material undergoing rapid decomposition (either deflagration or detonation) and releasing a pressure wave that causes physical damage to the surrounding environment. Can include either high or low explosives but does not include a nuclear explosive device that releases energy from fission and/or fusion, or an incendiary device where decomposition takes place at a much slower rate’.

¹²⁰ Which the GTD defines as ‘An act whose primary objective is to take control of a vehicle such as an aircraft, boat, bus, etc. for the purpose of diverting it to an un-programmed destination, obtain payment of a ransom, force the release of prisoners, or some other political objective. Hijackings are distinct from Hostage Taking because the target is a vehicle, regardless of whether there are people/passengers in the vehicle.’

(barricade incidents),¹²¹ hostage-takings (kidnappings),¹²² facility/infrastructure attacks,¹²³ unarmed assaults,¹²⁴ and unknown incidents.¹²⁵ Fourth, the RDWTI is more consistent in terms of the amount of detail recorded about each terrorist attack; whereas for many attacks occurring before the 1990s, the GTD merely records the occurrence of an attack. Finally, GTD omits statistical information about terrorist attacks occurring in 1993.

Based on a review of attacks by the 2,222 terrorist groups listed in the GTD, Appendix B summarises the total number of recorded attacks by each group, the years in which each group committed attacks, and the total fatalities resulting from all attacks perpetrated by the group. Whilst it is beyond the scope of this Study to analyse the patterns of attacks by all of these 2,222 groups, the statistics in Appendix B show the increased lethality of attacks by contemporary groups over those by pre-contemporary terrorist groups. To illustrate with a few examples - between 1970 and 2011 the IRA perpetrated 2,674 attacks killing 1,792; 179 attacks by the PLO between 1970 and 1985 killed 182; the PFLP (responsible for the 1985 Achille Lauro hijacking) perpetrated 146 attacks between 1970 and 2011 killing 186; and between 1970 and 2011 Basque Fatherland and Freedom (ETA) perpetrated 2,027 attacks resulting in 818 fatalities. By contrast contemporary terrorist groups have been far more deadly in their smaller number of attacks. Between 1998 to 2011, 124 attacks by Al Qaeda resulted in 4,636 fatalities; Al Qaeda in Iraq's 187 attacks between 2004 and 2011 –killed 2,123; the 118 attacks by Pakistan-based Lashkar-e-Taiba between 1999 and 2011 caused 1,002 fatalities; and the 1,600 attacks by the LTTE between 1975 and 2010 caused 10,838 fatalities.

¹²¹ Which the GTD defines as 'An act whose primary objective is to obtain political or other concessions in return for the release of prisoners (hostages); such attacks are distinguished from kidnapping since the incident occurs and usually plays out at the target location with little or no intention to hold the hostages for an extended period in a separate clandestine location'.

¹²² Which the GTD defines 'As for Barricade Incident - but distinguished by the intention to move and hold the hostages in a clandestine location. Usually in kidnappings the victims are selected beforehand'.

¹²³ Which the GTD defines as 'An act, excluding the use of an explosive, whose primary objective is to cause damage to a non-human target, such as a building, monument, train, pipeline, etc; Such attacks consist of actions primarily aimed at damaging property, or at causing a diminution in the functioning of a useful system (mass disruption) yet not causing direct harm to people. Such attacks include arson and various forms of sabotage. Can include acts that intend to cause harm to people as a result of the harm done to objects (e.g., blowing up a dam so that the ensuing flood will kill residents downstream). Such acts can include acts which aim to harm an installation, yet also cause harm to people incidentally'.

¹²⁴ Which the GTD defines as 'An attack whose primary objective is to cause physical harm or death directly to human beings by any means other than explosive, firearm, incendiary, or sharp instrument (knife, etc.).

¹²⁵ The attack type cannot be determined from the available information

[2.5.1] Operational profiles of contemporary terrorist attacks

Tables 2 to 6 below depict the yearly trends in worldwide terrorist attacks between 1972 and 2011, with Appendix C summarising the more specific details about these yearly trends.¹²⁶ The information depicted in these tables has been derived from the GTD – which as at 1 October 2013, only includes statistics on terrorist attacks until 31 December 2011. Although “raw” statistics on terrorist attacks in 2012 and 2013 are available from various media sources, such statistics have not been subject to the same analysis as those incorporated into the GTD. Nevertheless, these tables still depict the significant increase in mass-casualty and suicide terrorist attacks since the mid-1990s which [2.4] outlined.

Table 1: Suicide terrorist attacks per year: 1972 – 2011

Table 1 depicts the steady increase in suicide attacks since the late 1990s. Whilst as Appendix C shows, the majority of suicide attacks since 2004 – 2005 have occurred in Iraq and Afghanistan, suicide terrorist attacks have occurred in very wide range of locations. Since 9/11, numerous studies have analysed the phenomena of suicide terrorism, noting it to be a very concerning form of terrorism due to the lack of restraints by the perpetrators, with the potential for such attacks to cause significant casualties.¹²⁷

¹²⁶ In relation to mass casualty and suicide attacks, Appendix C ‘Summary of yearly statistics in mass-casualty and suicide terrorist attacks: 1972 – 2011’ summarises the total yearly number of attacks, the numbers of mass casualty attacks resulting in over 50 fatalities, the numbers of major mass casualty attacks resulting in over 100 fatalities, the total number of fatalities per year and a summary of the locations of such attacks for each year. Appendix C excludes attacks where the GTD listed the perpetrator as ‘Unknown’

¹²⁷ A sizeable literature has emerged on Al Qaeda’s tendency towards mass-casualty suicide attacks. See for example Robert Pape *Dying to Win: The Strategic Logic of Suicide Terrorism* (Random House, 2005); Scott Atran ‘The Moral Logic and Growth of Suicide Terrorism’ 2006 29(2) *Washington Quarterly* 127 - who argues that religion is not the major influencing factor behind suicide terrorism attacks; Bruce Hoffman ‘Terrorism, Signalling and Suicide Attack’ 2004(2) *Studies in Conflict & Terrorism* 243; Schmid et al, above n 4, which at 237 discusses the origins and development of suicide terrorism, and definitional challenges; and at 239 – 240 quotes Robert Pape as describing forms of terrorist violence in terms of increased lethality from Demonstrative; Destructive and Suicide; and Yoram Schweitzer and Shaul Shay *The Globalisation of Terror: The Challenge of Al Qaida and the Response of the International Community* (Herzliya: The International Policy Institute for Counter-Terrorism, 2004, 153 – 164

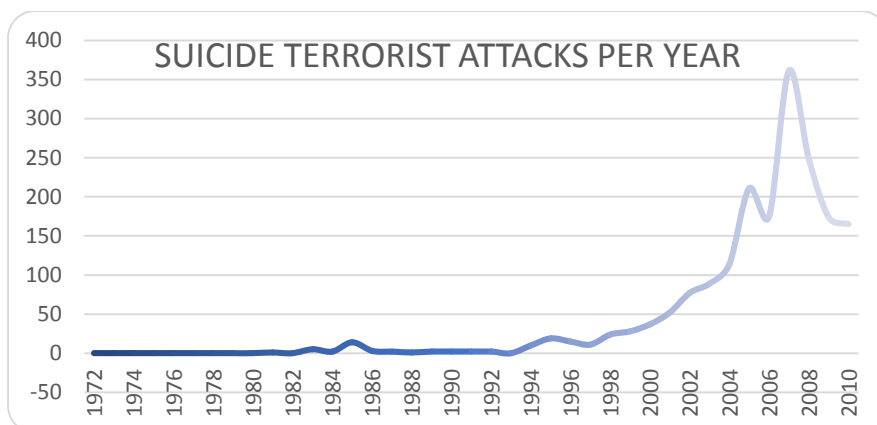


Table 2: Fatalities per year from suicide terrorist attacks: 1972 – 2011

Table 2 below shows how since 2001 there has been a significant rise in the number of fatalities arising from suicide attacks. The 9/11 attacks account for the large “spike” in 2001, and the combination of several mass casualty suicide attacks in Iraq account for the even larger “spike” in 2007 which is depicted in Table 3.

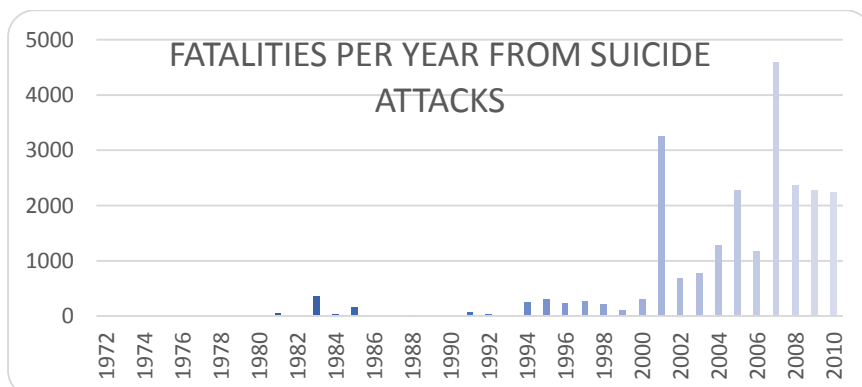


Table 3: Mass-casualty suicide terrorist attacks: 1972 - 2011

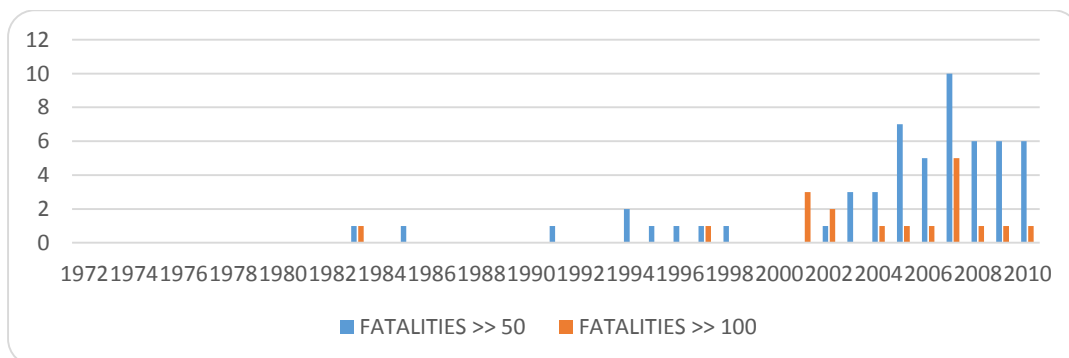


Table 4: Comparison of yearly numbers of mass casualty attacks per year: Suicide vs Non-Suicide attacks: 1972 - 2011

Tables 4 and 5 depict how the numbers of suicide mass casualty terrorist attacks have markedly increased since 1999 and with the exception of the significant “spike” reflecting the 9/11 attacks in Table 5, how such attacks have accounted for nearly as many fatalities as those from non-suicide mass casualty attacks over more recent years.

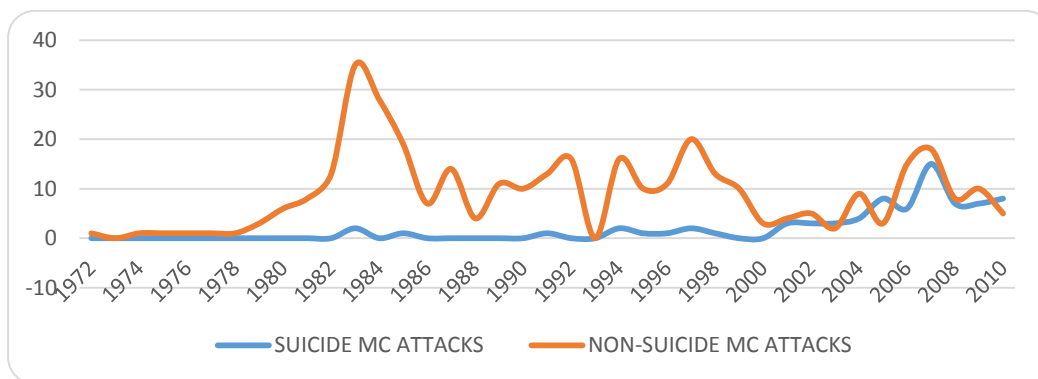


Table 5: Comparison: Fatalities from mass-casualty attacks per year: Suicide vs Non-Suicide attacks: 1972 - 2011

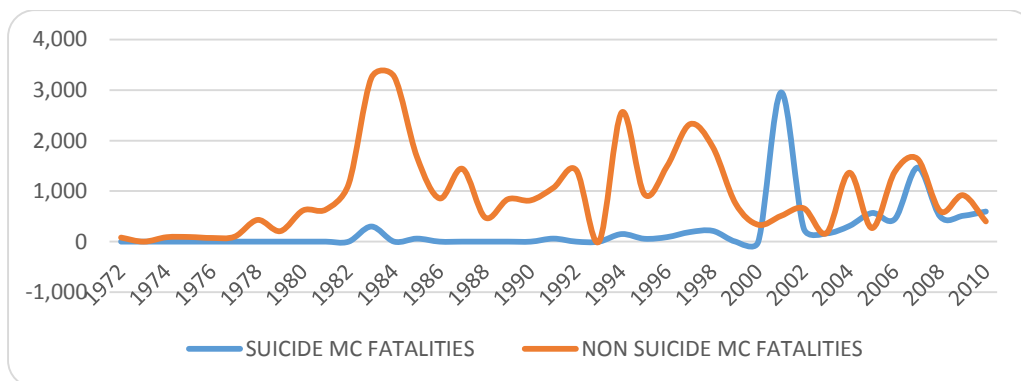


Table 6 below summarises the details of the most notable attacks by contemporary terrorist groups since 1998. As well as showing the significant lethality of these attacks inflicted by very small numbers of perpetrators, the table shows the close coordination between many of these attacks (several of which were executed almost simultaneously).

Table 6: Significant contemporary terrorist attacks: 1998 – 2013

Date	Location	Summary of Attack	Perpetrators	Fatalities	Injuries
7 August 1998	Nairobi, Kenya and Dar es Salaam, Tanzania	Near-simultaneous suicide bombings by explosives-laden trucks against US embassies	Four members of Al Qaeda and Egyptian Islamic Jihad (two per truck)	223	More than 4,000
11 September 2001	New York City; Washington DC; Shansville Pennsylvania, USA	Four airliners were hijacked, with two being crashed into the World Trade Centre towers and one into the Pentagon. The fourth airliner crashed during an attempted revolt by passengers	19 members of Al Qaeda	2,996	More than 6,000
12 October 2002	Kuta and Denpasar, Bali	A small suicide backpack bomb with 2.2 pounds of TNT was detonated outside a night club frequented by Western tourists. Twenty seconds later a bomb with 300 pounds of Ammonium Nitrate was detonated. Shortly afterwards a third bomb was detonated outside the US consulate	Four members of Jemaah Islamiyah	202	209
23-26 October 2002	Moscow	Siege of Dubrovka Theatre by suicide attackers. The siege was ended after three days by Russian forces using chemicals	50 members of Special Purpose Islamic Regiment; Riyad-us Saliheen Brigade of Martyrs; Islamic International Brigade	170	700
11 March 2004	Madrid, Spain	Ten explosions resulting from four coordinated bombings on Madrid's train system within three minutes of the first attack	Around 30 members of Al Qaeda inspired Abu Hafs al-Masari Brigade	192	2,500
1 – 3 September 2004	Beslan, Russia	Around 30 suicide attackers staged a siege of a school. The siege was ended by Russian forces	Around 30 members of Riyad-us Saliheen Brigade of Martyrs	385	783
7 July 2005	London, United Kingdom	Four suicide attacks on London underground and on a double decker bus within one hour of the first, with the first three attacks within one minute of the first explosion	Four members of the Secret Organisation of Al Qaeda in Europe	56	700
11 July 2006	Mumbai, India	Seven explosions on Mumbai's train system over 11 minutes	Students Islamic Movement of India; Lashkar-e-Taiba	209	714
20 September 2008	Islamabad, Pakistan	Suicide bombing in a dump truck detonated outside Marriott Hotel	Lashkar e-Jhangvi	54	266

[2.5.2] Operational profiles of pre-contemporary terrorist attacks

In contrast to the propensity of many contemporary terrorist groups to perpetrate mass-casualty and suicide attacks as outlined in [2.5.1], the operational profiles¹²⁸ of attacks by pre-contemporary terrorist groups have been noted as more constrained in several respects. Several terrorism scholars have noted pre-contemporary terrorist groups being mindful of influencing mostly localised public opinion towards their causes, and the achievement of “more attainable” short-term objectives such as independence or autonomy for specific regions, or for the release of political prisoners;¹²⁹ as opposed to being fanatically devoted to, and willing to martyr themselves for, the achievement of grandiose goals such as those espoused by Al Qaeda. As such, pre-contemporary terrorist groups generally tended to be highly selective in their targets, seeking to maximise the symbolic value of their attacks to influence public opinions in favour of their causes, as opposed to maximising casualties. For example, Richardson explains that on 17 December 1983, the IRA planted a bomb outside of Harrods in London which killed 5 people; and whilst this number of casualties could have been increased to hundreds if it had been planted inside, the IRA consciously refrained from doing so to avoid alienating its core Catholic support base in Northern Ireland.¹³⁰

Outside of civil wars and with the exception of aircraft bombings, mass-casualty attacks were generally not characteristic of the operational profile of attacks by pre-contemporary terrorist groups. One notable exception to this trend was the 1980 “Bologna Massacre” bombing outside a railway station by an Italian neo-fascist terrorist organisation which killed 85 and wounded more than 200. Terrorism commentators also note a common practice of telephone warnings being made just before bombings, and representatives of the terrorist groups often claiming responsibility and stating the reasons for such attacks.¹³¹

Aviation terrorism incidents (which have been comparatively more frequent than maritime terrorism incidents),¹³² illustrate the generalised distinctions between the operational profiles of contemporary and pre-contemporary terrorist groups.

¹²⁸ Even though terrorism studies do not use this exact term – it is still used here for structural purposes

¹²⁹ Rapaport, above n 47, 57

¹³⁰ Richardson, above n 58, 84

¹³¹ Richardson, above n 58, 34

¹³² As Chapter 1 noted, maritime terrorist attacks have accounted for around two per cent of all recorded terrorist attacks since 1968. Chapter 3 explains that the present author’s research has recorded around 228 maritime terrorist attacks since 1961.

Appendix D records a total of 35 aircraft bombings between 1970 and 2009, resulting in 1,833 fatalities overall. It shows these non-suicide bombings were most prevalent during the 1970s and 1980s – with the only two suicide bombings occurring in 1994 and 2004. These non-suicide bombings (in which the perpetrators were not willing to martyr themselves as the perpetrators of contemporary terrorist attacks have) contrast to one attempted¹³³ and the combined total of 22 suicide bombings that are reported to have been planned by Al Qaeda since the mid-1990s. In early January 1995, Al Qaeda members Ramzi Yousef and Khalid Sheik Mohammed had planned the “Bojinka Plot” which was to have involved the bombing of 12 airliners over the Pacific Ocean; and in early August 2006, the “Transatlantic Plot” by Al Qaeda to detonate ten US-bound airliners over the Atlantic was disrupted by British authorities.¹³⁴

Patterns in aircraft hijackings since 1968 also illustrate the generalised distinctions between the operational profiles of contemporary and pre-contemporary terrorism. As depicted in Table 7 below, and further summarised in Appendix E, whilst 323 aircraft hijackings have been recorded between 1968 and 2012, these occurred with far greater frequency during the early 1970s, then the mid-1980s and the early 1990s. As Appendix E details, the majority of these hijackings involved the perpetrators making demands (typically for the release of political prisoners), with most hijackings being peacefully resolved with minimal or nil fatalities – thereby demonstrating the “negotiability” that was characteristic of pre-contemporary terrorism incidents. Aside from the 9/11 hijackings, the fatalities resulting from these hijackings were caused by accidental crashes of the hijacked aircraft (in five cases), or shoot-outs with security forces (in six cases). Appendix E notes numerous pre-contemporary aircraft hijackings involving the perpetrators demanding passage to (or in other cases, away from) locations such as Cuba, Libya and other communist states. A significant number of pre-contemporary aircraft hijackings also involved the progressive movement of hijacked aircraft across several States. Notable examples of long distance hijackings included the 1976 hijacking of a Philippine Airlines aircraft from Manila to Libya (the longest distance aerial hijacking), the 1976 hijacking of Air France Flight 139 from Athens to Entebbe in Uganda (where Israeli special forces mounted a long distance rescue mission), and the 1977 hijacking of Lufthansa

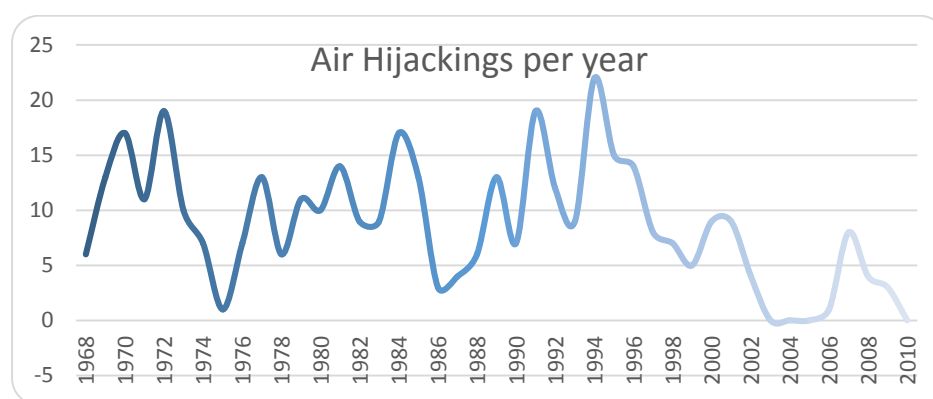
¹³³ As Appendix D notes, on 22 December 2001 suspected Al Qaeda member Richard Reid attempted to detonate a bomb concealed in his shoe aboard American Airlines Flight 63 whilst over the Atlantic Ocean, but this bomb failed to detonate

¹³⁴ Gunaratna, above n 71, 56

Flight 181 from Spain to Mogadishu in Somalia (where German and British special forces mounted a long distance rescue mission).¹³⁵

As Table 7 shows, and as Appendix E details, aircraft hijackings have decreased significantly since the late 1990s. The unsuccessful attempt by members of the Al Qaeda-linked Armed Islamic Group of Algeria to hijack Air France Flight 8969 en route from Algiers to Paris on 24 December 1994, which was intended to be crashed the aircraft into the Eiffel Tower, provides further indications of the resolve of contemporary terrorist groups to perpetrate mass casualty suicide attacks.

Table 7: Summary of air hijackings per year: 1968 – 2011



The contrasts between contemporary and pre-contemporary forms of terrorism are also evident in the patterns of barricade hostage-taking incidents.¹³⁶ As Table 8 below shows, and as Appendix F further details, barricade incidents were prevalent at a wide range of locations during the late 1970s, early 1980s and mid-1990s, but then declined significantly during the last decade. The very large “spike” in barricade incidents during 2005 is attributable to barricade incidents in Iraq and Afghanistan occurring during the respective civil conflicts in those two States. Terrorism scholars have noted that outside of Iraq and Afghanistan, barricade hostage-taking incidents have not featured regularly in the operational profiles of attacks by

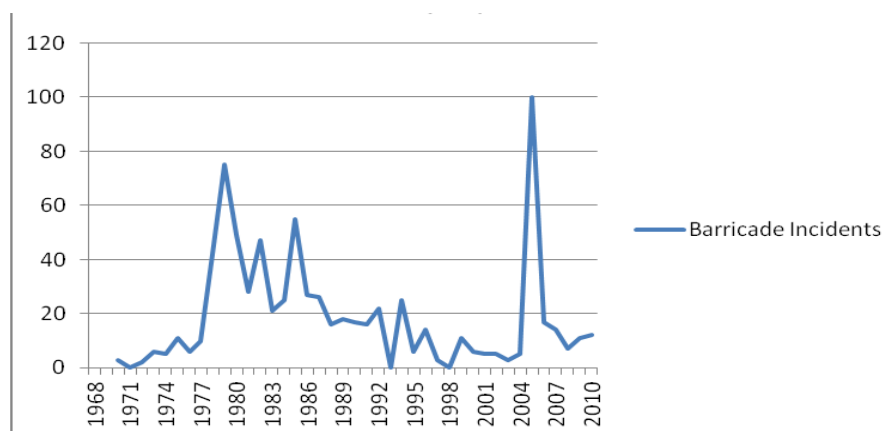
¹³⁵ Appendix E records the full details of these hijackings

¹³⁶ The GTD defines barricade / hostage incidents as ‘An act whose primary objective is to take control of hostages for the purpose of achieving a political objective through concessions or through disruption of normal operations. Such attacks are distinguished from kidnapping since the incident occurs and usually plays out at the target location with little or no intention to hold the hostages for an extended period in a separate clandestine location.’

contemporary terrorist groups - even for the release of the large number of Al Qaeda detainees at Guantanamo Bay.¹³⁷

Whilst barricade hostage-taking incidents have decreased in their frequency, they have increased in their lethality. For example, the Moscow Theatre Siege between 23 and 26 October 2002, where 850 people in a Moscow Theatre were held hostage by members of the Riyadus-Salikhin Reconnaissance and Sabotage Battalion of Chechen Martyrs, Special Purpose Islamic Regiment and the Islamic International Peacekeeping Brigade, with this siege ended broken by Russian Spetsnaz forces – with a total of 170 fatalities; and the Beslan school siege – where 1,100 people (including around 770 children) were held hostage for two days between 1 and 3 September 2004 until the siege was ended by Russian security forces, resulting in 385 fatalities.¹³⁸ More recently on 21 September 2013, an armed three day siege of the Westgate shopping centre in Nairobi in Kenya by the Islamic extremist group Al-Shabab resulted in 72 fatalities and around 175 being injured.¹³⁹

Table 8: Barricade incidents per year: 1968 – 2011



In summary Tables 2 to 8 above illustrate a general global trend towards mass-casualty and suicide attacks, away from restrained incidents such as targeted bombings and “negotiable”

¹³⁷ Adam Dolnik and Keith Fitzgerald *Negotiating Hostage Crises with the New Terrorists* (Praeger Security International, 2008), 15 - 16 points out that hostage-takings have not featured prominently in the tactics of Al Qaeda-linked groups

¹³⁸ Appendix F notes the barricade terrorism incidents which have resulted in significant casualties; see also Dolnik, above n 137, 2 - 3

¹³⁹ Nicholas Soi and Robyn Dixon ‘Kenya says Nairobi mall siege is over, with 72 dead’ *Los Angeles Times* 25 September 2013; Paul Bentley ‘Horrific claims of torture emerge as soldiers reveal gory Kenyan mall massacre details’ *Daily Mail* 27 September 2013

hostage-takings. Howard succinctly summarises the distinctions between the operational profiles of Al Qaeda-influenced groups and pre-contemporary terrorist groups by explaining that ‘... under the old rules, terrorists want a lot of people watching, not a lot of people dead. They did not want large body counts because they wanted converts and a seat at the [negotiating] table’ and that ‘... [Al Qaeda] terrorists are not particularly concerned about converts, and rather than wanting a seat at the [negotiating] table, they want to destroy the table and everyone sitting at it. In fact [Al Qaeda] want casualties – lots of them’.¹⁴⁰ Numerous other terrorism scholars have expressed similar conclusions.¹⁴¹

[2.5.3] Comparisons of reported interest in acquiring and utilising Weapons of Mass Destruction

A further significant point of comparison between contemporary and pre-contemporary terrorist groups is the widely reported,¹⁴² yet also challenged,¹⁴³ interest by contemporary terrorist groups to acquire what have become commonly referred to as ‘weapons of mass destruction’ (WMD). Whilst there is no universally accepted definition of ‘WMD’, the term is usually understood as referring to nuclear, radiological, chemical and biological weapons capable of causing mass destruction, and with the raw materials, related ‘precursors’ capable of being used construction and potential delivery systems collectively being referred to as WMD materiel’.¹⁴⁴

Concerns about terrorists acquiring WMD materiel came to fore after the Oklahoma bombing and the Aum Shrinkyo attacks in 1995, and took on additional significance following 9/11.¹⁴⁵

¹⁴⁰ Russell Howard ‘Pre-emptive Military Doctrine: No Other Choice’ in Rohan Gunaratna (ed) *The Changing Face of Terrorism* (Singapore: Eastern Universities Press, 2004), 39

¹⁴¹ Akiva Lorenz *Al Qaeda’s Maritime Threat* (International Institute for Counter Terrorism) 15 April 2007, 7 similarly concludes that ‘Al Qaeda, unlike traditional separatist-irredentist terrorist groups such as Provisional IRA, does not want to become part of today’s international political system, but to replace it entirely’. Wilkinson, above n 52 at 44 makes similar observations

¹⁴² James Van de Velde ‘The Impossible Challenge of Deterring “Nuclear Terrorism” by Al Qaeda’ (2010) 33(8) *Studies in Conflict & Terrorism* 682; Robert Ayson ‘After a Terrorist Nuclear Attack: Envisaging Catalytic Effects’ (2010) 33(7) *Studies in Conflict & Terrorism* 571; Stevenson, above n 79, 33 - 34

¹⁴³ Robin Frost ‘Nuclear Terrorism After 9/11’ (2005) 45(378) *Adelphi Papers*

¹⁴⁴ Douglas Guilfoyle ‘Maritime Interdiction of Weapons of Mass Destruction’ (2007) 12 *Journal of Conflict and Security Law*, 2. More recently, the Council for Security Cooperation in the Asia-Pacific defined WMD as ‘... atomic explosive weapons, radioactive material weapons, lethal chemical and biological weapons, and any weapons developed in the future which have characteristics comparable in destructive effect to those of the atomic bomb or other weapons mentioned above’: Council for Security Cooperation in the Asia Pacific WMD Study Group *Handbook on Preventing the Proliferation of Weapons of Mass Destruction in the Asia-Pacific* (Council for Security Cooperation in the Asia-Pacific, 2013), 2

¹⁴⁵ For a succinct overview of the threat of WMD terrorism, see CSCAP, above n 144, 3 - 12

Almost two months after 9/11, bin Laden was reported to have stated in a 7 November 2001 interview with Pakistani journalist Hamid Mir, ‘I wish to declare that if America used chemical or nuclear weapons against us, then we may retort with chemical and nuclear weapons. We have the weapons as a deterrent’. In the same interview, al-Zawahiri is recorded as stating: ‘If you have \$30 million, go to the black market in central Asia, contact any disgruntled Soviet scientist, and a lot of dozens of smart briefcase bombs are available. They have contacted us, we sent our people to Moscow to Tashkent to other central Asian states, and they negotiated and we purchased some suitcase bombs’.¹⁴⁶ Bin Laden is also reported to have declared that:

‘Acquiring weapons for the defence of Muslims is a religious duty. If I have indeed acquired these weapons, then I thank God for enabling me to do so. And if I seek to acquire these weapons, I am carrying out a duty. It would be a sin for Muslims not to try to possess the weapons that would prevent the infidels from inflicting harm on Muslims.’¹⁴⁷

The potential for terrorists to acquire WMD materiel has been specifically acknowledged in three UN Security Council Resolutions between 2004 and 2011,¹⁴⁸ within the UN’s 2004 High Level Report¹⁴⁹ and the 2005 *In Larger Freedom* Report.¹⁵⁰ Whilst nuclear weapons have only been used as weapons of war on two occasions in 1945 in the bombings of Hiroshima (killing around 160,000) and Nagasaki (killing approximately 80,000), chemical weapons have been previously utilised in several armed conflicts – including the first world war and in more recent

¹⁴⁶ Rolf Mowatt-Larssen ‘Al Qaeda’s Pursuit of Weapons of Mass Destruction’ *Foreign Policy* 25 January 2010 http://www.foreignpolicy.com/articles/2010/01/25/al_qaedas_pursuit_of_weapons_of_mass_destruction?page=0,2&hidecomments=yes

¹⁴⁷ Charles Ferguson and William Potter *The Four Faces of Nuclear Terrorism* (Routledge, 2005), 31

¹⁴⁸ Including UNSC Res 1450 (13 December 2002) UN Doc S/RES/1450, UNSC Res 1810 (25 April 2008) UN Doc S/RES/1810; and UNSC Res 1977 (20 April 2011) UN Doc S/RES/1977: <http://www.un.org/en/sc/1540/> accessed 1 October 2013

¹⁴⁹ The United Nations *A More Secure World: Our Shared Responsibility* - Report of the Secretary-General High-level Panel on Threats, Challenges and Change GA 59th session, Agenda Item 55 UN Doc A/59/565 (2 December 2004) noted at para [146] that ‘the threat that terrorists - of whatever type, with whatever motivation - will seek to cause mass casualties creates unprecedented dangers. Our recommendations provided above on controlling the supply of nuclear, radiological, chemical and biological materials and building robust global public health systems are central to a strategy to prevent this threat’

¹⁵⁰ United Nations *In Larger Freedom: Towards Development, Security and Human Rights For All* – Report of the Secretary-General GA 59th session, Agenda Items 45 and 55 UN Doc A/59/2005 (21 March 2005) noted at para [87] that ‘Terrorism is a threat to all that the United Nations stands for: respect for human rights, the rule of law, the protection of civilians, tolerance among peoples and nations, and the peaceful resolution of conflict. It is a threat that has grown more urgent in the last five years. Transnational networks of terrorist groups have global reach and make common cause to pose a universal threat. Such groups profess a desire to acquire nuclear, biological and chemical weapons and to inflict mass casualties. Even one such attack and the chain of events it might set off could change our world forever’.

times by the Iraqis against Iranian forces and Kurdish minorities. The only chemical terrorist attack to date has been the Sarin gas attack on the Tokyo subway system by the Aum Shinrikyo sect on 20 March 1995 which killed 13 and injured around 6,000 people.¹⁵¹

Terrorism scholars have pointed out that WMD of various levels of sophistication could conceivably be assembled from quite small amounts of raw materials - nuclear weapons from small amounts of uranium, and biological and chemical weapons from commonly used agricultural and industrial chemicals.¹⁵² Numerous concerns have been expressed that over the last two decades since the end of the Cold War, the scope for the proliferation of nuclear materiel, and also very destructive conventional weaponry, has markedly increased due to the lessening of government control over such materiel due to the collapse of former communist states.¹⁵³ Added to these concerns, it has been noted that information on the assembly such weapons may be found on the internet. However other studies have challenged such concerns, pointing out the very significant levels of technology and scientific expertise to successfully assemble such WMD.¹⁵⁴ By contrast, the present author's research has not found any indications of pre-contemporary terrorist groups having an interest in acquiring, or possessing, WMD materiel. This may be explained by "more restrained" operational profiles of such groups as noted in [2.5.2], and the near complete control by a very small number of states over WMD during the Cold War.

One of the key ways by which WMD materiel may be transported over long distances is by sea. As [7.2] explains, countering the maritime trafficking of WMD materiel is arguably the most operationally and legally challenging of the all the maritime terrorism threats examined in this Study – due to the challenges of tracking and locating small amounts of WMD materiel concealed within shipping containers being akin to "finding a needle in a haystack"; the legitimate dual uses of what might be regarded as 'WMD materiel', and firmly entrenched freedom of navigation principles under UNCLOS restricting the scope for the interdiction of laterally transiting vessels.

¹⁵¹ National Consortium for the Study of Terrorism and Responses to Terrorism Global Terrorism Database <http://www.start.umd.edu/gtd/>

¹⁵² See for example Charles Ferguson and William Potter *The Four Faces of Nuclear Terrorism* (2005), 3; Graham Allison *Nuclear Terrorism: The Ultimate Preventable Catastrophe* (2004); Frost, above n 143 25 - 40

¹⁵³ David Fidler 'Weapons of Mass Destruction and International Law' *American Society of International Law Insights* February 2003. See also Martin van Creveld *The Rise and Decline of the State* (1999); Richardson, above n 58, 188 - 208

¹⁵⁴ Frost, above n 143

[2.6] CONTEMPORARY vs PRE-CONTEMPORARY TERRORISM: COMPARISON OF ORGANISATIONAL PROFILES

Several generalised distinctions may be made between the common organisational profiles of contemporary and pre- contemporary terrorist groups.

[2.6.1] Globalised outlook of contemporary terrorist groups

As noted in Table 7 above, numerous terrorist attacks have perpetrated by extremist Islamic groups over the last 15 years from South America,¹⁵⁵ Eastern Africa, the United States, Southeast Asia, Europe and the Middle East. Terrorism scholars have noted the ability of like-minded contemporary terrorist groups to operate across borders, in contrast to the general tendency of attacks by most pre-contemporary terrorist groups to be localised.¹⁵⁶ On this point, Schmid et al explains that the term “transnational terrorism” is now used more widely than “international terrorism” amongst terrorism scholars.¹⁵⁷ As noted in [2.4], it has been widely claimed that various linkages have developed between around 15 – 20 Islamic extremist groups across the world (but with no clear consensus on which groups do and do not fit within these groupings). Many such linkages have been both ideological (groups being inspired by bin Laden’s pronouncements and/or the methods of Al Qaeda’s previous attacks), and operational (before the loss of its training bases in Afghanistan, operatives receiving training in Al Qaeda’s attack methods; financial, logistical and personnel support), and as recently discovered in the 2011 US raid on bin Laden’s compound in Abbottabad Pakistan, strategic direction on the perpetration of terrorist attacks.¹⁵⁸

¹⁵⁵ For example, on 18 July 1994, a major suicide bombing by Hezbollah in Buenos Aires, Argentina resulted in 96 fatalities and 236 injuries: National Consortium for the Study of Terrorism and Responses to Terrorism Global Terrorism Database <http://www.start.umd.edu/gtd/>

¹⁵⁶ Rapaport, above n 47, 63 One exception to this general pattern was the machine gun by members of the Japanese Red Army (in cooperation with the PFLP) at Lod Airport in Israel on 30 May 1972 (which killed 28 and injured 78): RAND Database of Worldwide Terrorism Incidents http://smapp.rand.org/rwtid/search_form.php

¹⁵⁷ Schmid et al, above n 4, 184 - 185

¹⁵⁸ See for example ‘The Osama Bin Laden files: All documents and key findings’ *The Telegraph* 14 March 2013 <http://www.telegraph.co.uk/news/worldnews/al-qaeda/9243419/The-Osama-Bin-Laden-files-all-documents-and-key-findings.html> ; David Gardner ‘Revealed: How bin Laden plotted to bring down Air Force One to kill Obama and replace him with ‘totally unprepared’ Biden’ *Daily Mail* 3 May 2012 <http://www.dailymail.co.uk/news/article-2138851/Osama-bin-Laden-files-reveal-plot-bring-Air-Force-One-kill-Barack-Obama.html>; Accessed 1 October 2013

Terrorism scholars have described Al Qaeda having “franchised” its ideology and modus operandi. For example, Hoffman talks of “many Al Qaedas” connected to a central ideological or motivational base, but advancing the remaining centre’s goals - at once simultaneously yet independently of each other – with Al Qaeda being an “umbrella organisation” initially providing financing and training to such groups prior to the loss of its ability to operate in an unfettered manner in Afghanistan in 2001, and then providing the inspiration for these groups.¹⁵⁹ Similarly, Gunaratna explains that through “franchising” its philosophy and style of operations, the [Al Qaeda] movement has enabled multiple campaigns to be waged against US-related interests across the world driven by the ideal of universal jihad.¹⁶⁰

[2.6.2] Contemporary terrorist groups operating without active State sponsorship or support

In several instances, pre-contemporary terrorist groups were provided various degrees of overt and covert support from certain states – with Libya, Iran, North Korea and more recently Sudan and Afghanistan alleged to have provided such various levels of support to terrorist groups.¹⁶¹ In several cases, terrorist and rebel groups were supported by superpowers playing “proxy wars” – notable examples being the support provided by the United States to the mujahedeen in Afghanistan, and also to the Sandinistas in Nicaragua.

¹⁵⁹ Bruce Hoffman *Inside Terrorism* Revised and Expanded Edition (New York: Columbia University Press, 2006), 282

¹⁶⁰ Rohan Gunaratna ‘Al Qaeda’s Origins, Threat and its Likely Future’ (2003) in Rohan Gunaratna (ed) *Terrorism in the Asia-Pacific: Threat and Response* (Eastern University Press 2003); Michael Richardson *A Time Bomb for Global Trade: Maritime Terrorism in an Age of Weapons of Mass Destruction* (Institute for Southeast Asian Studies, 2004), 29 In Southeast Asia for example, Al Qaeda has influenced a change in outlook within previously locally-focused Islamic separatist groups towards the pursuit of a more transnational agenda of a pan-Islamic caliphate (“Daulah Islamiah”) to include Indonesia, Malaysia, Singapore, the southern Philippines and southern Thailand: E. Pavlova ‘Terrorism After September 11: Regional and Global Implications’ in Rohan Gunaratna (ed) *The Changing Face of Terrorism* (Singapore: Eastern Universities Press, 2004), 54; Rapaport, above n 47, 64

¹⁶¹ For example, Anthony Cassese *International Law* 2nd Edition (Oxford University Press, 2005) at 469-470 expresses the view that ‘... generally terrorist groups are not part of the official apparatus of any State, although they usually receive, in varying degrees, some form of backing from that official apparatus.’ He discusses six “degrees of state support” for terrorism – which are summarised below in descending order of state support for terrorism. Firstly, terrorist groups comprising State officials; secondly, agents, mercenaries, and/or armed bands engaged by the authorities of a State; thirdly terrorist groups being supplied with financial aid and/or weapons by a State; fourth terrorist groups being provided with logistical and/or training facilities by a State; fifth states that acquiesce to the presence of terrorist groups within their territory; and sixth and terrorist groups operating within the territory of a State that is unable to exercise effective control over that territory. The fourth, fifth and sixth of Cassese’s points are relevant in describing the levels of state support provided to terrorist groups by the former Taliban regime in Afghanistan prior to the US-led intervention. However his characterisation it is not capable of addressing the threat posed by trans-national “home-grown” terrorist groups which have been responsible for perpetrating many significant attacks over recent years – demonstrated most notably by the 2005 London train bombings. It could not accurately be said that one particular state provided active “support” to enable these attacks to occur

In contrast, it is generally recognised that whilst Al Qaeda (as the most significant driver of contemporary terrorism) previously received various levels of state support from the former Taliban government of Afghanistan, and also from the governments of Sudan and Iran through the provisions of safe havens for training and planning purposes - its ideology agenda has not been directly or indirectly influenced by the government of any state – but rather by the teachings of figures such as the late bin Laden and al-Zawahiri. Furthermore, numerous terrorism studies explain that even following the loss of its capacity to train and operate in a largely unfettered manner within Afghanistan following the US-led intervention from 2001, Al Qaeda has still proven itself to be an adaptive and highly networked transnational movement¹⁶² – with groups influenced by its ideologies being responsible for numerous mass-casualty and suicide attacks.

Terrorism scholars explain that Al Qaeda has flourished based on its own financial resources,¹⁶³ noting that what it lacks in state sponsorship, it makes up for in its flexibility in being able to operate across borders, recognising these capabilities are not possessed by states and thereby effectively “privatising” international terrorism.¹⁶⁴ There have been numerous claims that Al Qaeda receives significant financial support from various criminal activities.¹⁶⁵ It has also been explained that the strength of the Al Qaeda movement lies not in its possession or occupation of defined geographical territories – but rather its fluidity and impermanence – enabling it to continue as, as its name translates, to be “the base” of operations¹⁶⁶ - with one recent study describing Al Qaeda as a “dune organisation” that is able to quickly and flexibly adapt to changing circumstances.¹⁶⁷

¹⁶² Gunaratna, above n 73, 12 - 13

¹⁶³ Gunaratna, above n 73, 12 - 13

¹⁶⁴ David Claridge ‘The Terrorism Threat to Trade and Commerce’ in Rohan Gunaratna (ed) *Terrorism in the Asia-Pacific: Threat and Response* (Eastern University Press 2003), 46

¹⁶⁵ On the issue of the various sources that Al Qaeda-linked groups have been reported to utilise for financing, see for example Chester G Oehme III ‘Terrorists, Insurgents and Criminals – Growing Nexus?’ (2008) 31(1) *Studies in Conflict & Terrorism* 80; Aurel Croissant and Daniel Barlow ‘Following the Money Trail: Terrorist Financing and Government Responses in Southeast Asia’ (2007) 30(2) *Studies in Conflict & Terrorism* 131; and Steven Hutchinson and Pat O’Malley ‘A Crime–Terror Nexus? Thinking on Some of the Links between Terrorism and Criminality’ (2007) 30(12) *Studies in Conflict & Terrorism*, 1095

¹⁶⁶ Gunaratna, above n 73, 10; Hoffman, above n 61, 282

¹⁶⁷ Shaul Mishal and Maoz Rosenthal ‘Al Qaeda as a Dune Organisation: Toward a Typology of Islamic Terrorist Organisations’ (2005) 28 *Studies in Conflict & Terrorism* 275

As [2.6.4] below notes, over more recent years since around 2005, whilst Al Qaeda as an organisation may no longer directly control the perpetration of terrorist attacks, Al Qaeda-influenced home-grown terrorist groups (which have for example perpetrated the 2004 Madrid and 2005 London bombings) also operate independently of state support.

[2.6.3] Less identifiable organisational structures

Terrorism scholars have explained that most second and third wave terrorist groups tended to be discretely organised¹⁶⁸ with hierarchical and identifiable command structures. Particularly in relation to barricade incidents (which [2.5.2] above noted were perpetrated with greater regularity during the late 1970s and early to mid-1980s), the “controlling minds” of pre-contemporary terrorist groups were generally identifiable, and frequently amenable to negotiation – particularly in hijacking and barricade incidents as Tables 8 and 9 depicted. Bruce Hoffman is widely quoted as explaining that ‘... however disagreeable or repugnant such terrorists and their tactics may have been, we at least knew who they were and what they wanted’.¹⁶⁹

By contrast, through being influenced by highly secretive extremists, being able to operate across national borders, and through having access to funding and advanced technology, terrorist movements such as Al Qaeda are not susceptible to diplomacy or military deterrence in the way that many pre-contemporary terrorist groups were, because its leaders are not identifiable to negotiate with, nor to retaliate against.¹⁷⁰ For example, Yasser Arafat addressed the UN as the leader of (the then terrorist) PLO in 1974; by contrast it would be impossible to imagine the late bin Laden or other Al Qaeda leaders doing so today.

However at the same time, the leadership of other non-Al Qaeda influenced contemporary terrorist groups such as the LTTE, Hezbollah and Hamas have been remained identifiable. Furthermore, groups such as Hamas and Hezbollah have assumed functions as de facto governing bodies of their support bases, and their representatives have been elected into

¹⁶⁸ In comparison to the tendency of contemporary terrorist groups to be transnational and home-grown

¹⁶⁹ Bruce Hoffman ‘Lessons of 9/11’ submitted for the Committee Record to the United States Joint September 11 2011 Inquiry Staff of the Senate Select Committees on Intelligence on 8 October 2002. Cited in Randy Borum ‘Counter-Terrorism Training Post-9/11’ in Rohan Gunaratna (ed) *The Changing Face of Terrorism* (Singapore: Eastern Universities Press, 2004), 64

¹⁷⁰ Howard, above n 140, 39; Claridge, above n 161, 46

governments of Palestine and Lebanon. Nevertheless, as [2.5.1] above noted, such contemporary terrorist groups have still actively perpetrated attacks typical of fourth wave terrorism.

[2.6.4] The increasing prevalence of home grown terrorism

As a result of the “franchising” of Al Qaeda’s ideology and modus operandi outlined above, several “home grown” terrorist groups have emerged since around 2005.¹⁷¹ As [2.3.2] noted, the Al Qaeda movement developed significantly during the later 1980s and early 1990s in Sudan and Afghanistan – with thousands of Islamic extremists from all over the world passing through Al Qaeda’s training camps. Many of these individuals gaining irregular combat experience in conflicts such as Kosovo and Chechnya before returning to their home countries. Combined with advances in internet communications, the “returning home Afghan alumni” have contributed to the radicalisation of many Islamic communities across the world, and facilitated the growth of “home-grown” terrorist groups.¹⁷²

As [2.4.1] noted, several terrorism commentators have opined that over recent years, and particularly following the 2011 death of bin Laden, Al Qaeda has declined as a terrorist organisation that is capable of perpetrating attacks on the scale of 9/11. However as Table 7 showed home grown terrorist groups¹⁷³ have been responsible for perpetrating several significant attacks – including the 2004 Madrid bombings¹⁷⁴ and the 2005 London bombings.¹⁷⁵ Home-grown Islamic extremists have also been responsible for the assassination of Dutch film

¹⁷¹ Crone and Harrow, above n 104, 522 note that the term “home-grown” terrorism came into widespread usage following the 2005 London bombings

¹⁷² See generally Rohan Gunaratna ‘Al Qaeda’s Origins, Threat and its Likely Future’ in Rohan Gunaratna (ed) *Terrorism in the Asia-Pacific: Threat and Response* (Eastern University Press, 2003); Crone and Harrow, above n 104 521; Jason Burke and Paddy Allen *The Five Ages of Al Qaeda* (London: Guardian, 2009)

¹⁷³ Which have also variously been termed “grass-roots”, “self-starter” and “radicalised: groups: Javier Jordan, Fernando Manas and Nicola Horsburgh ‘Strengths and Weaknesses of Grassroots Jihadist Networks: The Madrid Bombings’ (2008) 31(1) *Studies in Conflict & Terrorism* 17; Manni Crone and Martin Harrow ‘Home-grown Terrorism in the West’ (2011) 23 *Terrorism and Political Violence* 521

¹⁷⁴ Javier Jordan, Fernando Manas and Nicola Horsburgh ‘Strengths and Weaknesses of Grassroots Jihadist Networks: The Madrid Bombings’ (2008) 31(1) *Studies in Conflict & Terrorism* 17; Stevenson, above n 79, 27

¹⁷⁵ Aidan Kirby ‘The London Bombers as Self-Starters: A Case study in Indigenous Radicalisation and the Emergence of Autonomous Cliques’ (2007) 30(5) *Studies in Conflict & Terrorism* 145

maker Theo van Gogh in 2004¹⁷⁶ and the attempted suicide attack on Glasgow Airport on 30 June 2007.¹⁷⁷

Kurtulusthe talks of an “increased atomisation” in the organisational profile of contemporary terrorist groups in less than four years between the 9/11 attacks and the 2005 London bombings from being Al Qaeda-controlled hierarchies, to Al Qaeda-influenced networks to home-grown self-starter cells, explaining that ‘... according to several accounts, the 9/11 hijackers were directly affiliated to the Al Qaeda leadership and may have received direct orders; the Madrid bombers, however, were more or less a flat network that had several influential individuals as its nodes; and finally, 7/7 London bombers have all the hallmarks of an isolated self-starter cell’.¹⁷⁸ The increasing independence of contemporary terrorist groups and the growth of home grown terrorism mean that that terrorists could potentially strike anywhere, any time.

[2.7] INTERNATIONAL SECURITY IMPLICATIONS OF CONTEMPORARY TERRORISM

The combination of the demonstrably more lethal operational profile and largely invisible organisational profile of contemporary terrorism outlined in this chapter has over the last 15 years brought terrorism to the fore as a very significant threat to national and international security. The 9/11 attacks demonstrated that small numbers of fanatical terrorists could successfully employ asymmetric warfare tactics through their non-conventional use of conventional technologies such as hijacked aircraft to perpetrate mass-casualty, synchronised attacks against even the United States as the universally-recognised hegemon of the post-Cold War international system.¹⁷⁹ This has transformed terrorism from a localised nuisance and a “sideshow” in the “East vs West” confrontation of the Cold War¹⁸⁰ needing be contained, managed and suppressed to a major transnational threat to national and international security

¹⁷⁶ Theo van Gogh produced the film *Submission* in 2004 which criticised the treatment of women in Islamic cultures – which provoked outrage amongst Muslim communities. He was assassinated by Mohammed Bouyeri, a member of the Dutch Islamic extremist Hofstad Network in Amsterdam on 2 November 2004. Cited in Crone and Harrow, above n 104, 529

¹⁷⁷ In this attack a Jeep Cherokee loaded with propane canisters was driven into the glass doors of Glasgow Airport and set ablaze, killing only the driver: Crone and Harrow, above n 104, 529

¹⁷⁸ Kurtulusthe, above n 94, 490

¹⁷⁹ Elana Pavlova ‘Terrorism After September 11: Regional and Global Implications’ in Rohan Gunaratna (ed) *Terrorism in the Asia-Pacific: Threat and Response* (Eastern University Press 2003), 49

¹⁸⁰ Russell Howard ‘Pre-emptive Military Doctrine: No Other Choice’ in Rohan Gunaratna (ed) *The Changing Face of Terrorism* (Eastern Universities Press, 2004), 39

needing to be disrupted, destroyed and eliminated.¹⁸¹ However it has been widely noted that it is virtually impossible to “eliminate” or “defeat” many (largely invisible) contemporary terrorist groups because such groups are not identifiable “enemies” that can be defeated in traditional military terms; and that the absolutist ideologies of such groups means that the struggle against such groups cannot be precisely said to “end” at with ceasefire agreements. Rather, most terrorism specialists have emphasised the need to progress from talking of a “war” to be “won” against Al Qaeda-influenced contemporary terrorist groups to an on-going struggle for security against a largely invisible threat.¹⁸² As one international legal scholar accurately summed up ‘ ... given their nature [attacks by contemporary terrorist groups] are very difficult to defend against whilst underway – the potential target is usually only revealed by the attack itself, all of society represents a potential target thus rendering on-the-spot defence problematic, the actual violence may occur after the terrorists have left the scene (as in a bombing), the terrorists may be willing to die in the attack, and the identity and location of the terrorists may not be uncovered until the completion of a particular action’.¹⁸³ Ronzitti summarises the challenges contemporary terrorist groups present to States when explaining that ‘ ... in the past, the imminence of attack was much more visible because it consisted of the mobilisation of army, navy and air force. Nowadays, terrorist movements operate underground, ready to [strike anywhere]’.¹⁸⁴

The challenges faced by States in countering contemporary terrorism are succinctly depicted in Figure 3 below. This diagram contrasts the “Aggregate Intelligence Effort” required by States to monitor the “Enemy Size/Tactical Footprint” of security threats from opposing States during the Cold War, and from contemporary terrorist groups during what was referred to following 9/11 as the “War on Terror”. It shows that in comparison to the Cold War, significantly greater intelligence and monitoring efforts need to be focused on very small groups of terrorists operating trans-nationally.

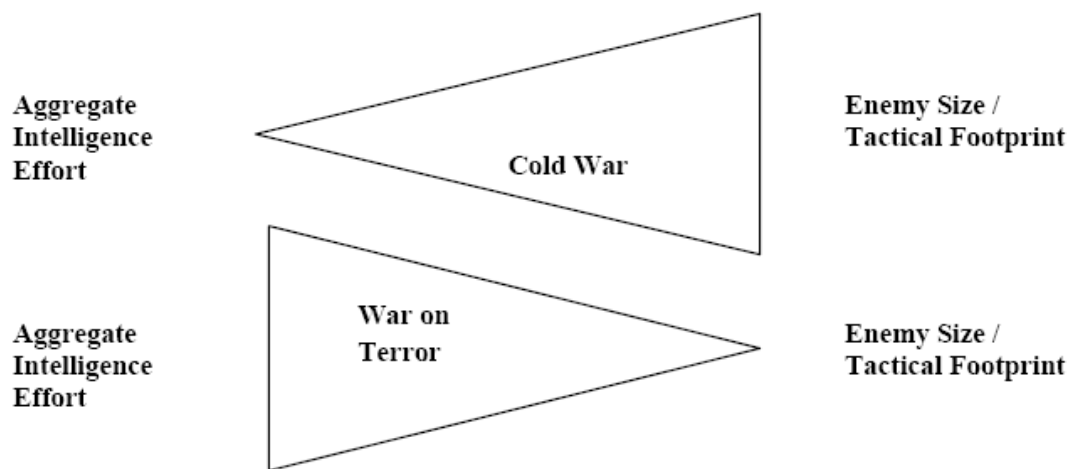
¹⁸¹ Claridge, above n 161, 46

¹⁸² Howard, above n 178, 43

¹⁸³ Michael Schmitt *Counter-Terrorism and the Use of Force in International Law* (George C Marshall Center Papers, No. 5 (2002), 24 - 25

¹⁸⁴ Natalino Ronzitti ‘The Expanding Law of Self-Defence’ (2006) 11 *Journal of Conflict and Security Law*, 347

Figure 3: Comparison of “Enemy Size/Tactical Footprint” and “Aggregate Intelligence Effort” between the Cold War and the War on Terror.



Source: Rupert Herbert-Burns ‘Terrorism in the Early 21st Century Maritime Domain’ in Joshua Ho and Catherine Zara Raymond (eds) *The Best of Times, The Worst of Times: Maritime Security in the Asia-Pacific* (World Scientific, 2004), 173

[2.7.1] Post 9/11 Counter-Terrorism Security Council Resolutions¹⁸⁵

The increased and expanded threat of contemporary terrorism to international peace and security following 9/11 outlined in the above sections has been recognised extensively by the UN Security Council. Resolution 1267 (1999) provided the foundations for these counter-terrorism resolutions, through obliging all states to refrain from providing any form of support to the Taliban, bin Laden and his associates, and as noted in [2.2.2] establishing a committee to designate terrorist organisations, with this list being last updated on 20 September 2013.¹⁸⁶ In Resolution 1368 the Security Council characterized the 9/11 attacks, as a ‘threat to international peace and security’ and expressed its readiness to take ‘all necessary steps ... to combat all forms of terrorism, in accordance with its responsibilities under the [UN

¹⁸⁵ Natalie Klein *Maritime Security and the Law of the Sea* Oxford Monographs in International Law (Oxford University Press, 2011), 283 uses this term to refer to these resolutions

¹⁸⁶ ‘List established and maintained by the Committee pursuant to resolutions 1267 (1999) and 1989 (2011) with respect to individuals, groups, undertakings and other entities associated with Al-Qaida’ http://www.un.org/sc/committees/1267/aq_sanctions_list.shtml Last updated 20 September 2013. See also Appendix A ‘Designations of terrorist groups by the United Nations and by selected States as at 1 October 2013’ UNSC Res 1267 (15 October 1999) UN Doc S/RES/1267, para 6

Charter]’.¹⁸⁷ The preamble to Resolution 1368 expressed the Security Council’s determination to ‘... combat by all means threats to international peace and security caused by terrorist acts’, and ‘recognize[ed] the inherent right of individual or collective self defence in accordance with the [UN] Charter’.¹⁸⁸

Resolution 1373 re-affirmed that terrorism constitutes¹⁸⁹ a serious threat to international peace and security and re-affirmed the inherent rights of individual and collective self defence under the UN Charter.¹⁹⁰ It also both obliged and invited states to implement measures to prevent terrorist acts and the financing and support of it – including criminalizing the willful provision or collection of ‘funds, financial assets or economic resources’ by their nationals or persons within their territories; and freeze the funds of persons and entities associated with the commission, or facilitation, of terrorist acts’.¹⁹¹ It obliged States to refrain from providing “safe havens” for persons financing, planning, supporting or committing terrorist acts;¹⁹² exchange information with other states to prevent the commission of terrorist acts;¹⁹³ bringing to justice any person participating in the financing, planning, preparation or perpetration of terrorist act;¹⁹⁴ co-operating in relation to criminal investigations relating to the financing or support of terrorist acts – including assistance in obtaining evidence;¹⁹⁵ and preventing the movement of persons associated with proscribed terrorist groups – through effective border controls and travel documentation.¹⁹⁶

Resolution 1373 also noted with concern the close connections between international terrorism and illegal activities including transnational organized crime, illicit drugs, money-laundering, illegal arms trafficking, and the illegal movement of WMD materiel;¹⁹⁷ recognized the need for states to complement international cooperation by taking ‘additional measures’ to prevent

¹⁸⁷ UNSC Res 1368 (12 September 2001) UN Doc S/RES/1368, paras 1 and 5

¹⁸⁸ UNSC Res 1368 (12 September 2001) UN Doc S/RES/1368, Preamble. Schmid et al, above n 4, 51 characterises UN language as frequently being “elastic” (using the example of ‘terrorism in all its forms and manifestations’), to which UN member states may afford their own interpretations

¹⁸⁹ The present tense is retained here because Resolution 1373 was not temporally limited; and because it has been affirmed and re-affirmed in several subsequent Security Council resolutions

¹⁹⁰ UNSC Res 1373 (28 September 2001) UN Doc S/RES/1373, Preamble

¹⁹¹ UNSC Res 1373 (28 September 2001) UN Doc S/RES/1373, para 1

¹⁹² UNSC Res 1373 (28 September 2001) UN Doc S/RES/1373, paras (2)(c) and (2)(d)

¹⁹³ UNSC Res 1373 (28 September 2001) UN Doc S/RES/1373, para 2(b)

¹⁹⁴ UNSC Res 1373 (28 September 2001) UN Doc S/RES/1373, para 2(e)

¹⁹⁵ UNSC Res 1373 (28 September 2001) UN Doc S/RES/1373, para 2(f)

¹⁹⁶ UNSC Res 1373 (28 September 2001) UN Doc S/RES/1373, para 2(g)

¹⁹⁷ UNSC Res 1373 (28 September 2001) UN Doc S/RES/1373, para 4

and suppress the financing and preparation of any acts of terrorism within their territories,¹⁹⁸ and declared that acts, methods, and practices of terrorism, (as well as knowingly financing, planning and inciting such acts) as ‘contrary to the purposes and principles of the UN’.¹⁹⁹

Through imposing these obligations, Resolution 1373 laid the foundations for subsequent Security Council Resolutions to make more detailed statements and impose more specific obligations on states to combat all manifestations of terrorism. Resolution 1377 went one step further to declare in the preamble that ‘... acts of international terrorism constitute one of the most serious threats to international peace and security in the twenty-first century’, and also that stressed that acts of international terrorism ‘... are contrary to the purposes and principles of the [UN Charter], and that the financing, planning and preparation of as well as any other form of support for acts of international terrorism are similarly contrary to the purposes and principles of the [UN Charter]’.²⁰⁰ Since 2001, preambles of 27 further Security Council Resolutions have re-affirmed the seriousness of terrorism as a threat to international peace and security; affirmed and re-affirmed the need to ‘combat through all means’ terrorist threats to international peace and security; affirmed and re-affirmed the inherent rights of individual and collective self-defence in accordance with the Charter of the United Nations.²⁰¹

Although these post-9/11 counter terrorism resolutions have been passed unanimously, several non-members of the Security Council have voiced concerns regarding the haste and informality with which these resolutions had been adopted, calling for a more transparent and interactive

¹⁹⁸ UNSC Res 1373 (28 September 2001) UN Doc S/RES/1373, para 3(f)

¹⁹⁹ UNSC Res 1373 (28 September 2001) UN Doc S/RES/1373, para 5

²⁰⁰ UNSC Res 1377 (12 November 2001) UN Doc S/RES/1377, Preamble

²⁰¹ These include the preambles for UNSC Res 1390 (16 January 2002) UN Doc S/RES/1390; UNSC Res 1438 (14 October 2002) UN Doc S/RES/1438; UNSC Res 1440 (24 October 2002) UN Doc S/RES/1440; UNSC Res 1450 (13 December 2002) UN Doc S/RES/1450; UNSC Res 1452 (20 December 2002) UN Doc S/RES/1452; UNSC Res 1455 (17 January 20023 UN Doc S/RES/1455; UNSC Res 1456 (20 January 2003) UN Doc S/RES/1456; UNSC Res 1465 (13 February 2003) UN Doc S/RES/1465; UNSC Res 1516 (20 November 2003) UN Doc S/RES/1516; UNSC Res 1526 (30 June 2004) UN Doc S/RES/1526; UNSC Res 1530 (11 March 2004) UN Doc S/RES/1530; UNSC Res 1535 (26 March 2004) UN Doc S/RES/1535; UNSC Res 1566 (8 October 2004) UN Doc S/RES/1566; UNSC Res 1611 (7 July 2005) UN Doc S/RES/1611; UNSC Res 1617 (29 July 2005) UN Doc S/RES/1617; UNSC Res 1618 (4 August 2005) UN Doc S/RES/1618; UNSC Res 1735 (22 December 2006) UN Doc S/RES/1735; UNSC Res 1787 (10 December 2007) UN Doc S/RES/1787; UNSC Res 1805 (20 March 2008) UN Doc S/RES/1805; UNSC Res 1810 (25 April 2008) UN Doc S/RES/1810; UNSC Res 1822 (30 June 2008) UN Doc S/RES/1822; UNSC Res 1904 (17 December 2009) UN Doc S/RES/1904; UNSC Res 1963 (20 December 2010) UN Doc S/RES/1963; UNSC Res 1988 (17 June 2011) UN Doc S/RES/1988; UNSC Res 1989 (17 June 2011) UN Doc S/RES/1989; UNSC Res 2082 (17 December 2012) UN Doc S/RES/2082; and UNSC Res 2083 (17 December 2012) UN Doc S/RES/2083

approach from the Security Council.²⁰² These post-9/11 counter terrorism resolutions have been noted to represent a significant “paradigm shift” in the Security Council’s practice, through imposing obligations that are not constrained by time nor geographic location. Contrastingly, it has been noted that “traditional” Security Council resolutions (and indeed pre-9/11 terrorism-related Security Council Resolutions) have been limited to specific state(s), regions or groups of persons for specifically limited time periods.²⁰³ This has led several international legal scholars to criticise the Security Council for taking on an “international legislative role” - particularly given that Article 25 of the UN Charter obliges all member states to comply with obligations imposed by resolutions of the Security Council.²⁰⁴

This scholarly analysis increased following the passing of Resolution 1540 in 2004 on WMD proliferation amongst non-state actors. Despite the efforts of the United States, Resolution 1540 did not result in binding obligations being imposed on States to interdict suspected shipments of WMD materiel to non-state actors, but merely ‘called upon’ States to ‘take cooperative action’ to prevent such transfers.²⁰⁵ As [7.2] explains, international legal scholars have been divided on the extent to which Resolution 1540, and the other post-9/11 counter-terrorism Security Council Resolutions, might add further justification to the interdiction of vessels suspected of transporting WMD materiel for terrorist purposes under the vaguely-worded provisions of UNCLOS, and in exceptional cases, Article 51 of the UN Charter (which Chapter 8 examines).²⁰⁶

²⁰² For example, the Costa Rican representative to the UN later argued within the UN General Assembly the importance for the UNSC to act responsibly through holding transparent and effective consultations with other UN members when adopting such resolutions imposing such far-reaching obligations: UN Doc. A/56/PV.25, at 3 (2001) Cited in Stefan Talmon ‘The Security Council as World Legislature’ (2005) 99 *American Journal of International Law*, 180

²⁰³ Examples of “traditional” Security Council Resolutions include those which authorised the 1990 action against Iraq following its invasion of Kuwait, and which also established the enforceable “no fly zone”. See for example Rob McLaughlin, ‘United Nations Mandated Naval Interdiction Operations in the Territorial Sea?’ (2002) 51 *International and Comparative Law Quarterly* 249 and Sandra L. Hodgkinson, Edward Cook, Thomas Fichter, Christian Fleming, Jonathan Shapiro, Jon Mellis, Brandon Boutelle, Stephen Sarnoski, Gregory Noone ‘Challenges to Maritime Interception Operations in the War on Terror: Bridging The Gap’ (2007) 22 *American University International Law Review* 583. As [5.2.2.3] explains, Resolution 1816 (2008) and its succeeding resolutions on piracy in the Gulf of Aden have adopted this “more traditional” focus.

²⁰⁴ Guilfoyle, above n 144, 13 - 14; Daniel Joyner ‘The Proliferation Security Initiative: Non-proliferation, Counter-Proliferation and International Law’ (2005) 30 *Yale Journal of International Law* 507, 540; Talmon, above n 200 175; and Paul Szaz ‘The Security Council Starts Legislating’ (2002) 96 *American Journal of International Law* 901

²⁰⁵ UNSC Res 1540 (28 April 2004) UN Doc S/RES/1540, para 10

²⁰⁶ Michael Becker ‘The Shifting Public Order of the Oceans: Freedom of Navigation and the Interdiction of Ships at Sea’ (2005) 46 *Harvard Journal of International Law*, 166 - 167; Joyner above n 202, 541; Guilfoyle, above n 144, 1 - 2

Of all post-9/11 counter-terrorism Security Council Resolutions, Resolution 1390 whilst focusing on the situation in Afghanistan, has imposed the most wide-ranging obligations on States regarding (and broadly defined) ‘Usama bin Laden, members of the Al-Qaida organization and the Taliban and other individuals, groups, undertakings and entities associated with them.’²⁰⁷ Paragraph 2 of Resolution 1390 obliged States to prevent their territories being utilised by these groups and individuals for financing,²⁰⁸ entering or transiting through,²⁰⁹ and for supplying weaponry,²¹⁰ - with these obligations have been re-affirmed in ten subsequent Security Council resolutions.²¹¹ As the term ‘territories’ within Resolution 1390 was expressed generally and did not specifically exclude maritime territories, [7.3.3] considers the extent to which the vaguely-worded provisions of UNCLOS, when considered in light of the obligations imposed by Resolution 1390, might allow States to interdict foreign vessels suspected of transporting conventional weaponry, terrorist-connected persons and being utilised for terrorist financing across the UNCLOS maritime zones, and in exceptional cases, Article 51 of the UN Charter (which Chapter 8 examines).

²⁰⁷ The ‘other individuals, groups, undertakings and entities associated with them’ was defined as meaning the list referred to within Security Council Resolutions 1267 (1999) and 1333 (2000) – which was to be updated regularly by the UN committee established pursuant to UNSC Resolution 1267 (1999). See ‘The List established and maintained by the Committee pursuant to resolutions 1267 (1999) and 1989 (2011) with respect to individuals, groups, undertakings and other entities associated with Al-Qaida’ Last updated on 20 September 2013 http://www.un.org/sc/committees/1267/aq_sanctions_list.shtml; Accessed 1 October 2013

²⁰⁸ UNSC Res 1390 (16 January 2002) UN Doc S/RES/1390, para 2(a) obliged states to ‘... freeze the funds and other financial assets or economic resources of these individuals, groups, undertakings and entities - including funds derived from property owned or controlled, directly or indirectly, by them or by persons acting on their behalf or at their direction, and ensuring that neither these nor any other funds, financial assets or economic resources are made available, directly or indirectly, for such persons’ benefit, by their nationals or by any persons within their territory.

²⁰⁹ UNSC Res 1390 (16 January 2002) UN Doc S/RES/1390, para 2(b) obliged states to ‘... prevent the entry into or the transit through their territories of these individuals’

²¹⁰ UNSC Res 1390 (16 January 2002) UN Doc S/RES/1390, para 2(c) obliged states to ‘... prevent the direct or indirect supply, sale and transfer, to these individuals, groups, undertakings and entities from their territories or by their nationals outside their territories, or using their flag vessels or aircraft, of arms and related materiel of all types including weapons and ammunition, military vehicles and equipment, paramilitary equipment, and spare parts for the aforementioned and technical advice, assistance, or training related to military activities’

²¹¹ These resolutions have included UNSC Res 1526 (30 January 2004) UN Doc S/RES/1526; UNSC Res 1617 (29 July 2005) UN Doc S/RES/1617 (which extended the definition of groups ‘associated with’ Al Qaeda or Osama Bin Laden); UNSC Res 1810 (25 April 2008) UN Doc S/RES/1810; UNSC Res 1822 (30 June 2008) UN Doc S/RES/1822; UNSC Res 1904 (17 December 2009) UN Doc S/RES/1904; UNSC Res 1963 (20 December 2010) UN Doc S/RES/1963; UNSC Res 1988 (17 June 2011) UN Doc S/RES/1988; UNSC Res 1989 (17 June 2011) UN Doc S/RES/1989; UNSC Res 2082 (17 December 2012) UN Doc S/RES/2082; and UNSC Res 2083 (17 December 2012) UN Doc S/RES/2083

[2.8] CONCLUSION

Through enunciating the generalised terms of contemporary terrorism and pre-contemporary terrorism, this Chapter has enabled the forms of terrorist attacks perpetrated by both Al Qaeda-influenced groups, and the (now defeated) LTTE to be examined under the one heading, and distinguished from older forms of terrorism. It explained how contemporary terrorism has been characterised by fanatically-driven, transnational, increasingly independent and home-grown groups (organisational profile) perpetrating infrequent yet very deadly mass-casualty attacks, frequently through the use of suicide tactics – in comparison to “more constrained” and negotiable hostage takings (operational profile). Finally it explained how recognition of the threat of contemporary terrorism has resulted several significant counter-terrorism Security Council Resolutions, which have imposed wide-ranging obligations on States that are neither geographically nor temporally limited.

At present, no official statements from government security agencies (which are fully informed through both public and classified information sources) indicate that the contemporary post-9/11 threat of terrorism has disappeared. For example, Australia’s terrorism alert level has not been lowered from “Medium” to “Low” since the 9/11 attacks,²¹² and indeed was elevated to “High” on 12 September 2014.²¹³ In October 2013 the Director General of the Australian Security Intelligence Organisation publicly stated that ‘... nothing I have seen in four years as Director-General of Security has led me to think otherwise than that the threat of terrorism is real and persistent, both globally and in Australia itself’.²¹⁴ Similarly, the United Kingdom’s terrorist threat levels have not been reduced below “Substantial” since the introduction of their

²¹² ‘Tony Abbott lifts terror alert level to high, but says no attack is imminent’ *The Australian*, 12 September 2014 <http://www.theaustralian.com.au/national-affairs/tony-abbott-lifts-terror-alert-level-to-high-but-says-no-attack-is-imminent/story-fn59niix-1227056610235>; See also Australian Government: ‘National Terrorism Public Alert System’

<http://www.nationalsecurity.gov.au/Securityandyourcommunity/Pages/NationalTerrorismPublicAlertSystem.aspx>

²¹³ National terrorism public alert level raised to high’ Prime Minister Media Release 12 September 2014 ‘<http://www.pm.gov.au/media/2014-09-12/national-terrorism-public-alert-level-raised-high>

²¹⁴ ‘Director-General’s speech: The 2013 Sir Zelman Cowen Oration, 1 October 2013’ Australian Security Intelligence Organisation <http://www.asio.gov.au/Publications/Speeches-and-Statements/Speeches-and-Statements/DGs-Speech-October-1-2013.html>

five public terror threat levels on 1 August 2006,²¹⁵ and was raised to “Severe” on 29 August 2014.²¹⁶

Chapter 3 shows that whilst maritime attacks have accounted for around only two per cent of recorded terrorist attacks since 1968, maritime attacks by contemporary terrorist groups since the mid-1990s have reflected the trend towards significant casualty and suicide attacks outlined in this chapter. It also reasons that the disruptive consequences following from a significant maritime terrorism incident could be very profound. The chapter formulates the Maritime Terrorism Threat Matrix, which provides a structured framework for analysing how terrorists have, and might seek to, target or utilise vessels, and reinforces the importance of preventing maritime terrorism incidents from occurring.

²¹⁵ Terrorist threat level history’ United Kingdom MI5 Security Service <https://www.mi5.gov.uk/home/the-threats/terrorism/threat-levels.html#history>

²¹⁶ Threat level from international terrorism increased from substantial to severe’ United Kingdom Home Office, 29 August 2014 <https://www.gov.uk/government/news/threat-level-from-international-terrorism-increased>

CHAPTER 3

THE THREAT OF CONTEMPORARY TERRORISM IN THE MARITIME DOMAIN

[3.1] INTRODUCTION

This Chapter outlines the serious threat contemporary terrorism could pose within the maritime domain.¹ It explains how the disruptive effect of a terrorist attack on significant port facilities or navigational choke-points could be profound, and that terrorist attacks on land enabled through weaponry or operatives transported by sea, or financed by the terrorist utilisations of vessels, could also be (and have been) very devastating. Through a high-level overview² of the 228 recorded maritime terrorism attacks, the chapter shows the contrasts between contemporary and pre-contemporary terrorism articulated in Chapter 2 away from restrained and negotiable forms of terrorism and towards significant-casualty and suicide attacks.³ It also notes indications of contemporary terrorist groups having the intent and capabilities to perpetrate maritime attacks. After reviewing the insightful yet overly specific maritime terrorism scenarios postulated by maritime security specialists since 9/11, the chapter formulates the Maritime Terrorism Threat Matrix, which provides the most structured framework to date for statistically analysing all of the ways in which terrorist have, and might conceivably⁴ target and/or utilise vessels. It concludes by emphasising the importance of preventing the occurrence of maritime terrorism incidents in the first instance, rather than responding after terrorist attacks occur – which is the challenging standard against which the prospects for the international agreements succeeding should be assessed.

¹ This chapter addresses the first of the sub-questions posed in [1.2.2], namely ‘(1) How should the threat of contemporary post-9/11 forms of maritime terrorism be understood?’

² The term ‘high level’ here refers to the analysis of trends over several years

³ [3.3] contrasts the bombings of USS *Cole* in 2000, MV *Limburg* in 2002 and *Super Ferry 14* in 2004 to pre-contemporary incidents such as the 1985 *Achille Lauro* hijacking

⁴ Given the cunning, innovative and unpredictable operational profile of contemporary terrorist groups demonstrated in attacks such as 9/11, which contrasts to the more predictable operational profile of pirate groups, Chapter 3 reasons that it is very important to examine planned and postulated maritime terrorism incidents as well as successful and attempted ones. Chapter 2 also noted that the *9/11 Commission Report* at 339 – 348 cited the lack of imagination and the failure to “think outside the box” as a contributing factor to the failure to pre-empt the 9/11 attacks

[3.2] VULNERABILITIES OF THE MARITIME DOMAIN TO TERRORIST TARGETING AND UTILISATION

Covering around seventy per cent of the world's surface, oceans are the focus of numerous economic, commercial, recreational and military activities. It has been estimated that around eighty per cent of international trade moves by sea,⁵ with both the volumes of trade and the number of ships ploughing the world's oceans continually increasing. These large volumes of trade are concentrated in four key respects that make the maritime domain particularly vulnerable to targeting and/or utilisation by terrorists. First, recent decades have seen a significant concentration of the international trade moving by sea into containerised cargoes – it has been widely estimated that up to 90 per cent of goods transported by sea move via shipping containers.⁶ Whilst facilitating maritime trade and commerce, the impossibility of physically inspecting each and every shipping container provides scope for shipping containers to be utilised for nefarious purposes by terrorists – including smuggling WMD materiel,⁷ conventional weaponry and terrorist-connected persons to enable subsequent terrorist attacks on land.

Second, recent decades have also seen the increasing concentration of containerised shipping onto larger vessels (such as “Panamax” vessels), and towards the increasing importance of a smaller number of “mega-ports” capable of handling very large vessels and cargo volumes.⁸ Such large, slow moving and often “minimum manned” vessels are particularly vulnerable to targeting by both terrorist and pirate groups. A significant attack on one or more of the large “mega-ports” that are capable of servicing such large vessels could cause significant disruptions to the free-flow of international trade - given that international supply chains function and indeed survive according to the “Just enough, Just in time” principle - whereby goods are delivered in the sufficient quantity just in time for consumption or sale in order to minimise the time spent in storage.⁹

⁵ Michael Richardson *A Time Bomb for Global Trade: Maritime Terrorism in an Age of Weapons of Mass Destruction* (Institute of Southeast Asian Studies, 2004), 3; Martin Murphy *Small Boats, Weak States, Dirty Money: Piracy & Maritime Terrorism in the Modern World* (2009), 266

⁶ Richardson, above n 5, 3

⁷ Marc Levinson *The Box: How the Shipping Container Made the World Smaller and the World Economy Bigger* (Princeton University Press, 2006); Richardson, above n 5, 5 - 6

⁸ Levinson, above n 7, 10 - 15

⁹ Akiva Lorenz *Al Qaeda's Maritime Threat* (International Institute for Counter Terrorism) 15 April 2007, 15; Richardson, above n 5 at 7 explains that ‘the global economy is built on integrated supply chains that feed components and other materials to users just before they are required and just in the right amounts. That way,

The costs from a significant disruption to the functioning of a “mega-port” were seen between 27 September and 9 October 2002 when industrial action by port workers on the closed all 29 sea ports along the West Coast of America. This was estimated to have disrupted the itineraries of more than 200 ships carrying 300,000 containers, and resulted in costs in the range of US\$450 million to several billion dollars to the US economy, as well as removing between 0.4 and 1.1 per cent of the nominal GDP of prominent Asian exporters, including Hong Kong, Malaysia, and Singapore.¹⁰ The effects of these disruptions were drawn upon in a widely-cited “port security war game” exercise facilitated by consulting firm Booz Allen Hamilton, which considered the effects from a significant terrorist attack on a major US port causing closure of other US ports. This exercise reasoned that the economic consequences flowing from such an attack could be more profound than 9/11 attacks because it would affect the functioning of the *real economy* (that is, the physical interchange of goods) as opposed to the *financial economy* (that is, the interchange of financial flows). It reasoned that whilst governments and businesses can implement business continuity measures to survive the loss of their offices and personnel from attacks such as 9/11, attacks on physical infrastructure such as “mega-ports” could take far longer to return to pre-attack capacity.¹¹

Third, several key navigational chokepoints around the world are very significant for the free-flow of international shipping. These include the Strait of Gibraltar, the Suez Canal, the Bosphorus Strait, Bab-el-Mandab linking the Red Sea and the Indian Ocean, the Strait of Hormuz, the Straits of Malacca and the Panama Canal. The waters in proximity to these chokepoints are also heavily trafficked by smaller vessels whose activities are challenging to monitor. Furthermore, Islamic extremist groups are reported to be active in areas in proximity to several of these international straits, leading to widespread concerns of terrorist attacks following 9/11.¹² Similarly to the effect of attacks on “mega-ports”, actual or threatened disruptions to the free flow of international shipping through these chokepoints, even for a

inventory costs are kept low. If supply chains are disrupted, it will have repercussions around the world, profoundly affecting business confidence’.

¹⁰ Michael Greenberg, Peter Chalk and Henry Willis *Maritime Terrorism: Risk and Liability* (RAND Corporation: 2006) ; Philippe Crist *Security in Maritime Transport: Risk Factors and Economic Impact* (Organisation for Economic Cooperation and Development Maritime Transport Committee, 2003), 122 - 123

¹¹ This port security war game exercise examined the hypothetical impacts on the US economy and international financial markets that could result from the discovery of radiological bombs entering the United States via shipping containers progressively over a 92 day period, estimating the total cost could be as high as USD 58 billion: Crist, above n 10, 19 - 23

¹² Lorenz, above n 9, 16

short period of time, could have profoundly adverse consequences for international shipping and economies around the world through increasing both the time and the cost for goods to be transported by sea, as the closure of the Suez Canal during the Suez Crisis of the 1950s demonstrated.¹³ Furthermore, large volumes of potentially volatile and explosive materials such as oil, liquefied natural gas and ammonium nitrate are transported by sea, and concerns have also been expressed that such vessels might be targeted by terrorists. However several maritime security specialists have played down such concerns, pointing out that such vessels are constructed to ensure the safe transport of such materials under all conditions.¹⁴

Fourth, the widespread anonymity regarding the ownership and control of vessels that plough the world's oceans, given the often lax controls of "open registry" flag states¹⁵ and as [4.4] discusses, inconsistencies in the enforcement of seafarer identity measures have raised concerns about the nefarious uses of ships and seafarer identification by terrorist and criminal groups. Such factors make the world's oceans very vulnerable to targeting and/or utilisation by terrorists, with the following section showing how the maritime domain has presented, and could well present, an attractive location for future terrorist attacks.

[3.3] COMPARISON OF CONTEMPORARY AND PRE-CONTEMPORARY MARITIME TERRORIST ATTACKS

The Council for Security Co-operation in the Asia-Pacific (CSCAP) Working Group on Maritime Cooperation has defined maritime terrorism as the '... undertaking of terrorist acts and activities within the maritime environment, using or against vessels or fixed platforms at sea or in port, or against any one of their passengers or personnel, [or] against coastal facilities'.¹⁶ Although the CSCAP definition also included the undertaking of such acts against '... settlements, including tourist resorts, port areas and port towns or cities',¹⁷ because this Study is limited to examining the threat of terrorism in the *maritime* (as opposed to *terrestrial*)

¹³ See for example John Noer *Chokepoints: Maritime Economic Concerns in the South China Sea* (Washington: National University Press, 1996)

¹⁴ Peter Martin 'Security in the Maritime Sector of the Liquefied Natural Gas Industry' in Rupert Herbert-Burns, Sam Bateman and Peter Lehr (eds) *Lloyds MIU Handbook of Maritime Security* (CRC Press, 2009), 159 - 169

¹⁵ See in particular Crist, above n 10; and Organisation for Economic Cooperation and Development Maritime Transport Committee *Ownership and Control of Ships* (2003)

¹⁶ Lorenz, above n 9, 3

¹⁷ Lorenz, above n 9, 3

domain, terrorist attacks executed from the *landward* side against such land targets¹⁸ are not counted by this Study as *maritime* terrorist attacks.

[3.3.1] Comparison of operational profiles

As previously mentioned in Chapters 1 and 2, maritime attacks have only accounted for around two per cent of all recorded terrorist attacks since 1968.¹⁹ Based on the widest possible review of terrorism databases and other sources, this Study has recorded 228 maritime attacks having been successfully²⁰ perpetrated by groups which have been variously described as terrorist between 1968 and 2013.

Whilst small in comparison to the global total, maritime attacks over the last two decades reflect the contrasts in the operational profile between contemporary and pre-contemporary terrorist groups explained in Chapter 2 away from restrained and “negotiable” forms of terrorism such as vessel hijackings and towards significant-casualty and suicide attacks.²¹ Table 9 below summarises the yearly statistic trends in the 228 recorded successful maritime terrorist attacks between 1968 and 2013, with Appendix G providing the full details of these attacks.²² It shows how the yearly numbers of maritime attacks have fluctuated – with the first “spike” around 1974 to 1976 mostly due to attacks on vessels around the Caribbean by anti-Castro Cuban groups such as El Poder Cubano; the second (and largest) “spike” between 1984 to 1985 mostly reflecting attacks on vessels around Nicaraguan waters during its Civil War by groups such as

¹⁸ An example of an attack executed from the *landward* side would be an attack on a port facility by an explosives-laden vehicle – which would not be an attack against the port facility executed from the *maritime* side

¹⁹ 1968 is when the RAND Terrorism Chronology Database and RAND-MIPT Terrorism Incident Database started methodically recording statistics on terrorist attacks: Murphy, above n 5, 185-186

²⁰ As noted in [2.2.4], the National Consortium for the Study of Terrorism and Responses to Terrorism Global Terrorism Database <http://www.start.umd.edu/gtd/> (GTD) from which many of the statistics utilised in this Study have been derived, defines a terrorist attack as being ‘successful’ according to the tangible effects of the attack. The notes to the GTD explain ‘For example, in a typical successful bombing, the bomb detonates and destroys property and/or kills individuals, whereas an unsuccessful bombing is one in which the bomb is discovered and defused or detonates early and kills the perpetrators. Success is *not* judged in terms of the larger goals of the perpetrators. For example, a bomb that exploded in a building would be counted as a success even if it did not, for example, succeed in bringing the building down or inducing government repression’.

²¹ Akiva Lorenz *The Threat of Maritime Terrorism to Israel* (International Institute for Counter Terrorism) 15 April 2007, 26

²² Appendix G ‘Chronology of successful maritime terrorist attacks: 1961 – 2013’ summarises the following information for each attack: the date; the location of the attack and the navigational status of the attacked vessel (Underway (U), In port (P), At anchor (A), or Offshore platform (OP)); the perpetrators of the attack; the attacked vessel; the method of attack and its effects; the Maritime Terrorism Threat Matrix incident category; the injuries resulting from the attack; the fatalities resulting from the attack; and the source from which the information about the attack was derived

the Nicaraguan Democratic Force and the Democratic Revolutionary Alliance; and the “spike” between 2005 to 2007 mostly driven by attacks on offshore platforms around Niger Delta by the Movement for the Emancipation of the Niger Delta (MEND), and also by LTTE attacks on shipping around Sri Lanka.

Given the low numbers of maritime terrorist attacks, the “spikes” in fatalities have mostly been driven by significant-casualty²³ attacks resulting in over ten fatalities. Aside from one single attack in 1971 with 24 fatalities, such significant-casualty attacks have mostly occurred since the mid-1990s. Similarly, all of the ten suicide maritime terrorist attacks have been perpetrated since 1999 - which further evidences the observation made in [2.5] about mass-casualty and suicide attacks being a characteristic of contemporary terrorism since the mid-1990s. As detailed in Appendix G, the LTTE has perpetrated five of these ten suicide maritime terrorist attacks, with other attacks been perpetrated by the Abu Sayyaf Group against a Philippines passenger ferry in 2000 (resulting in one fatality); by Jamaat al-Tawhid/ Tawhid and Jihad in 2004 against the Khor al-Amaya and Al-Basra offshore oil terminals in Iraq in 2004 (resulting in six fatalities, and causing a temporary shut-down in oil production from the terminals; and a suicide speedboat attack in 2010 against the Japanese tanker MV *Star* in the Persian Gulf by an unknown perpetrator.²⁴

²³ Whilst the term ‘Mass casualty’ is widely used to refer to attacks with more than 50 casualties, due to the comparatively lower occurrence of maritime terrorist attacks, this Study uses the term ‘Significant casualty’ attack to refer to maritime terrorist attacks resulting in more than ten fatalities

²⁴ Anthony DiPaola ‘UAE Confirms Terror Attack on Japan Tanker in Persian Gulf Last Month’ Bloomberg 7 August 2010 <http://www.bloomberg.com/news/2010-08-06/u-a-e-confirms-terror-attack-on-japan-tanker-in-persian-gulf-last-month.html>

Table 9: Yearly trends in recorded maritime terrorist attacks: 1968 - 2013²⁵

Year	Attacks per year	Total fatalities	Attacks >> 10 fatalities	Suicide attacks
2011	0	0	0	0
2010	7	6	0	1
2009	9	50	2	0
2008	9	29	1	2
2007	9	2	0	1
2006	10	71	4	1
2005	3	0	0	0
2004	4	134	2	2
2003	3	30	2	0
2002	2	1	0	1
2001	2	20	2	0
2000	5	58	2	2
1999	5	2	0	1
1998	0	0	0	0
1997	7	39	1	0
1996	5	5	0	0
1995	2	1	0	0
1994	7	15	0	0
1993	1	0	0	0
1992	7	45	2	0
1991	9	12	1	0
1990	3	2	0	0
1989	6	4	0	0
1988	5	18	1	0
1987	5	1	0	0
1986	7	19	1	0
1985	9	6	0	0
1984	21	7	0	0
1983	3	1	0	0
1982	2	6	0	0
1981	4	1	0	0
1980	6	0	0	0
1979	6	5	0	0
1978	3	5	0	0
1977	2	0	0	0
1976	9	3	0	0
1975	7	0	0	0
1974	8	0	0	0
1973	3	0	0	0
1972	0	0	0	0
1971	1	24	1	0
1970	0	0	0	0
1969	0	0	0	0
1968	7	0	0	0
Totals	223	622	22	11

²⁵ This is a high level summary of the attacks listed in Appendix G. As at 1 October 2013 neither the GTD nor the RDWTI had been updated for the terrorist attack statistics for 2012, and the author's research did not identify any maritime terrorist attacks occurring during 2012 or 2013.

Both Al Qaeda, and the Al Qaeda-influenced Adan Abyan Islamic Army have been responsible for the two most notable suicide attacks over the last decade. First, the bombing of the USS *Cole* by an explosives-laden dinghy whilst refuelling in Aden, Yemen in 2000 resulted in 17 fatalities and 39 injuries, extensive damage to the *Cole*. Shortly after this attack bin Laden is widely reported to have composed and read the following poem at the wedding of one of his sons praising the attack.

‘Your brothers in the East prepared their mounts and Kabul has prepared itself and the battle camels are ready to go, A destroyer: even the brave fear its might. It inspires horror in the harbor and in the open sea. She goes into the waves flanked by arrogance, haughtiness and fake might. To her doom she progresses slowly, clothed in a huge illusion. Awaiting her is a dinghy, bobbing in the waves, disappearing and reappearing in view’.²⁶

Second, the suicide attack by an explosives-laden dinghy on the oil tanker *MV Limburg* on 6 October 2002 off the coast of Yemen caused one fatality and 12 injuries. The 157,000 GRT *Limburg*, which was carrying 397,000 barrels of crude oil from Iran to Malaysia, caught fire, causing around \$45 million damage to the vessel and almost 90,000 barrels of crude oil to link into the Gulf of Aden. Following this attack, oil prices immediately rose by around 30 cents per barrel; and marine hull and cargo insurance rates for ships operating in and around Yemen trebled.²⁷ The overall loss to the Yemeni economy was estimated at around \$56 million – including the loss of \$3.8 million to Yemen in port revenues, and the loss of 3000 jobs relating to the Yemeni shipping industry.²⁸ Two Al Qaeda communiqués following this attack evidence the extremist ideology noted in Chapter 2 as driving the actions of Al Qaeda-influenced contemporary terrorist groups. One communiqué explained ‘If a boat which didn’t cost US \$1,000 managed to devastate an oil tanker of that magnitude, imagine the extent of the danger that threatens the West’s commercial lifeline, which is petroleum’.²⁹ Another communiqué

²⁶ Tracey Connor ‘Bin Laden: Cole Poetic Justice’ *New York Post* 2 March 2011 http://www.nypost.com/p/news/item_af8AlarmoUUffkHpb8YvvO; Craig Unger *House of Bush, House of Saud* (Scribner, 2004), 229

²⁷ Lorenz, above n 9, 14; Peter Lehr ‘Maritime Terrorism: Locations, Actors and Capabilities’ in Rupert Herbert-Burns, Sam Bateman and Peter Lehr (eds) *Lloyd’s MIU Handbook of Maritime Security* (CRC Press, 2008), 59 - 60

²⁸ Catherine Zara-Raymond *Maritime Terrorism in Southeast Asia: A Risk Assessment* (Institute for Defence and Strategic Studies Working Paper No. 74, March 2005), 31

²⁹ Lorenz, above n 9, 14

evidences Al Qaeda's recognition of the vulnerabilities of Sea Lines of Communication, and its strong resolve to target those vulnerabilities, when declaring that:

‘We congratulate our Islamic nation for heroic and brave jihadi operations that were undertaken by its justified mujahedeen sons in Yemen against the crusader oil tanker and in Kuwait against the invading forces and the American occupation. By hitting the oil tanker in Yemen, the mujahedeen hit the secret line, the provision line and the feeding to the artery of life to the crusader's nation. They reminded the enemies of the heaviness of the blood bill and the enormity of losses, that they will pay a high price for the continuation of their aggression on our nation and their plunder of our good and our wealth.’³⁰

The USS *Cole* and MV *Limburg* attacks, and several of the significant casualty³¹ and suicide attacks summarised in Table 9 (and detailed in Appendix G), were perpetrated without warning and with devastating effect. Such attacks contrast markedly to common patterns of maritime attacks perpetrated by pre-contemporary terrorist groups, which as Appendix G shows, involved “hit and run” attacks on ships causing a maximum of one to two fatalities, and “negotiable” hijackings with specific demands such as the release of political prisoners.³²

The well-known 1985 *Achille Lauro* hijacking illustrates the contrast in the operational profiles of maritime attacks by contemporary and pre-contemporary terrorist groups, with several other pre-contemporary vessel hijackings being perpetrated in a similar, albeit less “high profile” manner.³³ The *Achille Lauro* cruise liner was hijacked by four members of the Palestinian Liberation Front (PLF) whilst en route from Alexandria to Port Said – who had not originally planned to hijack the ship – but forcibly took over the vessel after a crew member discovered them cleaning their weapons within their cabins. The four PLF members then forced the *Achille*

³⁰ This communique was cited in Lorenz, above n 9, 14; and in David Claridge ‘The Terrorist Threat to Trade and Commerce’ in Rohan Gunaratna (ed) *Terrorism in the Asia-Pacific: Threat and Response* (Eastern University Press 2003), 58

³¹ Given that maritime terrorist attacks have only constituted around 2 per cent of all recorded terrorist attacks since 1968, this Study notes attacks involving more than 10 fatalities as ‘significant casualty’ attacks

³² Thereby reflecting the broader trends in terrorist incidents globally - as [2.5.2] explained, the frequency of “negotiable” aerial hijackings have declined over the last decade, and are more characteristic of pre-contemporary than contemporary terrorism. Furthermore [2.5.2] outlined the decline in barricade terrorism incidents outside of Iraq where many such actions were perpetrated by insurgent groups following the US-led intervention under Operation Iraqi Freedom

³³ See Appendix G ‘Chronology of successful maritime terrorist attacks: 1961 – 2013’

Lauro to change course towards Tartus in Syria, and also demanded the release of around fifty Palestinian prisoners being held in Israeli prisons. After being refused permission to dock at Tartus, the hijackers killed a disabled American-Jewish passenger Leon Klinghoffer, and threw his body overboard. The hijackers then directed the *Achille Lauro* back towards Port Said in Egypt, and following two days of negotiations, agreed to abandon the vessel in exchange for safe passage to Tunisia aboard an Egyptian commercial airliner. However on President Reagan's orders the airliner was intercepted by US Navy airplanes and escorted to Sicily in Italy – where the hijackers were arrested by Italian authorities – but were subsequently released. Following this incident, Leon Klinghoffer's family sued the PLF for its role in his death – eventually settling its \$1.5 million lawsuit for an undisclosed sum.³⁴ In contrast, it is far less likely that persons aggrieved by attacks involving secretive and un-identifiable groups such as Al Qaeda could institute legal proceedings against such groups – particularly given the propensity of such contemporary terrorist groups to carry out suicide attacks where the perpetrators do not survive to be arrested and prosecuted. The *Achille Lauro* incident highlighted several shortcomings in the UNCLOS piracy provisions,³⁵ and provided the impetus for the development of the 1988 SUA Convention which is examined in Chapter 6.³⁶

[3.3.2] Indications of maritime-focused intent and capability amongst contemporary terrorist groups

A well-accepted approach to assessing the threat posed by terrorist groups is to consider the combination of their intent and their capabilities.³⁷ [3.3.1] above overviewed trends in the small yet significant number of maritime attacks by contemporary terrorist groups over the last two decades. In addition to the two Al Qaeda communiqués noted above, several statements provide indications of maritime-focused intent by Al Qaeda with a similar “extremeness” in their ideology noted in Chapter 2. A 1998 statement by the International Islamic Front for Jihad entitled ‘Clinton Humiliates More than a Billion Muslims’ evidenced the resolve of Al Qaeda to target the maritime domain in an effort to retaliate against the US and its related interests:

³⁴ Anthony Cassese *International Law* 2nd Edition (Oxford University Press, 2005) 477 – 478

³⁵ [6.2.4] explains how the *Achille Lauro* affair highlighted the limitations of the UNCLOS piracy provisions under Article 101 in relation to situations involving violence aboard ships that had the potential to prejudice the safety of maritime navigation which were not committed for ‘private ends’ and which did not involve two ships

³⁶ Cassese, above n 34; Natalino Ronzitti (ed) *Maritime Terrorism and International Law* (Boston: Martinus Nijhoff, 1988); Greenberg et al, above n 10, 20 - 23; Schmid et al, above n 36, 519; Anthony Cassese and Steven Greenleaves *Terrorism, Politics and Law: The Achille Lauro Affair* (Cambridge: Polity Press, 1989)

³⁷ David Claridge ‘The Terrorism Threat to Trade and Commerce’ in Rohan Gunaratna (ed) *Terrorism in the Asia-Pacific: Threat and Response* (Eastern Universities Press, 2003), 169 – 170

‘Oh Muslims, it is our obligation upon us to retaliate against the American aggression [in Sudan and Afghanistan] and its alliance and to take the necessary measures to prevent her from repeating her atrocities. It is obligatory upon us to close all their embassies and to expel their employees from Muslim countries, to boycott them economically (not exporting to or importing from them), to withdraw all our money from their banks and countries, to close their companies, to remove their trace from all Muslim countries and *to forbid them passage whether by land, sea or air, via planes, ships or any other means of transportation*’.³⁸ [Emphasis added]

A 2002 article by former bin Laden aide Abu Upheid Al-Qurashi entitled ‘The Nightmares of America’ evidenced similar thinking about Al Qaeda’s intent to target significant maritime areas. Whilst lengthy, it is reproduced in full below to show Al Qaeda’s recognition of the dependence of the US and other Western economies on unobstructed maritime navigation around the world, particularly through key navigational chokepoints where contemporary terrorist groups are understood to have support. It also indicates the strong ideological commitment to, and global focus of, Al Qaeda’s willingness to wage jihad against the US and its interests, as well as the highly asymmetric nature of contemporary maritime terrorism shown in the *USS Cole* attack (through noting that \$5,000 could damage a \$1 billion destroyer):

‘It is known that America, even before it became a global power, always focused on freedom of navigation to market its products via the oceans and it reaped large economic benefits from that. And it increased in intensity America’s susceptibility to the capitalism that built it and that made the biggest capitalists the true controllers of politics in America. Consequently, they strongly protect their ability to spread their commodities throughout the world without restrictions or conditions. After the brave attacks against the Cole, the page of maritime jihad was opened anew, for this operation was a major step in the works of the jihadis, and it showed that sacrifice and expense not exceeding \$5,000 destroyed a \$1 billion destroyer. What’s worse for America is that most of the important straits and trade routes are controlled by Muslim countries (Bosporus, Dardanelles, Gibraltar, Suez, Malacca, Hormuz, Bab al-Mandab). Likewise,

³⁸ Ben Venzke and Aimee Ibrahim *The Al-Qaeda Threat: An Analytical Guide to Al-Qaeda’s Tactics and Targets* (Intel Center: 2002), 134

the long history that Muslims have in maritime warfare and stressing Crusader commerce increases the possibility of returning to that form of jihad. This type of jihad has been revived again in the southern Philippines and the Indonesian archipelago where the Muslim nature of these countries made them among the highest targets for the Americans. Perhaps this is also one of the reasons America defended its targeting of Somalia, especially since no centralised country controls it and has a strategic location over Bab al-Mandab and consequently controls the entrance to the Red Sea. So if maritime jihad were resurrected another time in this country, it will be going after global trade. Among these paradoxes that show the extent of the American fear from this option, is the violence that happened to the members of the Algerian Salafist Group for Call and Combat (GSPC) in most European countries for reporting to the Americans that the group was thinking about undertaking maritime jihad against American ships in the Strait of Gibraltar. This shows how severely disturbed the Americans are from this possibility'.³⁹

Additionally, since post-9/11 several studies by maritime security specialists have reported on the maritime capabilities of various contemporary terrorist groups.⁴⁰ As [7.3.1.3] explains, it has been noted that after the loss of its territorial bases in Afghanistan and the death of bin Laden, Al Qaeda continues to maintain maritime attack capabilities, with numerous references to 'Al Qaeda's Navy' providing an independent source of finances to the group. Several Palestinian groups including the Palestinian Liberation Front, Hamas, Palestinian Islamic Jihad and Hezbollah have been reported to maintain maritime attack capabilities.⁴¹ Even following its military defeat in mid-2009, the LTTE has been widely noted as having maintained extensive maritime attack capabilities (albeit localised to Sri Lanka and India), and as [2.4.2] noted concerns about its future resurgence have been raised. It has also been claimed that Islamic terrorist groups have learnt from the LTTE's successful perpetration of maritime attacks.⁴² The Abu Sayyaf Group, which has perpetrated several significant maritime attacks (including the most deadly to date by bombing the Super Ferry 14 in 2004 – which as [5.3.1]

³⁹ Ben Venzke and Aimee Ibrahim *The Al-Qaeda Threat: An Analytical Guide to Al-Qaeda's Tactics and Targets* (Intel Center: 2002), 135

⁴⁰ Including Lehr above n 27; Hans Tino Hansen 'Distinctions in the Finer Shades of Gray: The Four Circles Model for Maritime Security Threat Assessment' in Rupert Herbert-Burns, Sam Bateman and Peter Lehr (eds) *Lloyds MIU Handbook of Maritime Security* (CRC Press, 2009); Murphy, above n 5

⁴¹ Akiva Lorenz *The Threat of Maritime Terrorism to Israel* (International Institute for Counter Terrorism, 24 September 2007), 3

⁴² Joshua Sinai 'Future Trends in Worldwide Maritime Terrorism (March 2004) 3(1) *The Quarterly Journal*, 65

notes killed 116), reportedly has well-practiced maritime attack capabilities.⁴³ Whilst the Indonesian group Jemaah Islamiyah has not perpetrated any maritime attacks to date, it is reported to possess such capabilities, and the explosives for the devastating 2002 Bali bombings were reportedly transported by vessels.⁴⁴ The Movement for the Emancipation of the Niger Delta (MEND) has been noted as maintaining significant maritime attack capabilities - which as Appendix G and [6.3.1] notes have been utilised to carry out at least 23 attacks against offshore platforms around the Niger Delta since 2006. MEND is generally considered to be more of an insurgent, as opposed to terrorist group,⁴⁵ which is evident in the operational profile of its maritime attacks.⁴⁶

Whilst maritime security specialists have reasoned that some forms of attacks might require highly specialised expertise and resources,⁴⁷ and that other forms of attack might be perpetrated without specialised expertise and resources,⁴⁸ as Chapter 1 explained, this Study does not seek to “rank” the comparative probabilities of particular types of maritime terrorism incidents occurring in practice. Rather, it examines all of the ways in which maritime terrorism incidents⁴⁹ have occurred, and might conceivably occur in the future. [3.5], which formulates the Maritime Terrorism Threat Matrix, explains that instead of talking about certain forms of maritime attacks being “more probable” or “less probable”, it talks about them being “conceivable” or “inconceivable”.

⁴³ Zara-Raymond, above n 28, 18 - 20; Rommel Banlaoi ‘Maritime Terrorism in Southeast Asia: The Abu Sayyaf Threat’ (Autumn 2005) 58(4) *Naval War College Review*, 65

⁴⁴ Catherine Zara-Raymond *Maritime Terrorism in Southeast Asia: A Risk Assessment* (Institute of Defence and Strategic Studies Working Paper No. 74, March 2005), 17 - 18

⁴⁵ But for a contrary view, see Moshe Terdman ‘The Movement For The Emancipation Of The Niger Delta (MEND): Al Qaeda’s Unlikely Ally In Nigeria’ (January 2007) 2(1) *Islam In Africa Newsletter* Cited in Schmid et al, above n 36, 494

⁴⁶ Analysis of the Global Terrorism Database indicates the predominant operational profile of the 67 attacks by MEND recorded between 2006 and 2011 have been mostly “hit and run” attacks and kidnappings – as opposed to mass casualty / suicide attacks. Whilst on 5 December 2006 MEND perpetrated a bombing of an oil pipeline in Atlas Creek Island, Nigeria killing 200, its “next most deadly” attack resulted in 11 fatalities

⁴⁷ For example, Sam Bateman ‘Maritime Terrorism: Issues for the Asia-Pacific Region’ (October 2006) 2(3) Kokoda Foundation *Security Challenges* 77 at 85 – 86 opines that actions such as the sinking of large ships to block the Straits of Malacca and Singapore, the deliberate detonation of ships with hazardous or dangerous cargoes as “floating bombs”, and underwater swimmer attacks on ships or port facilities would require highly specialised skills and resources – and rates such actions as ‘less credible maritime terrorism scenarios’

⁴⁸ For example, Sam Bateman ‘Maritime Terrorism: Issues for the Asia-Pacific Region’ (October 2006) 2(3) Kokoda Foundation *Security Challenges*, 86 – 87 opines that actions such as bomb attacks on cruise liners or passenger ferries, the blocking of navigational “choke points” by sea mines, and suicide attacks by small craft could be perpetrated without specialised skills and resources – and rates such actions as ‘more credible maritime terrorism scenarios’

⁴⁹ As [1.2] explained, this Study uses the “umbrella” term ‘maritime terrorism incident’ to encompass both maritime terrorist attacks, and the utilisation of vessels to enable the perpetration of subsequent terrorist attacks through transporting weaponry, operatives or financing terrorist activities

The next section examines the various ways in which maritime security specialists have postulated that contemporary maritime terrorism incidents might conceivably occur. It shows that whilst the range of postulated scenarios are insightful, there is considerable overlap and variation, highlighting the need for a more generalised and structured framework for recording and analysing maritime terrorism statistics.

[3.4] HOW COULD POST-9/11 MARITIME TERRORISM INCIDENTS OCCUR?

In the field of counter-terrorism studies, the analysis of attempted and planned terrorist attacks has been deemed to be an important factor in understanding the profiles of terrorist groups, and in pre-empting future attacks. For instance, the first of the seven ‘Sinai Attack Indicators’ which may provide indicia of future terrorist attacks has been noted to be ‘... previous terrorist attacks, failed attacks or plots not yet executed, which serve as blueprints for intentions and future targeting’.⁵⁰ Indeed, one of the seven major shortcomings of US intelligence noted by the 9/11 Commission Report was the lack of imagination in interpreting information that fell “outside the box”.⁵¹ Given the demonstrated propensity of contemporary terrorist groups to perpetrate innovative significant casualty attacks such as those noted in [2.5] and [3.3] above, to consider how future contemporary maritime terrorism incidents might conceivably occur (and thereby assess the prospects of the international agreements enabling the prevention of such incidents), it is important to think broadly and imaginatively. Because terrorism is an inherently “low occurrence / high impact” phenomena, considering only the precedents of previous successful terrorist attacks will not achieve this full appreciation of all conceivable maritime terrorism threats. The 9/11 attacks demonstrated how a far-fetched scenario became a devastating reality.

In addition to the 228 successful maritime terrorist attacks referred to in [3.3] (the details of which are summarised in Appendix G, and discussed in Chapters 5, 6 and 7), there have been numerous reports of maritime attacks having been attempted or planned by terrorist groups.

⁵⁰ Joseph Sinai ‘Teaming Catastrophic Terrorism by Al Qaeda Jihadists’ (Winter 2005) 11(4) *Journal of Counterterrorism and Homeland Security International* Cited in Paul Wilkinson *Terrorism versus Democracy: The Liberal State Response* Second Edition (Routledge, 2006), 188. The other ‘Sinai Attack Indicators’ are a terrorist group’s modus operandi, especially tactics; use of particular types of weaponry and devices that a terrorist group perceives will achieve its objectives; the objectives of a state sponsor; the geographic factor; historical dates of particular significance to terrorist groups; and triggers that propel a group to launch attacks in a revenge mode as quickly as possible

⁵¹ Schmid et al, above n 36, 29

Vessels have also been utilised by terrorist groups to enable subsequent attacks on land through transporting weaponry and operatives, and as a means of fundraising. Furthermore since 9/11, several maritime security specialists have examined the vulnerabilities of specific countries and/or regions,⁵² or maritime industry sectors,⁵³ to maritime terrorist threats. In doing so, they have postulated⁵⁴ a range of scenarios on how terrorists might seek to target and/or utilise vessels. As the following review shows, whilst these scenarios provide excellent insights into how maritime terrorism incidents might occur, there is considerable variation and overlap between these scenarios, with several scenarios being specifically confined towards certain geographical areas and/or maritime industry sectors, rather than being generalised and capable of global application.

In 2004, section 8.9 of the Part B of the ISPS Code, which provides guidance on steps that should be considered when implementing and complying with the mandatory requirements of Part A of the Code,⁵⁵ listed eight ‘possible security incidents’ which it recommended that Ship Security Assessments should consider.⁵⁶ Also in 2004, Richardson undertook a comprehensive study of the vulnerabilities of the containerised shipping sector to terrorist targeting and utilisation, and postulated that ‘vessels of all sizes, and also the cargo containers they carry, can be used in a number of ways by terrorists to further their aims’.⁵⁷ He also discussed various ways in which ships with volatile cargoes might be detonated to cause disruption to shipping.⁵⁸ In a 2005 analysis of Australia's preparedness to counter maritime threats from Al Qaeda-linked terrorist groups, Bateman and Bergin postulated ‘eleven credible scenarios for a

⁵² For example, the Asia-Pacific region, the United States or Australia

⁵³ For example, major sea ports, the cruise industry, or containerised shipping

⁵⁴ The term ‘postulated’ is widely used within the literature on post-9/11 maritime terrorism – for instance Greenberg et al, above n 10, 27 noted that ‘at least seven [maritime terrorism] scenarios are routinely postulated’

⁵⁵ [4.2] provides an overview of the ISPS Code

⁵⁶ These ‘possible security incidents’ included ‘damage to, or destruction of, the ship or a port facility – through explosive devices, arson, sabotage or vandalism; hijacking or seizure of the ship or persons on board; tampering with cargo, essential ship equipment or systems or ship’s stores; unauthorised access [to] or use [of] [the vessel], including the presence of stowaways; smuggling weapons or equipment, including weapons of mass destruction; use of the ship to carry those intending to cause a security incident and/or their equipment; use of the ship itself as a weapon or as a means to cause damage or destruction; attacks from seaward whilst at berth or at anchor; and attacks [on the ship] whilst at sea’.

⁵⁷ According to Richardson, these ways included ‘the raising of money, through legal or illegal trade, to finance their activities; to covertly transport operatives, equipment and weapons to support terrorist operations; to deliver bombs or other means of destruction to their destination, such as a container set to explode near a port city or other target; and to use vessels as weapons in their own right’: Richardson, above n 5, 8

⁵⁸ Richardson postulated that ‘Oil and chemical tankers could be sunk or set ablaze in a busy strait, waterway or port to cause pollution and disrupt shipping. Ammonium nitrate carriers or petroleum tankers could be rigged as floating bombs. Ammonium nitrate is a common agricultural fertiliser. It is widely traded around the world by sea. But it can, when mixed with fuel oil, be turned into a powerful explosive. Packed into trucks, vans and cars, it has been used in many terrorist bombings’: Richardson, above n 5, 8

maritime terrorist attack either within Australian waters or against Australian targets.⁵⁹ The 2005 US *National Security Strategy for Maritime Security* noted several maritime ‘attack capabilities’ that terrorists might develop,⁶⁰ and also discussed how terrorists might ‘take advantage of a vessel’s legitimate cargo’ to perpetrate attacks.⁶¹ In a briefing paper for the US Congress, Fritelli discussed eight conceivable ‘maritime terrorism tactics’ which might be used against the United States and its interests.⁶² In a 2006 study of the risk of maritime terrorism to the containerized and passenger shipping sectors, Greenberg et al noted ‘at least seven maritime terrorism scenarios’ as ‘having been routinely postulated’.⁶³ Herbert-Burns summarized the

⁵⁹ These eleven scenarios were ‘An attack on an Australian port, either by using a ship as a weapon or by causing an explosion on board a ship carrying hazardous or dangerous cargo; the sinking of a vessel in a channel or in a berth; an attack on the loading and storage facilities for hazardous and volatile materials; an attack on ships transiting the Indonesian or Philippines archipelagos carrying trade to or from Australia; an attack on an LNG carrier loading cargo at a northwestern Australian port; a small-boat suicide attack against a high-value target such as a warship, cruise liner, ferry or oil tanker alongside in an Australian port, or moving within the port; an attack against a cruise liner or passenger ferry, including a harbor ferry; an attack on a warship, especially a US Navy vessel, alongside in an Australian port, or an [Royal Australian Naval] vessel in an overseas port; mining or the threat of mining to close an entrance channel to an Australian port; smuggling of weapons or equipment, perhaps including WMD, into an Australian port; and/or infiltration of terrorists and/or their materials into Australia by sea, either by clandestine landing or the use of fraudulent seafarer documentation’: Sam Bateman and Anthony Bergin *Future Unknown: The Terrorist Threat to Australian Maritime Security* (Australian Strategic Policy Institute, 2005), 35

⁶⁰ These ‘attack capabilities’ included ‘using explosives-laden suicide boats and light aircraft; merchant and cruise ships as kinetic weapons to ram another vessel, warship, port facility or offshore platform; commercial vessels as launch platforms for missile attacks; underwater swimmers to infiltrate ports, and/or unmanned underwater explosive delivery vehicles; or the use of sea mines’: United States Government *National Security Strategy for Maritime Security* (Department of Homeland Security, 2005), 4

⁶¹ The policy document also discussed how chemicals, petroleum or liquefied natural gas could be used as the explosive component of a terrorist attack, and noted that vessels can also be used to transport powerful conventional explosives or WMD for detonation in a port or alongside an offshore facility: United States Government *National Security Strategy for Maritime Security* (Department of Homeland Security, 2005), 4

⁶² The ‘maritime terrorism tactics’ noted by Fritelli were ‘... using commercial cargo containers to smuggle terrorists, nuclear, chemical or biological weapons, components thereof, or other dangerous materials into the United States; seizing control of a large commercial cargo ship and use it as a collision weapon for destroying a bridge or refinery located on the waterfront; sinking a large commercial cargo ship in a major shipping channel, thereby blocking all traffic to and from the port; attacking a large ship carrying a volatile fuel (such as liquefied natural gas) and detonate the fuel so as to cause a massive in-port explosion; attacking an oil tanker in a port or at an offshore discharge facility so as to disrupt the world oil trade and cause large-scale environmental damage; seizing control of a ferry (which may carry hundreds of passengers) or a cruise ship (which can carry more than 3,000 passengers, of who usually about 90 per cent are US citizens) and threaten the deaths of the passengers if a demand is not met; attacking US Navy ships in an attempt to kill US military personnel, damage or destroy a valuable US military asset, and (in the case of nuclear-powered ships) cause a radiological release; and/or using land around a port to stage attacks on bridges, refineries located on the waterfront, or other port facilities’: John Fritelli *Port and Maritime Security: Background and Issues for Congress* (Congressional Research Service, 27 May 2005), 7

⁶³ These ‘eleven maritime terrorism scenarios’ included ‘the use of a commercial container ship to smuggle chemical, biological or radiological (CBR) materials for an unconventional attack carried out on land or at a major commercial port such as Rotterdam, Hong Kong, Dubai, New York or Los Angeles; use of a “Trojan Horse”, such as a fishing trawler, resupply ship, tug or similarly innocuous-looking vessel, to transport weapons and other battle-related material; hijacking of a vessel as a fund-raising exercise to support a campaign of political violence directed toward ethnic, ideological, religious or separatist designs; scuttling of a ship in a narrow SLOC in order to block or disrupt maritime traffic; hijacking of an LNG carrier that is then detonated as a bomb or used as a collision weapon; use of a small, high-speed boat to attack an oil tanker or offshore energy platform to affect international petroleum prices or cause major pollution; and directly targeting a cruise liner or passenger ferry to

three ways in which terrorists might utilize the maritime domain as ‘within which, through which, and from which’ to perpetrate attacks.⁶⁴ In addition to discussing the maritime attack capabilities of several terrorist groups, Sinai discussed how terrorists might utilize vessels to transport weaponry, and smuggle illegal substances such as narcotics as fundraising measures.⁶⁵ Nincic postulated five generalised ways in which ships might be targeted or utilized by terrorists,⁶⁶ and along similar lines, Murphy postulated four ‘broad categories for terrorism at sea’.⁶⁷ In a study of maritime terrorism risks in Southeast Asia, Zara-Raymond discussed nine ‘vulnerability factors’,⁶⁸ and in a later study, she postulated four maritime terrorism scenarios that might conceivably occur in the waters of Southeast Asia.⁶⁹ Most recently, Schmid et al discussed the various ways in which terrorists might seek to perpetrate attacks within maritime areas, and also to utilise vessels to enable subsequent attacks through deriving funds from the use of vessels.⁷⁰

cause mass casualties by contaminating the ship’s food supply, detonating an on-board or submersible improvised explosive device or, again, by ramming the vessel with a fast-approach, small, attack craft’: Greenberg et al, above n 10, 27

⁶⁴ Rupert Herbert-Burns ‘Terrorism in the Early 21st Century Maritime Domain’ in Catherine Zara Raymond and Joshua Ho (eds) *The Best of Times, The Worst of Times* (Word Scientific, 2005), 156

⁶⁵ Sinai, above n 42, 53 - 57

⁶⁶ These included including ‘... ships of concern: terrorist shipping “fleets”; the ship as an agent of proliferation; the ship as a WMD; the ship as a delivery system: a radiological device in a shipping container; and risks to dangerous maritime cargo vessels: hijacking and suicide bombing’: Donna Nincic ‘The Challenge of Maritime Terrorism: Threat Identification, WMD and Regime Response’ (August 2005) 28(4) *The Journal of Strategic Studies*, 625

⁶⁷ The ‘four broad categories’ conceptualized by Murphy were ‘... ships as iconic targets; ships as economic targets; ships as mass-casualty targets, and ships as weapons’: Murphy, above n 5, 199

⁶⁸ These ‘vulnerability factors’ were ‘sea lines of communication; ports; vessel inspection rates; containerized shipping; information and documentation; people; vessels in transit; bulk shipments; and flags of convenience: Catherine Zara-Raymond *Maritime Terrorism in Southeast Asia: A Risk Assessment* (Singapore: Institute of Defence and Strategic Studies, 2005)

⁶⁹ These four scenarios were ‘... ships sunk to block the Straits of Malacca; tankers being utilised as floating bombs to strike ports; the Malacca straits blocked by mines; and missiles launched at aircraft from vessels’: Catherine Zara-Raymond ‘Maritime Terrorism in Southeast Asia: Potential Scenarios’ (2006) 4(7) *Terrorism Monitor*

⁷⁰ Schmid et al reasoned that maritime terrorism could encompass ‘attacks against off- and onshore vessels and facilities, including ships and ports, or involving ships (eg LNG tankers) for the purpose of intimidation, coercion, blackmail, ransom or propaganda. This special variant of terrorism could be defined as: (1) a plotted or executed attack against a ship, port facility or offshore facility; or (2) an attempt to further political motives by utilising elements in the maritime environment to execute an act of terrorism. This definition highlights the fact that some elements of the maritime environment (ie ships) could be both targets of maritime terrorism and instruments of maritime terrorism – just imagine an oil tanker scuttled in a narrow strait or blown up in a major port. Again, this definition should not be seen as excluding somewhat more pedestrian acts committed with the intent to finance a wider terrorist or guerrilla struggle. Such acts, like kidnapping sailors and their ships for ransom, occur quite frequently in the Strait of Malacca and off the coast of Somalia, thus establishing a “grey area” where piracy committed for private ends overlaps with piracy committed for political reasons by maritime terrorist groups’: Schmid et al, above n 36, 659

This variation amongst the above scenarios raises important questions such as *‘Which postulated scenario(s) should be used as the “baseline benchmark” to conceptualise all the conceivable ways in which maritime terrorism incidents might occur, and form the basis for analysing statistics about occurrences, attempts and plans of maritime terrorism incidents?’* And importantly for this Study *‘What information source(s) should States, maritime industries and scholars look to in order to establish whether their laws and/or security plans address all conceivable threats’?*⁷¹

The following section overcomes this uncertainty by developing the Maritime Terrorism Threat Matrix. The Threat Matrix provides a structured framework for statistically analysing all conceivable forms of maritime terrorism that is capable of global application. Chapters 5, 6 and 7 show how the Threat Matrix “captures” all of the maritime scenarios noted above.

[3.5] THE MARITIME TERRORISM THREAT MATRIX

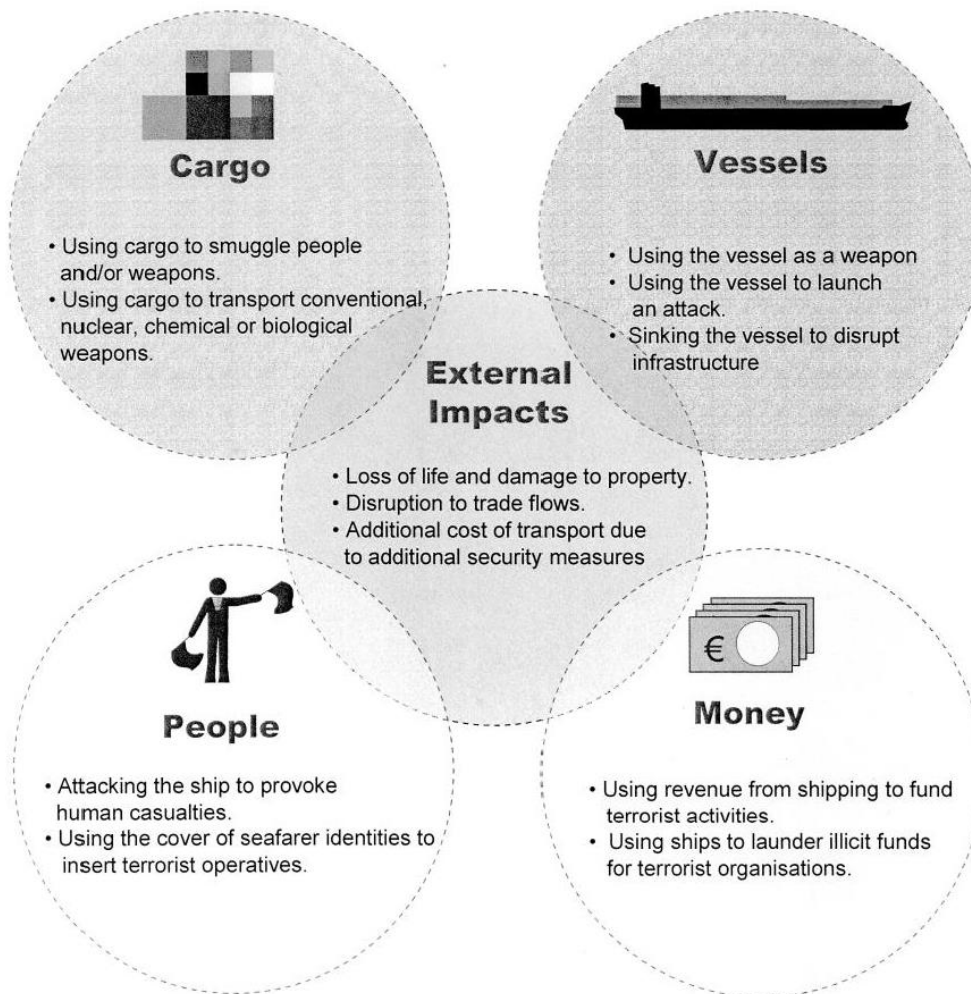
[3.5.1] Development of the Maritime Terrorism Threat Matrix

As at 1 October 2013 only two studies have postulated “generic summaries” of how terrorists might target and/or utilize vessels that are capable of global application. A 2003 study by the OECD⁷² identified four ‘terrorist risk factors from shipping’ as depicted in Figure 4 below.

⁷¹ As Chapter 4 explains, Part B of the ISPS Code states that Ship Security Plans and Port Facility Security Plans should address ‘all possible threats’

⁷² Crist, above n 10, 7

Figure 4: ‘Terrorist Risk Factors from Shipping’



Source: *Security in Maritime Transport: Risk Factors and Economic Impact* (OECD Maritime Transport Committee, 2003), 7

Whilst the four ‘risk factors’ noted in the 2003 OECD study are useful in providing a starting point for conceptualising how terrorists might attack and/or utilise vessels, the ideas expressed in a 2003 article by Campbell and Gunaratna⁷³ provide the foundations for developing a structured framework that can enable the statistical analysis of all forms of maritime terrorism incidents. Drawing analogies to the 9/11 attacks, where commercial airliners were hijacked and transformed into flying weapons, Campbell and Gunaratna postulated “five methods” in which vessels might conceivably be utilised by terrorists. These were ‘the vessel as a means’; ‘the

⁷³ Tanner Campbell and Rohan Gunaratna ‘Maritime Terrorism, Piracy and Crime’ in Rohan Gunaratna (ed) *Terrorism in the Asia-Pacific: Threat and Response* (Eastern University Press, 2003), 80

vessel as a weapon’; ‘the vessel as a bomb’; ‘the vessel as a disruption tool’; and ‘the vessel as a target’. Noting that these “five methods” might be used in combination, Campbell and Gunaratna provided a brief amplification how the “five methods” enunciated might occur in practice.

First, regarding the ‘vessel as a means’, they explained that ‘... terrorist groups actively use front shipping companies, flags of convenience, frequent vessel name changes, and other commonly used tactics within the maritime industry to smuggle members, weapons and supplies as well as to smuggle humans, narcotics and other contraband’.⁷⁴ Second, regarding the ‘vessel as a weapon’, they explained ‘... a large vessel, possibly laden full of fuel or other highly explosive materials, could be commandeered or hijacked and rammed into another vessel or other port infrastructure. The IMO has warned that terrorists “could use hijacked oil tankers or liquefied natural gas carriers”. Collisions involving such massive vessels have the potential to cause significant destruction as has been documented in the many instances in which the collision was accidental. An additional factor to consider is that these vessels, due to their enormous size and weight, are very hard to stop; turning and stopping distances are measured in miles’.⁷⁵ Third, regarding the ‘vessel as a bomb’, they explained that ‘... vessels could also be used to smuggle or transport a bomb or WMD which could be detonated in port. The bomb could be “built” into the ship via modifications to the vessel or other components to house an explosive device; it could be smuggled on board by the crew; or it could be hidden within a container. Terrorists might also look to leverage the explosive characteristics of the cargo as well as by detonating a shipload full of fertilizers (ammonium nitrate), for example. Furthermore, they explained that ‘... as passengers and crew, terrorists can clandestinely or deceptively gain access to ships and plant explosive devices’.⁷⁶ Fourth, regarding the ‘vessel as a disruption tool’, they explained ‘... recent union protests and lockouts in the west coast of the United States cost the US economy approximately US\$1 billion per day. Terrorist groups, intent on causing significant economic damage, have surely taken notice of the situation. As such, the possibility that such disruptive tactics may also be deployed by terrorist groups is great ... Sinking vessels in key trade bottlenecks, port channels and key military installations creates significant economic and military disruption, as well as over-stressing the surrounding infrastructure like roads and rail, which are not equipped to shoulder such a major

⁷⁴ Campbell and Gunaratna, above n 73, 81

⁷⁵ Campbell and Gunaratna, above n 73, 82

⁷⁶ Campbell and Gunaratna, above n 73, 82

logistical burden'.⁷⁷ Fifth, regarding the 'vessel as a target', they explained that '... historically maritime terrorist operations have been conducted in a manner that targets the vessel as the ultimate asset to be destroyed'.⁷⁸

As at 1 October 2013, Campbell and Gunaratna's 'five methods' has not been expanded upon further. Shie made brief mention of Campbell and Gunaratna's five methods" approach, but did not develop these ideas further.⁷⁹ Nevertheless, Campbell and Gunaratna's 'five methods' concept can be further elaborated through developing more specific "sub-categories" of specific ways in which terrorists might target and/or utilise vessels.

First, the 'vessel as a means' can be used as an "umbrella term" to encompass terrorists utilising vessels as a means of enabling subsequent attacks on land, through transporting WMD materiel, conventional weaponry or operatives to land locations, and for raising funds – both from illegal and "apparently legitimate" maritime trade and commerce. Second, the 'vessel as a weapon' can be used as an "umbrella term" to encompass terrorists using vessels to attack various targets either through the vessel's kinetic impact (that is, "ramming" the vessel into the target), or as platforms from which to fire weapons against targets – which could include other vessels, land targets such as port facilities, offshore platforms, or aircraft. Third, the 'vessel as a bomb' can be used as an "umbrella term" to encompass terrorists deliberately exploding vessels in proximity to a targets – which might include other vessels, land targets such as port facilities, or offshore platforms. The term could also encompass terrorists causing explosions onboard offshore platforms. Fourth, the 'vessel as a disruption tool' can be used as an "umbrella term" to encompass terrorists utilising vessels to perpetrate disruptive acts – including through disabling vessels in proximity to critical navigational "choke-points", causing deliberate pollution, laying seas mines and interfering with submarine cables or pipelines. Fifth, the 'vessel as a target' can be used as an "umbrella term" to encompass terrorist attacks on high profile target vessels from various sources – including from other vessels (for example, being physically "rammed", or fired upon by other vessels), from beneath the surface (by sea mines or divers), from within the vessel itself (through placing explosives on the vessel or otherwise harming persons on board), from the air (through ramming aircraft in in a "kamikaze-style"

⁷⁷ Campbell and Gunaratna, above n 73, 83

⁷⁸ Campbell and Gunaratna, above n 73, 83

⁷⁹ Tamara Shie 'Ports in a Storm?: The Nexus Between Counterterrorism, Counter-proliferation and Maritime Security in Southeast Asia' 4(4) *Issues & Insights* (Pacific Forum CSIS, Honolulu, Hawaii, July 2004), 3

into the vessel, or launching weapons or bombs against the vessel), and from the land (for example, launching weapons against the vessel from land sources).

Drawing together all of these sub-categories, it possible is to develop the “Maritime Terrorism Threat Matrix” shown in Table 10 below which provides a generic and structured framework for analysing statistics about all previous maritime terrorism incidents. The 21 forms of maritime terrorism incidents noted above may be termed ‘incident categories’, and their previous occurrences may be categorised under four headings. Firstly, “successful” – meaning that the particular incident category has actually occurred and has achieved its intended objectives (for example *USS Cole* attack in 2000);⁸⁰ secondly, “attempted” – meaning that the particular threat category has been attempted by terrorists, but has failed to eventuate or achieve its objectives; or has been thwarted by authorities (for example the attempted but failed attack on *USS Sullivans* in 1999); thirdly, “planned” – meaning that credible intelligence has been received that the particular threat category has been planned by terrorists – for example through confessions of captured terrorists; or through analysis of captured terrorist documents; and fourth, “postulated” – meaning that the particular threat category has been postulated by maritime security specialists.

⁸⁰ As [2.2.4] noted, The National Consortium for the Study of Terrorism and Responses to Terrorism Global Terrorism Database <http://www.start.umd.edu/gtd/> (GTD) from which many of the statistics utilised in this Study have been derived defines a terrorist attack as being “successful” according to the tangible effects of the attack. For example, in a typical successful bombing, the bomb detonates and destroys property and/or kills individuals, whereas an unsuccessful bombing is one in which the bomb is discovered and defused or detonates early and kills the perpetrators. Success is *not* judged in terms of the larger goals of the perpetrators. For example, a bomb that exploded in a building would be counted as a success even if it did not, for example, succeed in bringing the building down or inducing government repression.

Table 10: Enumerated Maritime Terrorism Threat Matrix

INCIDENT CATEGORY	SUCCESSFUL	ATTEMPTED	PLANNED	POSTULATED
(1) VESSEL AS A TARGET				
(a) From other vessels	67	3	8	7
(b) From sub-surface	27	1	2	7
(c) From within the vessel	21	1	1	2
(d) From the land	26	2	0	0
(e) From the air	0	0	1	0
(2) VESSEL AS A WEAPON				
(a) Against other vessels	0	0	0	4
(b) Against land targets	1	1	2	2
(c) Against offshore platforms	25	0	0	1
(d) Platform for attacking aircraft	0	0	0	1
(3) VESSEL AS A BOMB				
(a) Against other vessels	0	6	2	1
(b) Against land targets	1	1	1	3
(c) Against offshore platforms	2	0	1	0
(d) Exploding offshore platforms	0	0	0	0
(4) VESSEL AS A DISRUPTION TOOL				
(a) Against a critical “chokepoint”	1	0	0	6
(b) Against marine environment	0	0	0	5
(c) To lay sea mines	0	0	0	3
(d) To disrupt submarine cables	0	0	0	2
(5) VESSEL AS A MEANS				
(a) Transporting WMD materiel	1	6	Many	6
(b) Transporting conventional weaponry	8	7	0	0
(c) Transporting terrorist persons	7	11	1	2
(d) Terrorist financing	2	1	0	4

As Campbell and Gunaratna acknowledged, it is possible that maritime terrorism incidents could be perpetrated using a combination of the metrics described above. Therefore, for statistical purposes, this Study distinguishes between the ‘vessel as a weapon’, the ‘vessel as a bomb’ and the ‘vessel as a target’ according to the notability of the vessels involved. For example whilst the USS *Cole* and MV *Limburg* attacks both involved two vessels – the explosives-laden dinghies as floating bombs that attacked the *Cole* and *Limburg*, and secondly the *Cole* and MV *Limburg* as targets - it was the fact that prominent ships such as *Cole* and *Limburg* were the targets of the attacks that made these two incidents notable. To explain this further, media reports of these incidents were titled “17 sailors killed - USS *Cole* targeted by explosives-laden dinghy” – not “Two Yemenis killed when dinghy exploded next to US warship”. Therefore, for statistical purposes - the *Cole* and *Limburg* attacks are counted as ‘vessel as a target’ maritime terrorist incidents.

All references to ‘suspected terrorist vessels’ in the following chapters refer to vessels that are suspected of being about to perpetrate one or more of the maritime terrorism incidents envisaged by the Threat Matrix

[3.5.2] Use of the Threat Matrix for analysing the practical application of the international agreements in Chapters 5, 6 and 7

Chapters 5, 6 and 7 examine how the international agreements might apply in practice in preventing maritime terrorism incidents. These chapters examine how different forms of maritime terrorism incidents have previously occurred, been attempted or planned, and postulated by maritime security specialists in order to establish the “threat context” (that is, the types of maritime terrorism threats that might have to be prevented), noting trends in the geographical and jurisdictional locations of these maritime terrorism incidents and the types of vessels involved.

Several points regarding the methodology used to derive and present these previous maritime terrorism case studies warrant explanation. First, as noted in [1.6] many of the sources referred to in Chapters 5, 6 and 7 regarding previous maritime terrorism incidents⁸¹ include media

⁸¹ The term ‘maritime terrorism incident’ here is used in the widest sense to encompass both maritime terrorist attacks, and also utilisations of vessels as a means

reports, which often describe the location and details of previous vessel interdictions in generalised terms (for example ‘in international waters’, or ‘off the coast of xxx’). Other sources used to derive these statistics include terrorism databases such as the Global Terrorism Database and RAND Database on Worldwide Terrorism Incidents which [2.4.1] overviewed – which in many cases only provide basic details of maritime terrorist attacks. As [5.2] notes, in several cases the source of previous terrorist attacks on vessels (that is, from another vessel, the land, beneath the waterline, within the vessel or from the air) were not stated, and whilst the best efforts have been made to ascertain more precise details about such incidents, this has not been possible in all cases – meaning that 56 previous maritime terrorist attacks (25 per cent) are recorded in Appendix G as ‘Vessel as a Target: Unknown’.

Second, whilst Appendix G summarises the details of all recorded successful maritime terrorist attacks since 1968, Chapters 5, 6 and 7 focus on analysing trends in the particular maritime terrorism incidents⁸² - through considering all the ways they have previously been successfully perpetrated, attempted, planned and postulated by maritime security specialists. These analyses of maritime terrorism trends also show the increased lethality of attacks by contemporary terrorist groups compared to those of pre-contemporary terrorist groups that [2.5] and [3.4] articulated.

Third, as explained in [1.5], this Study does not seek to rank the probability of certain maritime terrorism incidents occurring; rather it talks of certain terrorist acts as being “conceivable” or “inconceivable”. As Chapter 5 explains, (outside of Hollywood movies) an example of an “inconceivable” maritime terrorism threat would be terrorists hijacking and utilising naval submarines to attack vessels, which are extremely well secured and would require very specialised skills to operate. However this Study still discusses some maritime terrorism scenarios that have been postulated as conceivable but which might sound far-fetched. An example discussed in Chapter 5 is the “9/11-style” targeting of vessels by ramming them with hijacked aircraft.

Fourth, as [2.2.4] noted, due to the low frequency of maritime terrorist attacks, and in order to “capture” the maximum number of examples of previous maritime terrorism incidents, Chapter

⁸² For example, Chapter 5’s examination of terrorist targeting of vessels is necessarily selective, as this form of maritime terrorism has accounted for around 85 per cent of the 228 recorded maritime terrorist attacks

6 includes examples of maritime attacks by groups such as the Movement for the Emancipation of the Niger Delta (MEND) which are generally more characterised as insurgent than terrorist, in order to illustrate how maritime attacks could conceivably be perpetrated.

Finally as Chapter 1 noted, maritime terrorism incidents are very infrequent, and government authorities might well keep information about attempted and planned terrorism incidents, and ISPS Code security plans, classified for national security reasons. These considerations mean that this Study's analysis of the likely success of the international agreements can only be evaluated according to the "most informed hypothetical", which asks: *'Through taking account of how maritime terrorism incidents have previously occurred, and might occur in future, what factors could determine the success of the international agreements in enabling the prevention of maritime terrorism incidents?'*

The following section [3.6] draws together the conclusions from this chapter and Chapter 2, and articulates criteria used within the following chapters in assessing the prospects for the international agreements to succeed in enabling the prevention of contemporary post-9/11 maritime terrorism incidents.

[3.6] CRITERIA FOR ASSESSING THE PROSPECTS FOR THE INTERNATIONAL AGREEMENTS TO PREVENT MARITIME TERRORISM INCIDENTS

At this point it is fitting to summarise the points articulated thus far in this Chapter. [3.2] explained the vulnerabilities of the maritime domain to terrorist attacks and utilisations; [3.3] outlined how contemporary forms of maritime terrorism have reflected the global trend towards significant casualty and suicide attacks; and from its analysis of maritime terrorism scenarios postulated by maritime security specialists since 9/11, [3.5] formulated the Maritime Terrorism Threat Matrix to conceptualise all the ways in which maritime terrorism incidents might occur. With these points in mind, it is important to consider: *"What criteria should be used in assessing the prospects for the international agreements to succeed in enabling the prevention of contemporary post-9/11 maritime terrorism incidents?"*

[3.6.1] Factors that *should* characterise international efforts to counter contemporary forms of maritime terrorism

Numerous post-9/11 terrorism studies have proffered recommendations on the question of how contemporary forms of terrorism ought to be countered.⁸³ While most of these studies have adopted a globalised and terrestrial (as opposed to specifically maritime) focus,⁸⁴ several relevant points may nevertheless be distilled from such studies. First, Schmid et al summarised the responses to a survey of terrorism experts on the question: ‘What are, in your view, the most effective countermeasures against international terrorism?’ as including (of relevance to this Study) as effective intelligence (47 per cent); effective inter-agency and international information sharing and cooperative action (44 per cent); cutting off many of the sources of funding for terrorists (24 per cent); educating the public about what to do if an attack is suspected, and after an attack (10 per cent); and improved border, airport and maritime security (8 per cent).⁸⁵

After reviewing similar studies on counter-terrorism, Schmid et al formulated ‘Twelve Rules for Preventing and Combating Terrorism’. Of these twelve rules, the ones most directly relevant to countering maritime terrorism included (4) deny[ing] terrorists access to arms, explosives, false identification documents, safe communication, and safe travel and sanctuaries; disrupt and incapacitate their preparations and operations through infiltration, communications intercepts and espionage, and by limiting their criminal and other fund-raising capabilities; (5) reduc[ing] low-risk/high-gain opportunities for terrorists to strike by enhancing communications security, energy security and transportation security, by hardening critical infrastructure and potential sites where mass casualties could occur, and by applying the principles of situational crime prevention to the countering of terrorism; (7) prepar[ing] for

⁸³ Schmid et al, above n 36, 255 - 265 summarises the theories on counter-terrorism. The approaches identified include ‘preventive counter-terrorism’ (establishing obstacles between terrorists and their objectives including defensive measures, law enforcement capabilities, and legal reforms); ‘detection-oriented measures’; ‘managerial measures’ (such as crisis management); and ‘response-oriented measures’ (involving retaliatory measures). These theories are arguably less directly relevant to addressing the research problem of this Study – given their terrestrial focus

⁸⁴ And as a result have emphasised the importance of constructively engaging with potential recruits for terrorist organisations and finding long-term solutions to international conflicts

⁸⁵ The other countermeasures which are not of direct relevance to this Study voted as most effective were: A prudent foreign policy (16 per cent); international consensus over the definition and scope of terrorism (13 per cent); limiting the spread of terrorist ideology through propaganda and the internet (11 per cent); providing counter-terrorism assistance to countries lacking expertise (10 per cent); military cooperation (9 per cent): Schmid et al, above n 36, 29

crisis and consequence management for both “regular” and “catastrophic” acts of terrorism in coordinated simulation exercises and educate first responders and the public on how best to cope; (8) establish[ing] an all-sources early detection and early warning intelligence system against terrorism and other violent crimes on the interface between organised crime and political conflict; and (9) strengthen[ing] coordination of efforts against terrorism both within and between states; enhance international police and intelligence cooperation, and offer technical assistance to those countries that lack the know-how and means to upgrade their counter-terrorism instruments.⁸⁶

Second, in his analysis of the factors that should characterise international efforts to counter post-9/11 maritime terrorism threats, Herbert-Burns emphasised the importance of three ‘inter-locking elements’. These included intelligence about the navigational activities of vessels, what is carried inside them and who is in control of them; holistic risk management across the whole gamut of sectors such as ports and supply chains that interface with the activities of vessels; and transnational and international co-operation between both government and commercial sectors.⁸⁷

Along similar lines to Schmid et al and Herbert-Burns, Gunaratna emphasised the need for the flexible application of a broad range of possible responses by States when arguing that ‘... target hardening and other forms of protection will not permanently reduce the threat of a terrorist attack. To manage the ever-changing post 9/11 threat, governments need to develop a full range of responses requiring a multitude of actors...’.⁸⁸ Gunaratna’s reference to the importance of developing ‘a full range of responses’ is one of the reasons this Study examines

⁸⁶ The other rules less directly applicable to the maritime domain included: (1) try[ing] to address the underlying conflict issues exploited by the terrorists and work towards a peaceful solution while not making substantive concessions to the terrorists themselves; (2) prevent[ing] alienated individuals and radical groups from becoming terrorist extremists by confronting them with a mix of “carrot” and “stick” tactics and searching for effective counter-motivation measures; (3) stimulat[ing] and encourage[ing] defection and conversion of free and imprisoned terrorists and find ways to reduce the tacit or open support of aggrieved constituencies for terrorist organisations; (6) keep[ing] in mind that terrorists seek publicity and exploit the media and the internet to gain recognition, propagate their cause, glorify their attacks, win recruits, solicit donations, gather intelligence, disseminate terrorist know-how and communicate with their target audiences.; (10) show[ing] solidarity with, and offer support to, victims of terrorism at home and abroad; (11) maintain[ing] the moral high ground in the struggle with terrorists by defending and strengthening the rule of law, good governance, democracy and social justice and by matching [one’s] deeds with [one’s] words; and (12) counter[ing] the ideologies, indoctrination and propaganda of secular and non-secular terrorists and try to get the upper hand in the war of ideas – the battle for hearts and minds of those the terrorists claim to speak and fight for: Schmid et al (2011), 38

⁸⁷ Herbert-Burns, above n 64, 173 - 175

⁸⁸ Rohan Gunaratna ‘Introduction: Change or Continuity’ in Rohan Gunaratna (ed) *The Changing Face of Terrorism* (Singapore: Eastern Universities Press, 2004), 3

both UNCLOS and the SUA treaties (which enable States to enforce laws at sea), and Article 51 of the UN Charter and the doctrine of Necessity (which might enable interdictions to be undertaken in exceptional circumstances). Similar and more directly relevant points were made in a critique of vessel interdiction powers under UNCLOS and the 1988 SUA Convention in 2003 by Jesus (who served as President of the International Tribunal for the Law of the Sea from 2008 to 2011).⁸⁹ Whilst this article pre-dated the finalisation of the 2005 SUA Convention which is examined in Chapters 6 and 7, Jesus argued the importance of States having the capacity to interdict suspected terrorist vessels *before* potentially deadly and disruptive terrorist attacks occur – rather than taking what he termed ‘ex-post-facto’ measures *after* such attacks occur. Whilst lengthy, his arguments below are directly relevant to this section’s articulation of criteria against which the success of the international agreements in enabling the prevention of contemporary post-9/11 maritime terrorism incidents ought to be assessed:

‘One cannot protect lives unless states are allowed to intervene before human tragedy happens. That is when it makes sense to recognise to any state the right to board, search, seize and arrest ships and offenders in the context of maritime terrorism in all maritime space with the exception of internal, maritime and inland waters. This is more so in the case of suicidal terrorist attacks for which the current [ie, 1988] SUA Convention’s strategy of prosecuting or extraditing offenders is totally inoperative and inefficient.

This [1988 SUA] Convention, as is well known, was adopted in the aftermath of the 1985 *Achille Lauro* incident in response to terrorist attacks against shipping. It approaches this matter, therefore, from the point of view of punishment of offenders, an ex post facto repression measure that only makes sense if the perpetrator survives the attack. This approach does not totally respond to contemporary needs to the extent that it does not contemplate a special breed of terrorist acts, potentially the most dangerous ones, against ships or from ships that may be carried out by persons who themselves are supposed to die in the attack, as witnessed recently in the 11 September 2001 New York City attack’.⁹⁰

⁸⁹ Jose Luis Jesus ‘Protection of Foreign Ships against Piracy and Terrorism at Sea: Legal Aspects’ (2003) 18(3) *International Journal of Marine and Coastal Law* 393

⁹⁰ Jesus, above n 89, 395 - 396

Jesus' remarks succinctly recognise the distinctions between the profiles of contemporary and pre-contemporary terrorism (that is away from restrained hostage-takings and towards significant casualty and suicide attacks) that were articulated in Chapter 2, and demonstrated in [3.3], and which Chapters 5, 6 and 7 further illustrate. He strongly argued the importance of States being able to interdict suspected terrorist vessels *before* potentially devastating attacks occur – rather than responding *after* such attacks:

‘The only to address this situation with respect to shipping, from the standpoint of legal protection, is by taking a preventative approach, allowing any state party to assert police jurisdiction,⁹¹ including in territorial waters, to board, inspect, seize the ship and equipment and arrest persons on board. In other words, in order to effectively prevent acts of sea terrorism from happening and address in legal terms this kamikaze-style terrorist attack against ships and other targets, states should be able to enjoy not only a judicial jurisdiction over offenders by claiming after *fait accompli*, that they be prosecuted or by prosecuting them themselves, but also a police jurisdiction that will allow them to prevent and stop terrorist ships from making terrorist attacks against other ships or against other targets such as port or pipeline facilities, platform structures, or that may be directed at blocking straits used for international navigation or causing major environmental damage’.⁹²

Whilst Jesus' calls for 'any state' to be able to interdict suspected terrorist vessels might sound like an unachievable ideal, his remarks nevertheless provide a useful benchmark against which the success of the international agreements in enabling the prevention of contemporary post-9/11 maritime terrorism incidents should be assessed.

[3.6.2] The coverage and acceptance criteria for assessing the prospects for the international agreements to prevent maritime terrorism incidents

Taking into account the points noted in [3.6.1] about the factors that *should characterize* international efforts to counter maritime terrorism, this section explains how Chapters 4 to 8 utilise the combination of the criteria of 'coverage' and 'acceptance' to evaluate the prospects

⁹¹ That is, the exercise of enforcement jurisdiction

⁹² Jesus, above n 89, 395 - 396

for the international agreements to succeed in enabling the prevention of maritime terrorism incidents. The ‘coverage’ criterion considers: *‘To what extent do the relevant provisions of the international agreement enable States prevent the maritime terrorism incident from occurring?’*; and the ‘acceptance’ criterion considers: *‘To what extent has the international agreement become accepted internationally?’* The acceptance of international counter-terrorism instruments has been noted by the 2004 UN High Level Panel Report to be critical to international counter-terrorism efforts.⁹³

Assessments of the international acceptance of the SOLAS Chapter XI security amendments including the ISPS Code, the amendments to SOLAS Chapter V (AIS and LRIT) and the 2003 SID Convention (which collectively have a “preventative” focus) must consider the extents to which these measures have become ingrained both amongst contracting governments, and at operational levels within maritime industries. Through being a generalised, adaptable security risk management framework that needs to be continually applied,⁹⁴ the prospects for the ISPS Code to succeed in preventing maritime terrorism incidents will be largely determined by the rigour of its continual application by contracting governments, shipping companies, ships and port facility operators, and that it will only be as strong as its weakest link. After analysing IMO proceedings relating to the SOLAS Chapter XI-2 and the ISPS Code since its entry into force in July 2004, Chapter 4 explains why it is impossible to make an overall assessment of the extent to which the ISPS Code has become ingrained internationally. Instead, Chapter 4 articulates “best case” and “worst case” scenarios of the factors likely to influence the prospects for ISPS Code measures to prevent maritime terrorism incidents.⁹⁵ These “best case” and

⁹³ The extent of acceptance of counter-terrorism agreements between States has been noted as a key determinant of global counter-terrorism efforts. For example the 2004 UN High Level Report noted with concern that: ‘... several United Nations anti-terrorist conventions have laid important normative foundations. However, far too many States remain outside the conventions’ and at [204] noted: ‘the effectiveness of the global collective security system, as with any other legal order, depends ultimately not only on the legality of decisions but also on the common perception of their legitimacy — their being made on solid evidentiary grounds, and for the right reasons, morally as well as legally’: United Nations *A More Secure World: Our Shared Responsibility*: Report of the Secretary-General High-level Panel on Threats, Challenges and Change GA 59th session, Agenda Item 55 UN Doc A/59/565 (2 December 2004) at [149]

⁹⁴ In other words such security measures need to be continually applied to lessen the scope for maritime terrorism incidents to occur – whereas the provisions of UNCLOS, the SUA treaties (and Article 51 of the UN Charter) will only “come into play” when the need to interdict suspected terrorist vessels arises

⁹⁵ As [4.2.6] explains, these factors include the size and type of vessels involved in maritime terrorism incidents; whether terrorists controlled the vessel involved in a maritime terrorism incident in the first instance; the rigour of the continual application of the ISPS Code security measures by ships and entities interfacing with them (including port facility operators and government authorities); whether a maritime terrorism incident involved an entity subject to the ISPS Code such as a security-regulated port facility or offshore platform; the form of a maritime terrorist attacks; and the effectiveness of government oversight and response capabilities

“worst case” scenarios are then applied in Chapters 5, 6 and 7 – which consider how the ISPS and other SOLAS maritime security measures might apply in practice.

Chapters 6 and 7 consider the coverage and acceptance of UNCLOS and the 2005 SUA treaties in examining how well these instruments could enable States to prevent maritime terrorism incidents through interdicting suspected terrorist vessels.⁹⁶ Chapter 6 examines the interdiction of vessels suspected of being about to perpetrate dangerous⁹⁷ or disruptive acts⁹⁸ in the maritime domain; and Chapter 7 examines the interdiction of vessels suspected of being utilised to enable subsequent terrorist attacks.⁹⁹

In relation to UNCLOS, Chapters 6 and 7 show that whilst widely ratified and accepted by States, the ambiguity of many of its provisions make assessments of the coverage of UNCLOS less straightforward. These chapters show the scope for varying interpretations of UNCLOS – with Chapter 7 articulating “restrictive” and “liberal” views of UNCLOS in relation to the interdiction of suspected illicit shipments of WMD materiel. Whilst Chapter 7 reasons that the more flexible liberal view of UNCLOS would better enable the prevention of maritime terrorism incidents, it argues in favour of States formalising specific agreements to facilitate vessel interdictions.

In relation to the 2005 SUA Convention, Chapters 6 and 7 show how the Convention’s coverage is very clear and objective, through carefully defining offences and the procedures for interdicting suspected terrorist vessels. However these chapters also explain that the current low levels of its ratification (that is, its acceptance) mean that the 2005 SUA Convention would most likely only be applicable in a limited range of circumstances.

Chapter 8 analyses the extent to which States might interdict suspected terrorist vessels in exceptional circumstances (where it otherwise lacked a clear jurisdictional basis under

⁹⁶ As [1.5.2] explained, this Study only examines the relevant provisions of these international agreements up to the point of enabling States to interdict suspected terrorist vessels – and so it does not consider the various domestic legal processes involved in subsequent legal proceedings against interdicted vessels, people or cargo. As Chapter 9 explains, it is intended this Study to stimulate further studies to examine such issues

⁹⁷ As Chapter 1 explained, this could involve using vessels as “weapons” (either as launching platforms or as kinetic ramming weapons) or as “floating bombs” against other vessels, land targets and offshore platforms

⁹⁸ As Chapter 1 explained, this could involve disabling vessels near critical navigational chokepoints, deliberate pollution, facilitating the laying of sea mines, or interfering with submarine cables

⁹⁹ Through transporting weaponry (conventional and WMD materiel) or terrorist operatives to a land location to perpetrate attacks, or utilising vessels to finance terrorist activities

UNCLOS or the SUA treaties) under Article 51 of the UN Charter, or the doctrine of Necessity. Similarly to UNCLOS, it shows that the ambiguity of the term ‘armed attack’ creates scope for “liberal” and “restrictive” views of Article 51 self-defence rights in the contemporary post-9/11 maritime terrorism context. Whilst Chapter 8 reasons that the more flexible liberal view of Article 51 would better enable the prevention of maritime terrorism incidents, similarly to Chapter 7 it argues in favour of States formalising specific agreements to facilitate vessel interdictions.

[3.7] CONCLUSION

This chapter has shown how maritime attacks by contemporary terrorist groups have involved significant casualty and suicide attacks, reflecting the global trend articulated in Chapter 2. It reasoned that the disruptive consequences following from a significant maritime terrorism incident could be very profound, and noted indications of significant attacks having been contemplated by contemporary terrorist groups. This prognosis highlights the importance of understanding all conceivable ways in which maritime terrorism incidents could occur, and explained the value of scenario analysis. From the numerous insightful maritime terrorism scenarios postulated since 9/11, it developed the Maritime Terrorism Threat Matrix to provide a structured framework for both conceptualising all the conceivable ways in which maritime incidents could occur, and for analysing statistics about how such incidents have previously occurred, been attempted and planned, and have been postulated. It concluded by arguing the importance of preventing maritime terrorism incidents from occurring in the first instance, rather than responding after attacks have occurred. For assessing the prospects for the international agreements to prevent maritime terrorism incidents, it articulated the coverage and acceptance criteria – the combination of which are applied in the following chapters.

Chapter 4 analyses developments relating to the post-9/11 maritime security and vessel tracking amendments to the SOLAS Convention (including the ISPS Code under Chapter XI-2, and the AIS and LRIT regulations under Chapter V) and the 2003 SID Convention since their entry into force – with these “preventative” measures being relevant to preventing all of the forms of maritime terrorism examined in Chapters 5, 6 and 7. It explains how the identified limitations of SOLAS Chapter XI-2 and the ISPS Code have been addressed within the IMO since their entry into force, and how it is impossible to make an overall assessment of the extent to which the ISPS Code has become accepted internationally. Instead, it articulates the factors

which will be likely to influence the prospects for the ISPS Code to succeed in lessening the scope for maritime terrorism incidents to occur. It also explains that while the vessel identification and tracking measures under SOLAS Chapter V (AIS and LRIT) have contributed to improved maritime domain awareness, several uncertainties and shortcomings remain. Finally it examines how the 2003 SID Convention has lessened the scope for terrorists and also criminals to travel under fraudulent seafarer identification documentation.

CHAPTER 4

SOLAS MARITIME SECURITY AND VESSEL IDENTIFICATION AND TRACKING AMENDMENTS AND 2003 SID CONVENTION: ANALYSIS OF DEVELOPMENTS SINCE THEIR ENTRY INTO FORCE

[4.1] INTRODUCTION

This chapter analyses developments relating to the SOLAS Chapter XI security amendments including the ISPS Code, the amendments to SOLAS Chapter V (AIS and LRIT) and the 2003 SID Convention since their entry into force. Collectively, these measures are the “preventative” first line of defence against maritime terrorism incidents.¹ [4.2] examines how the ISPS Code’s identified limitations (being its limited application to ‘ship-port interfaces’ and not to broader supply chains; its restricted application to large SOLAS Ships; its inconsistent application to offshore platforms; and uncertainties regarding Ship Security Alert System arrangements) have been addressed within the IMO since July 2004 through the development of voluntary guidance. It explains that while there are both positive and concerning indications about the extent of the ISPS Code’s implementation, inconsistencies in the information reported to IMO by contracting governments,² and the confidentiality of ISPS Code arrangements, make it impossible to make an overall assessment about how well the ISPS Code has been implemented at all levels.³ Instead, it articulates the factors that could influence the likelihood of “best case” or “worst case” scenarios of ISPS Code security measures preventing maritime terrorism incidents. [4.3] explains how mandatory AIS requirements have contributed to improved maritime security through reducing collision risks and improving situational awareness for ships, and examines how the risks of unauthorised access to AIS transmissions for nefarious

¹ These instruments have a preventative focus because the measures they mandate and recommend are aimed at preventing maritime terrorism incidents occurring in the first instance – through ship and port security measures, vessel identification and tracking, and seafarer identification - as opposed to enabling States to interdict suspected terrorist vessels. This Chapter addresses the second and third of the sub-questions posed in [1.2.2] – namely (2) ‘What are the limitations of the international agreements, and how have these limitations been addressed to date?’; and (3) ‘What factors are likely to influence the prospects of the international agreements being successful in preventing maritime terrorism incidents?’.

² All references to ‘Contracting Governments’ this Chapter refer to Contracting Governments to the 1974 SOLAS Convention. As explained in [4.2.5], the IMO has noted with concern significant delays in the provision of information by SOLAS Contracting Governments regarding their implementation of SOLAS Chapter XI-2 and the ISPS Code, and low response rates from Contracting Governments to voluntary IMO surveys about national maritime security arrangements

³ It explains that because the ISPS Code is a risk management framework applicable (through various national implementing laws and regulations) to States, shipping companies, port facilities and ships, this Study also considers how the ISPS Code applies at operational levels within maritime industries

purposes have been addressed within the IMO. It also shows that since becoming operational from early 2011, LRIT arrangements have been shown to function effectively, with LRIT information proving valuable in counter-piracy operations around the Gulf of Aden; but also notes uncertainties remaining about the actions States might take based on LRIT information. Finally [4.4] examines the extent to which the 2003 SID Convention could lessen the scope for terrorists to travel under false seafarer identification.⁴ The observations from this Chapter are applied in Chapters 5, 6 and 7⁵ – as the preventative security measures mandated and recommended under SOLAS Chapter XI-2 and the ISPS Code are relevant to lessening the scope for all the forms of maritime terrorism incidents examined in those chapters.

[4.2] SOLAS CHAPTER XI AND ISPS CODE SECURITY MEASURES

Chapter 3 outlined how the vulnerabilities of ships and port facilities to terrorist targeting and/or utilisation became increasingly apparent following the 9/11 attacks. At its 22nd Assembly meeting in November 2001, the IMO acknowledged the need to address these vulnerabilities through the development of new internationally consistent security measures. During 2001 and 2002, negotiations were held to develop the International Ship and Port Facility Security (ISPS) Code as an international security risk management framework for the maritime sector.⁶ Following these negotiations, the IMO's Diplomatic Conference on Maritime Security held between 9 and 13 December 2002 adopted significant amendments to the 1974 SOLAS Convention (SOLAS) – including amendments to SOLAS Chapter XI-1 ('Special Measures to Enhance Maritime Safety'), and with a new SOLAS Chapter XI-2 'Special Measures to Enhance Maritime Safety' being added. These 2002 amendments to SOLAS were incorporated into SOLAS under the SOLAS 'tacit acceptance' procedure, and entered into force on 1 July 2004.

⁴ However Chapter 7 reasons such improved seafarer identification measures would be not be applicable if terrorists sought land through clandestine landings rather than through major ports, as several groups have previously done

⁵ Chapters 5, 6 and 7 address the fourth question noted in [1.2.2], namely - (4) Considering how maritime terrorism incidents have previously occurred, and might occur in the future, how might the international agreements apply in practice in preventing maritime terrorism incidents?

⁶ For an overview of the development processes for the ISPS Code, see generally Ashley Roach 'Container and Port Security: A Bilateral Perspective' (2003) 18(3) *The International Journal of Marine and Coastal Law* 341; Hartmut Hesse 'Maritime Security in a Multilateral Context: IMO Activities to Enhance Maritime Security' (2003) 18(3) *The International Journal of Marine and Coastal Law* 327; Hartmut Hesse and Nicolaos Charalambous 'New Security Measures for the International Shipping Community' (2004) 2(3) *WMU Journal of Maritime Affairs* 123; and Chris Trelawny 'Maritime Security: Implementation of the ISPS Code' Paper presented at the 3rd Intermodal Africa 2005 Tanzania Exhibition and Conference – Dar es Salaam, 3 - 4 February 2005

After overviewing the application and requirements of the ISPS Code in [4.2.1], [4.2.2] to [4.2.5] examine how the limitations in the application of the ISPS Code have been addressed within the IMO since its entry into force in July 2004 through the development of voluntary guidance. After [4.2.6] explains the challenges in assessing the extent to which ISPS Code security measures have become ingrained at operational levels within maritime industries, [4.2.7] articulates the factors likely to influence whether “best case” or “worst case” scenarios of ISPS Code measures lessening the scope for the occurrence of maritime terrorism incidents might apply, which are then examined in Chapters 5, 6 and 7.

[4.2.1] Obligations imposed by SOLAS Chapter XI and the ISPS Code

The ISPS Code is a risk management framework applicable (through various national implementing laws and regulations) to States, shipping companies, port facilities and ships. Its objective is to increase level of security awareness and preparedness for large ships engaged on international voyages, and the port facilities that service these ships – through providing a standardised, consistent framework for evaluating risk, enabling governments to offset changes in threat levels with changes in vulnerability for ships and port facilities.⁷ It applies to three categories of ships engaged on international voyages, being passenger ships, including high-speed passenger craft; cargo ships, including high speed craft, or 500 gross tonnage and upwards; and mobile offshore drilling units,⁸ commonly referred to as ‘SOLAS ships’. It also applies to the port facilities serving such ships.⁹ Despite this narrow application, contracting governments may specify security requirements for smaller vessels.¹⁰ The ISPS Code consists of two parts – a mandatory Part A prescribing generalised requirements for contracting governments, ships, shipping companies and port facilities that service such larger ships; and a non-mandatory Part B providing more detailed, recommendatory guidance for the aforementioned entities to comply with the requirements of Part A of the Code and ensure maritime-related security. Rather than prescribing detailed mandatory rules, the ISPS Code takes the approach that the safety and security of ships and port facilities is a risk management activity

⁷ ISPS Code Foreword (IMO, 2003), p. iii

⁸ ISPS Code Part A, Section 3.1.1

⁹ ISPS Code Part A, Section 3.1.2

¹⁰ ISPS Code Part A, Section 3.2; ISPS Code Part B Section 4.46 – which provides that ‘Ships below Convention size are subject to measures by which States maintain security’

– requiring an assessment of the risks in each particular case to determine what security measures are appropriate in the circumstances.

[4.2.1.1] Obligations for Contracting Governments

SOLAS Chapter XI-2 and Part A of the ISPS Code impose several obligations on contracting governments. First, they are responsible for implementing and ensuring compliance with the ISPS Code by SOLAS ships subject to their jurisdiction and by port facilities that service such ships. They are required to nominate ‘Designated Authorities’ responsible for assessing and approving preventative security plans for SOLAS ships, companies operating SOLAS ships and port facilities serving SOLAS ships, and issuing International Ship Security Certificate (ISSCs) to SOLAS ships.¹¹ Contracting governments may also delegate certain maritime security responsibilities to ‘Recognised Security Organisations’ outside of government. Recognised Security Organisations may serve as initial recipients for ship-to-shore security alerts; maritime security-related communications from other contracting governments; and requests for maritime security advice and assistance to ships.¹² SOLAS Regulation XI-2/13 obliges contracting governments to communicate specified security-related information to the IMO,¹³ and to advise the IMO of changes to such information. A list of national agencies responsible for maritime security matters is available on the IMO’s website;¹⁴ however as [4.2.6] explains, concerns have been expressed about the currency of information supplied to the IMO by contracting governments. Second, contracting governments are required to continually monitor the maritime security situation applicable to ships operating in, or intending to enter, their territorial seas, and to set and promulgate security levels applicable to

¹¹ ISPS Code Part A Section 19

¹² For some examples of the legislative and institutional arrangements put in place by contracting governments to implement the requirements of SOLAS Chapter XI-2 and the ISPS Code, and improve maritime security more generally, see Ashley Craig and John Seher ‘US Maritime Transportation and Port Security: An Update and Analysis of Current Efforts’; Joshua Ho ‘Managing Port and Ship Security in Singapore’; John Lavers ‘Canada and the ISPS Code’; Devinder Grewal ‘The ISPS Code: The Australian Experience and Perspective’; and Noor Apandi Osnin ‘ISPS Code: Implementation in Malaysia’ in Rupert Herbert-Burns, Sam Bateman and Peter Lehr (eds) *Lloyds MIU Handbook of Maritime Security* (CRC Press, 2009)

¹³ SOLAS Regulation XI/13 specifies the information to be communicated to the IMO (to be made publically available) as including the names of their national authorities responsible for ship and port facility security; the locations within their territory covered by approved port facility security plans; the names and contact details of those designated to receive and act upon ship to shore security alerts referred to in Regulation XI/6.2.1; the names and contact details of those designated to receive and act upon communications from Contracting Governments exercising control and compliance measures referred to in Regulation XI/9.3.1; and the names and contact details of those designated to be available at all times to provide advice or assistance to ships, and to whom ships can report any security concerns referred to in Regulation XI/7.2

¹⁴ This information is available from the IMO’s Global Integrated Shipping Information System (GISIS) at <http://gisis.imo.org/Public/ISPS/Default.aspx>; Accessed 1 October 2013

such ships and port facilities.¹⁵ The ISPS Code specifies three progressively increasing security levels for ships and port facilities, being Security Level 1: Normal (at which the ship or port facility normally operates); Security Level 2: Heightened (applying for as long as there is a heightened risk of a security incident); and Security Level 3: Exceptional (applying for the period of time when there is a probable or imminent risk of a security incident).¹⁶ Third, contracting governments are authorised to undertake ‘control and compliance measures’ in relation to ships¹⁷ proposing to enter their port facilities – which might include denying permission, or requesting further information prior to authorising such entry) in situations where a contracting government had security-related concerns¹⁸ regarding a ship seeking to enter one of its port facilities.¹⁹

[4.2.1.2] Obligations for SOLAS ships and shipping companies²⁰

SOLAS Chapters XI-1 and XI-2 and the ISPS Code impose several preventative security requirements upon SOLAS Ships. They are required to prominently display non-erasable Ship Identification Numbers,²¹ which are intended to prevent unauthorised alterations to identity markings of the vessel; and maintain a Continuous Synopsis Record recording certain important information about the ship’s activities.²² They are also required to be equipped with Ship Security Alert Systems (SSAS)²³ – being a silent alarm system which when activated initiates and transmits a ship-to-shore security alert to a competent authority designated by the ship’s flag State. Such ship-to-shore security alerts are required to identify the ship, its location and indicate that the security of the ship is under threat or has been compromised, and be capable of activation from the ship’s navigational bridge and at least one other location.

¹⁵ SOLAS Chapter XI-2, Regulation 7 ‘Threats to Ships’

¹⁶ ISPS Code Part A, Section 7

¹⁷ And possibly other ships if the Contracting Government extended the application of the ISPS Code to ships below SOLAS Convention size: ISPS Code Part A, Section 3.2; ISPS Code Part B Section 4.46

¹⁸ These security-related concerns might arise in relation to the validity of the ship’s International Ship Security Certificate; the effectiveness of the ship’s preventative security measures; the effectiveness of security measures at the ship’s previous ports of call – or with other ships with which it may have interfaced with; the cargo or passengers embarked on the ship; or the accuracy of the information contained in the ship’s Continuous Synopsis Record.

¹⁹ SOLAS Chapter XI-2, Regulation 9 ‘Control and compliance measures’

²⁰ These two entities are grouped as one for the sake of brevity

²¹ SOLAS Chapter XI-1 Regulation 3

²² This information includes the ship’s name and responsible company; its flag State; date of registration; Ship Identification Number; registered owner; and the Designated Authority that issued the ship’s ISSC: SOLAS Chapter XI-2, Regulation 5

²³ SOLAS Chapter XI Regulation 6 Most vessels were required to be fitted with SSAS by 2004 and the remainder by 2006

However as [4.2.5] below explains, several uncertainties regarding the arrangements for coordinating responses to SSAS alerts have been identified.

Operators of SOLAS ships are required to designate a Ship Security Officer²⁴ responsible for security matters within SOLAS ships; to undertake periodic Ship Security Assessments,²⁵ and have in place Ship Security Plans.²⁶ Ship Security Plans are required to address various measures to safeguard the physical security of the ship, including measures to prevent weapons and other dangerous substances from being taken aboard the ship; control access to the ship (in particular its restricted areas) and to respond to breaches of such access control measures; to respond to changes in security levels set by contracting governments; and the operation of the ship's SSAS.²⁷ Ship Security Plan measures are required to be actively implemented through developing and maintain accurate records relating to security matters – and ensuring that the ship's personnel are conversant with its Security Plan and other measures through regular training drills and exercises.²⁸ Part B of the ISPS Code provides recommendatory guidance for both ships and shipping companies on Ship Security Assessments,²⁹ Ship Security Plans,³⁰ and security training, drills and exercises.³¹ Furthermore companies which operate ships subject to the ISPS Code are required to designate Company Security Officers responsible for the coordination of preventative security measures throughout their companies.³²

[4.2.1.3] Obligations for operators of port facilities

The ISPS Code imposes preventative security obligations on port facilities that serve SOLAS ships which mirror those imposed on SOLAS ships as explained in [4.2.1.2]. These include undertaking Port Facility Security Assessments³³ and actively implementing³⁴ Port Facility Security Plans.³⁵ Port Facility Security Plans are required to address measures to ensure the

²⁴ ISPS Code Part A, Section 12

²⁵ ISPS Code Part A, Section 8

²⁶ ISPS Code Part A, Section 9

²⁷ ISPS Code Part A, Section 9.4

²⁸ ISPS Code Part A, Section 13 Ship Security Plans 'Training, drills and exercises on ship security'

²⁹ ISPS Code Part B, Section 8

³⁰ ISPS Code Part B, Section 9

³¹ ISPS Code Part B, Section 13

³² ISPS Code Part A, Section 11

³³ ISPS Code Part A, Section 15

³⁴ Port Facility Security Plans are required to be actively implemented through developing and maintain accurate records relating to security matters – and ensuring that the port facility's personnel are conversant with the security plan and other security measures through regular training drills and exercises: ISPS Code Part A, Section 18

³⁵ ISPS Code Part A, Section 16

security of the port facility,³⁶ and designate Port Facility Security Officers³⁷ responsible for security throughout the Port Facility. Part B of the ISPS Code provides recommendatory guidance for both ships and shipping companies on Port Facility Security Assessments,³⁸ Port Facility Security Plans,³⁹ and security training, drills and exercises.⁴⁰

[4.2.1.4] Identified limitations of the ISPS Code

Whilst the ISPS Code has made a significant contribution towards increasing maritime security arrangements internationally through mandating and recommending the measures outlined above, its restricted (mandatory) application to the ‘ship-port interface’, to large SOLAS ships, and inconsistent application to offshore platforms have been acknowledged as limitations. Additionally, several uncertainties regarding Ship Security Alert System arrangements have been identified. The following sections show how these limitations have been addressed within the IMO (and in cooperation with other international organisations where appropriate) since the ISPS Code’s entry into force on 31 July 2004 – showing the preference amongst contracting governments to address these limitations through voluntary guidance rather than extending the mandatory application of the Code.

[4.2.2] Limited application of ISPS Code to the ship-port interface

As noted above, the ISPS Code applies to ‘SOLAS ships’ and the port facilities servicing them (the ‘ship/port interface’),⁴¹ and not to the supply chains that feed into the ship-port interface. In the aftermath of 9/11, this has led to concerns that terrorists might seek to introduce explosives, possibly including WMD, into shipping containers outside the ship-port interfaces subject to the ISPS Code, possibly to transport to another State or to detonate within a major

³⁶ Port Facility Security Plans are required to address and include measures to prevent weapons and other dangerous substances from being taken into the port facility; measures to control access to the port facility generally – particularly its restricted areas – and to respond to breaches of such access control measures; and measures to facilitate responses to changes in security levels set by Contracting Governments; ISPS Code Part A Section 16.3

³⁷ ISPS Code Part A, Section 17

³⁸ ISPS Code Part B, Section 15

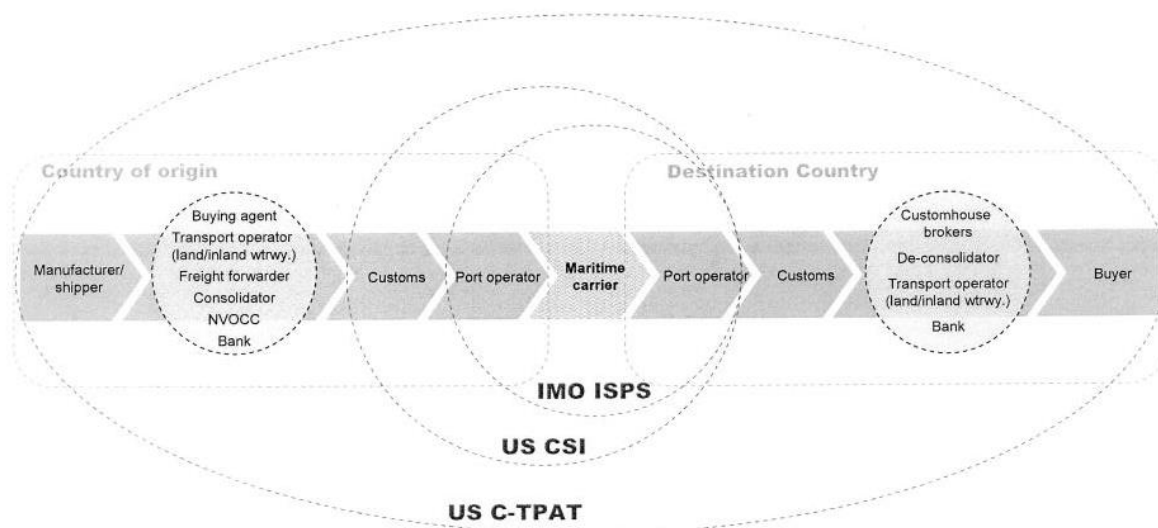
³⁹ ISPS Code Part B, Section 16

⁴⁰ ISPS Code Part B, Section 18

⁴¹ SOLAS Chapter XI-2 Regulation 1.10 defines the ‘Ship/port interface’ as meaning ‘the interactions that occur when a ship is directly and immediately affected by actions involving the movement of persons, goods or the provisions of port services to or from the ship’. The term is used widely in the records of various IMO proceedings

port.⁴² Figure 5 from the 2003 study by the OECD which was discussed in [3.5]⁴³ illustrates the numerous phases typically involved in the international movement of goods by sea. Before goods reach the ‘ship/port interface’, they frequently pass through the control of several entities including manufacturers or shippers of goods; buying agents; storage facilities; (sometimes multiple) land, air and waterways transport operators; freight forwarders and financial institutions; and lastly customs authorities. After leaving the ‘ship/port interface’, goods again pass through the control of customs authorities, freight forwarders, transport operators and storage facilities, before reaching the end buyer. As depicted in Figure 5 below, the ISPS Code only covers a very small phase of that overall process.

Figure 5: Depiction of the limited scope of the ISPS Code



Source: Philippe Crist *Security in Maritime Transport: Risk Factors and Economic Impact* (Organisation for Economic Cooperation and Development Maritime Transport Committee, 2003), 50

The 2002 IMO Diplomatic Conference on Maritime Security recognised both the limited focus of the ISPS Code to the ship-port interface, and the importance of increasing multi-modal security, and resolved to pursue further cooperation with the World Customs Organisation

⁴² For example, the detonation of bombs concealed within shipping containers. See generally Michael Richardson *A Time Bomb for Global Trade: Maritime Terrorism in an Age of Weapons of Mass Destruction* (Institute of Southeast Asian Studies, 2004)

⁴³ Philippe Crist *Security in Maritime Transport: Risk Factors and Economic Impact* (Organisation for Economic Cooperation and Development Maritime Transport Committee, 2003) – which undertook a comprehensive economic analysis of the anticipated cost impact of the ISPS Code on the international maritime sector

(WCO).⁴⁴ This section discusses how these identified limitations have been addressed by the IMO in consultation with the WCO, and through other cooperative supply chain security initiatives.

[4.2.2.1] Post 9/11 supply chain security initiatives

Since 9/11, several cooperative initiatives have been developed to increase the security of supply chains. Since December 2001 the US Customs and Trade Partnership against Terrorism (C-TPAT) has developed as a voluntary supply chain security initiative for private sector entities within United States, Canada and Mexico that facilitate the transport of goods across borders within the region.⁴⁵ Through being able to demonstrate the implementation of security risk management measures across their supply chains, C-TPAT participants are afforded expedited clearance through national borders – although C-TPAT is confined to North America. Secondly, the US Container Security Initiative (CSI), announced in January 2002, was developed in response to the 9/11 attacks as part of the US Customs and Border Protection's (CBP) layered cargo security strategy. The CSI is intended lessen the scope for terrorists to utilise shipping containers as both bombs and as a means to transport weaponry⁴⁶ through deploying US CBP container inspection and screening teams to foreign seaports exporting goods to the US which target and examine high-risk cargo before it is laden onto vessels bound for the United States. Under the CSI the US also allows foreign container inspection teams to inspect shipping containers departing from US ports to their ports. As at 1 October 2013 CSI inspection arrangements are reported to be operational in 58 ports worldwide.⁴⁷

⁴⁴ IMO *Consideration and Adoption of the International Ship and Port Facility Security (ISPS) Code* Conference of Contracting Governments to the International Convention for the Safety of Life at Sea, 1974 Agenda Items 7 and 8, IMO Doc SOLAS/CONF.5/34 (17 December 2002) Annex 2, Resolution 9 'Enhancement of security in co-operation with the World Customs Organisation (Closed cargo transport units)'

⁴⁵ With participants including US importers, US customs brokers, Canadian and Mexican manufacturers, US, Canadian and Mexican cross-border highway carriers, third party logistics providers, marine port authorities and terminal operators, Mexican long haul highway carriers, air, sea and rail carriers, air freight consolidators, ocean transportation intermediaries and non-vessel operating common carriers

⁴⁶ Jessica Romero 'Prevention of Maritime Terrorism: The Container Security Initiative' (2003) 4(2) *Chicago Journal of International Law* 597

⁴⁷ The ports listed are: Montreal, Vancouver and Halifax, Canada; Kingston, Jamaica; Santos, Brazil; Freeport, The Bahamas; Buenos Aires, Argentina; Balboa, Colón and Manzanillo, Panama; Puerto Cortes, Honduras; Cartagena, Colombia; Caucedo, Dominican Republic; Rotterdam, The Netherlands ; La Spezia, Genoa, Naples, Gioia Tauro, and Livorno, Italy; Bremerhaven and Hamburg, Germany; Felixstowe, Liverpool, Thamesport, Tilbury, and Southampton, United Kingdom; Antwerp and Zeebrugge, Belgium; Piraeus, Greece; Le Havre and Marseille, France; Algeciras, Barcelona, and Valencia, Spain; Gothenburg, Sweden; Lisbon, Portugal; Singapore; Shenzhen and Shanghai, China; Yokohama, Tokyo, Nagoya and Kobe, Japan; Kaohsiung and Chi-Lung, Taiwan; Hong Kong; Colombo, Sri Lanka; Pusan, South Korea; Port Salalah, Oman; Port Klang and Tanjung Pelepas,

Third, and following the concepts of CSI and C-TPAT, on 23 June 2005 the then 166 representatives of national customs administrations unanimously adopted the WCO SAFE Framework of Standards to Secure and Facilitate Global Trade ('SAFE Framework'). The SAFE Framework aims to harmonise and improve security risk management practices, screening of cargo containers and electronic record keeping and reporting throughout supply chains through two "pillars". The first pillar, "Customs-to-Customs network arrangements" aims to promote the exchange of "operational" information and mutual recognition of customs measures. The second pillar, "Customs-to-Business partnerships" entails the accreditation of entities involved in the movement of goods throughout supply chains⁴⁸ as Authorised Economic Operators (AEOs)⁴⁹ through having in place appropriate preventative security arrangements. The SAFE Framework provides the incentive of accelerated and simplified cargo movements for entities that have in place appropriate preventative security arrangements.

The WCO has facilitated the development of Mutual Recognition Arrangements between customs administrations. Mutual recognition is a broad concept whereby an action or decision taken or an authorization that has been properly granted by one Customs administration is recognized and accepted by another Customs administration.⁵⁰ In a 2012 overview, the WCO recorded 19 functioning AEO programmes in 45 countries worldwide. This included all 27 EU Member States having developed their own national programmes; within the Asia-Pacific China, Japan, Korea, Malaysia, New Zealand and Singapore developing pilot projects; 8 AEO programmes in the Americas and Caribbean region. The WCO also recorded 17 Mutual Recognition Arrangements having been signed, with a further arrangement becoming functional in July 2012 between the EU and the United States.⁵¹

Malaysia; Port Qasim, Pakistan; Laem Chabang, Thailand; Ashdod and Haifa, Israel; Dubai, United Arab Emirates; Durban, South Africa and Alexandria, Egypt. Listed at United States Department of Homeland Security 'Container Security Initiative Ports' <https://www.dhs.gov/container-security-initiative-ports> Undated; Accessed 1 October 2013

⁴⁸ Including manufacturers, importers, exporters, brokers, carriers, consolidators, intermediaries, ports, airports, terminal operators, integrated operators, warehouses and distributors

⁴⁹ An Authorised Economic Operator is a party involved in the international movement of goods in whatever function that has been approved by or on behalf of a national Customs administration as complying with WCO or equivalent supply chain security standards. AEOs include inter alia manufacturers, importers, exporters, brokers, carriers, consolidators intermediaries, ports, airports, terminal operators, integrated operators, warehouses, and distributors: World Customs Organisation *WCO SAFE Framework of Standards* June 2011, 6

⁵⁰ World Customs Organisation *WCO SAFE Framework of Standards* June 2011, 61

⁵¹ Keynote Speech by Kunio Mikuriya, Secretary General of the World Customs Organization to the WCO Global AEO Conference in Seoul, Republic of Korea, 17 April 2012 Accessed at <http://www.wcoomd.org/speeches/default.aspx?lid=1&id=257>; Accessed 1 November 2012

[4.2.2.2] Post-2004 IMO-WCO Cooperation

Since the entry into force of the ISPS Code, the IMO has cooperated with the WCO to improve security risk management arrangements throughout supply chains beyond the ‘ship-port interface’. The MSC at its 81st session in May 2006 was informed that the 32nd session of the IMO’s Facilitation Committee (FAL) had noted the adoption of the WCO SAEF Framework of Standards by the WCO. It also noted a report from the IMO Secretariat,⁵² which had developed preliminary guidance on how the relevant 17 WCO Standards might be incorporated into Parts A and B of the ISPS Code, and others into the Convention on Facilitation of International Maritime Traffic, 1965, as amended (‘FAL Convention’).⁵³ MSC 81 concluded that formal amendments to the SOLAS and FAL Conventions and the ISPS Code would take a significant time to develop and implement through national enabling legislation, and instead resolved to develop joint MSC/FAL interim guidance on procedures for maritime cargo supply chain security.⁵⁴ MSC 81 also received a report from Japan⁵⁵ on the Tokyo Ministerial Conference on International Transport Security held between 12 and 13 January 2006, which was attended by representatives from 14 countries,⁵⁶ resulting in the Ministerial Statement on Security in International Maritime Transport Sector;⁵⁷ and a report from the International Standards Organisation (ISO)⁵⁸ on its efforts to develop internationally consistent standards for supply chain and freight container security.⁵⁹

⁵² *IMO Measures to Enhance Maritime Security: Enhancement of security in co-operation with the World Customs Organization: Note by the Secretariat* IMO MSC 81st session, Agenda Item 5, IMO Doc MSC 81/5/4 (3 February 2006)

⁵³ *IMO Report of the Maritime Safety Committee on its Eighty-First Session* IMO MSC 81st session, Agenda Item 25, IMO Doc MSC 81/25 (24 May 2006), 5.12 – 5.15

⁵⁴ *IMO Report of the Maritime Safety Committee on its Eighty-First Session* IMO MSC 81st session, Agenda Item 25, IMO Doc MSC 81/25 (24 May 2006), 5.15

⁵⁵ *IMO Measures to Enhance Maritime Security: Report on the Ministerial Conference on International Transport Security Tokyo, Japan, 12-13 January 2006: Submitted by Japan* IMO MSC 81st session, Agenda Item 5, IMO Doc MSC 81/5/9 (10 February 2006)

⁵⁶ This conference was attended by Ministers responsible for transport security and officials from 14 countries, including Australia, Canada, China, France, Germany, Indonesia, Italy, Japan, the Republic of Korea, Malaysia, the Russian Federation, Singapore, the United Kingdom and the United States, and from the European Commission – and resolved to invite the IMO to consider, in co-operation with WCO, the development and adoption, as necessary, of appropriate measures to enhance the security of the maritime transport of containers in the international supply chain, while respecting efficiency and international harmonization

⁵⁷ *IMO Measures to Enhance Maritime Security: Report on the Ministerial Conference on International Transport Security Tokyo, Japan, 12-13 January 2006: Submitted by Japan* IMO MSC 81st session, Agenda Item 5, IMO Doc MSC 81/5/9 (10 February 2006), Annex 2. Noted in *IMO Report of the Maritime Safety Committee on its Eighty-First Session* IMO MSC 81st session, Agenda Item 25, IMO Doc MSC 81/25 (24 May 2006), 5.16

⁵⁸ *IMO Measures to Enhance Maritime Security: Enhancement of security in co-operation with the World Customs Organization: Note by the Secretariat* IMO MSC 81st session, Agenda Item 5, IMO Doc MSC 81/5/4 (3 February 2006)

⁵⁹ *IMO Report of the Maritime Safety Committee on its Eighty-First Session* IMO MSC 81st session, Agenda Item 25, IMO Doc MSC 81/25 (24 May 2006), 5.72 – 5.73

The MSC at its 82nd session in December 2006 noted that the 33rd session of the IMO's Facilitation Committee had discussed the development of maritime cargo security procedures in the context of the SAFE Framework of Standards, taking account of the preferences of contracting governments to address supply chain security through voluntary guidance, rather than extending the mandatory application of the ISPS Code (which had been proposed at MSC 81).⁶⁰

MSC 82 also noted proposals on guidance for implementing security measures throughout maritime transport related sectors submitted by Japan⁶¹ and by the United States⁶² for the MSC's consideration.⁶³ The MSC also urged contracting governments to consult with their national experts on safeguarding the security of maritime cargoes, and to submit their proposals on the security and facilitation of the movement of freight containers to the 34th session of the IMO's Facilitation Committee for consideration by the Joint MSC/FAL Working Group.⁶⁴

At its 88th session in December 2010 whilst the MSC noted a report submitted by Canada⁶⁵ proposing the development through the IMO of best practice guidance for maritime supply chain resilience in cooperation with the IMO's Facilitation Committee and the WCO, affirmed

⁶⁰ IMO *Report of the Maritime Safety Committee on its Eighty-Second Session* IMO MSC 82nd session, Agenda Item 24, IMO Doc MSC 82/24 (18 December 2006), 4.43

⁶¹ IMO *Measures to Enhance Maritime Security: The interim guidance on the security and facilitation of the movement of containers transported by ships: Submitted by Japan* IMO MSC 82nd Session, Agenda Item 4, IMO Doc MSC 82/4/2 (2 October 2006). Japan proposed that such security guidance should apply firstly to maritime container transport-related operators working within port areas, and then be further developed as best practice guidance for other operators working outside port areas. In addition to managing the placement of security seals on shipping containers, Japan submitted that such supply chain security guidance should also address the management of cargo control rooms, access arrangements, cargo load inventory documentation and control of employees. Lastly, Japan recommended that beneficial incentives (such as guarantees of expedited transit through checkpoints) should be provided to operators who implemented appropriate supply chain security measures.

⁶² IMO *Measures to Enhance Maritime Security: Improving security and facilitation provisions within IMO instruments taking into account the WCO SAFE Framework of Standards* IMO MSC 82nd Session, Agenda Item 4, IMO Doc MSC 82/4/3 (4 October 2006). The United States proposed several practical focus areas for supply chain security, including maintaining the physical integrity of containers while within the port facility's or vessel's control and effective measures for maintaining the security of seals on shipping containers. The United States (MSC 82/INF.7) had catalogued, based on extensive validations and site visits, supply chain security best practices and was making the catalogue available at:

http://www.cbp.gov/linkhandler/cgov/import/commercial_enforcement/ctpat/ctpat_best_practices.ctt/ctpat_best_practices.pdf

⁶³ IMO *Report of the Maritime Safety Committee on its Eighty-Second Session* IMO MSC 82nd session, Agenda Item 24, IMO Doc MSC 82/24 (18 December 2006), 4.46 – 4.50

⁶⁴ IMO *Report of the Maritime Safety Committee on its Eighty-Second Session* IMO MSC 82nd session, Agenda Item 24, IMO Doc MSC 82/24 (18 December 2006), 4.80

⁶⁵ IMO *Measures to Enhance Maritime Security: Enhancements to the ISPS Code: Submitted by Canada* IMO MSC 88th Session, Agenda Item 4, IMO Doc MSC 88/4/2 (21 September 2010)

the primacy of the WCO over supply chain security, with IMO's role being limited to those aspects related to ships and port facilities.⁶⁶ After noting that proposals relating to supply chain resilience were not within the High-level Action Plan of the IMO,⁶⁷ MSC 88 decided not to further pursue Canada's proposal.⁶⁸

In summary, the above developments indicate the promotion of security risk management measures to supply chains outside the ship-port interface is being pursued both through informal initiatives, and through the WCO in consultation with the IMO. It also noted contracting governments favouring this approach continuing, rather than expanding the mandatory scope of the ISPS Code beyond the ship-port interface. Chapter 7 further discusses the scope for supply chain security measures to lessen the scope for maritime terrorism incidents to occur.

[4.2.3] Limited application of ISPS Code to 'SOLAS vessels'

Another recognised limitation of the ISPS Code is its restricted application to very large vessels over 500 Gross Registered Tonnes engaged on international voyages. Whilst as [4.2.1] noted, the Part B of the ISPS Code recognises that contracting governments may apply security measures to smaller 'sub-SOLAS' vessels,⁶⁹ numerous vessels engaged in fishing activities frequently transit long international distances and fall outside the mandatory application of the ISPS Code. This has raised concerns that terrorists might utilise smaller vessels to transport weaponry or operatives, or to perpetrate maritime terrorist attacks,⁷⁰ with Chapters 5, 6 and 7 examining how terrorists have used, and also might use, smaller vessels to perpetrate terrorist attacks.

⁶⁶ IMO Report of the Maritime Safety Committee on its Eighty-Sixth Session IMO MSC 86th Session, Agenda Item 26, IMO Doc MSC 88/26 (25 December 2010), 4.15

⁶⁷ IMO Report of the Maritime Safety Committee on its Eighty-Sixth Session IMO MSC 86th Session, Agenda Item 26, IMO Doc MSC 88/26 (25 December 2010), 4.15

⁶⁸ IMO Report of the Maritime Safety Committee on its Eighty-Sixth Session IMO MSC 86th Session, Agenda Item 26, IMO Doc MSC 88/26 (25 December 2010), 4.18

⁶⁹ As [4.2.1] noted, ISPS Code Part B Section 4.46 provides that 'Ships below Convention size are subject to measures by which States maintain security'

⁷⁰ Mike Buky 'Maritime Terrorism: The Threat from Small Vessels' (2007) 157 *Maritime Studies* 1

The IMO acknowledged these limitations at its 2002 Diplomatic Conference on Maritime Security.⁷¹ Since this time it has facilitated further discussions to improve security arrangements for smaller vessels.⁷² Following the Tokyo Ministerial Conference on International Transport Security held between 12 and 13 January 2006,⁷³ the MSC at its 81st session in May 2006 invited submissions addressing security measures for ships falling outside the scope of SOLAS Chapter XI-2 and the ISPS Code.⁷⁴ In response to this invitation, the 82nd session of the MSC in December 2006 received submissions on security measures for ‘sub-SOLAS’ vessels from the United States,⁷⁵ Japan,⁷⁶ and the United Kingdom.⁷⁷ However several delegations criticised the US and Japanese proposals for being too prescriptive and requiring considerable resources to implement; and argued that given the wide variety of types, functions and sizes of the ‘sub-SOLAS’ vessels concerned, any future ‘sub-SOLAS’ vessel security measures should be developed as voluntary guidance rather than expanding the mandatory application of the ISPS Code.⁷⁸ At the conclusion of the 82nd session of the MSC, a

⁷¹ IMO *Consideration and Adoption of the International Ship and Port Facility Security (ISPS) Code*, Conference of Contracting Governments to the International Convention for the Safety of Life at Sea 1974, Agenda Items 7 and 8, IMO Doc SOLAS/CONF.5/34 (17 December 2002) Annex 2 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*)

⁷² For a succinct chronology of discussion on security arrangements for non-SOLAS vessels within the IMO, see IMO *Measures to Enhance Maritime Security: Enhancement of the security of ships other than those already covered by SOLAS Chapter XI-2 and the ISPS Code: Submitted by Japan* IMO MSC 82nd session, Agenda Item 4, IMO Doc MSC 82/4/5 (27 September 2006)

⁷³ See above in [4.2.2.2]

⁷⁴ IMO *Report of the Maritime Safety Committee on its Eighty-First Session* IMO MSC 81st session, Agenda Item 25, IMO Doc MSC 81/25 (24 May 2006), 5.61

⁷⁵ IMO *Measures to Enhance Maritime Security: Enhancement of the security of ships other than those already covered by SOLAS Chapter XI-2 and the ISPS Code: Submitted by the United States* IMO MSC 82nd session, Agenda Item 4, IMO Doc MSC 82/4/4 (27 September 2006) – which provided an overview of security arrangements in place within US ports for sub-SOLAS merchant vessels, and which invited other contracting governments to contribute additional suggestions for appropriate security measures for such vessels

⁷⁶ IMO *Measures to Enhance Maritime Security: Enhancement of the security of ships other than those already covered by SOLAS Chapter XI-2 and the ISPS Code: Submitted by Japan* IMO MSC 82nd session, Agenda Item 4, IMO Doc MSC 82/4/5 (27 September 2006) – which provided a list of best practice security measures for smaller ships not covered by SOLAS Chapter XI-2 and the ISPS Code to prevent attacks

⁷⁷ IMO *Measures to Enhance Maritime Security: Enhancement of the security of ships other than those already covered by SOLAS Chapter XI-2 and the ISPS Code: Submitted by the United Kingdom* IMO MSC 82nd session, Agenda Item 4, IMO Doc MSC 82/4/6 (17 October 2006) – which summarised research being conducted in the UK into technologies to protect ships against seaward attack from small craft. In another document submitted to the 82nd session of the MSC, the United Kingdom also provided some examples of security guidance for leisure craft operating on the River Thames – covering common locations for terrorists to conceal explosives aboard and within the vicinity of large vessels, and recommended security precautions for preventing terrorist attacks on vessels: IMO *Measures to Enhance Maritime Security: Security guidance for leisure craft operating on the River Thames: Submitted by United Kingdom* IMO MSC 82nd session, Agenda Item 4, IMO Doc MSC 82/INF.15 (10 October 2006)

⁷⁸ IMO *Report of the Maritime Safety Committee on its Eighty-Second Session* IMO MSC 82nd session, Agenda Item 24, IMO Doc MSC 82/24 (18 December 2006), 4.37 – 4.38

Correspondence Group was formed to further investigate appropriate security measures relating to sub-SOLAS vessels.⁷⁹

The MSC at its 83rd session in October 2007 received reports from the Correspondence Group formed at MSC 82.⁸⁰ Proposals on ‘sub-SOLAS’ vessel security were also submitted by Australia,⁸¹ Singapore (which provided a report on its Harbour Craft Security Code and Transponder System arrangements)⁸² and the United States.⁸³ Also, it was recommended that for the Correspondence Group to develop appropriate preventative security guidance for sub-SOLAS vessels in an organised manner, such guidelines should focus on and differentiate between four vessel types – namely commercial non-passenger vessels, passenger vessels, fishing vessels, and pleasure craft.⁸⁴ The MSC also recommended that sub-SOLAS vessel security guidelines should address security measures applicable to normal operations and those applicable to times and places of heightened security risk; and requested the Correspondence Group to report to MSC 85.⁸⁵

The MSC at its 85th session in December 2008 received a report from the Correspondence Group on security arrangements for sub-SOLAS.⁸⁶ Following MSC 85, the report of the

⁷⁹ IMO Report of the Maritime Safety Committee on its Eighty-Second Session IMO MSC 82nd session, Agenda Item 24, IMO Doc MSC 82/24 (18 December 2006), 4.73 – 4.75

⁸⁰ IMO Measures to Enhance Maritime Security: Enhancement of the security of ships other than those already covered by SOLAS Chapter XI-2 and the ISPS Code: Submitted by the United Kingdom as co-ordinator of the Correspondence Group IMO MSC 83rd session, Agenda Item 4, IMO Doc MSC 83/4/2 (25 July 2007)

⁸¹ IMO Measures to Enhance Maritime Security: Enhancement of the security of ships other than those already covered by SOLAS Chapter XI-2 and the ISPS Code: Submitted by Australia MSC 83rd session, Agenda Item 4, IMO Doc MSC 83/4/4 (14 August 2007) – which proposed the development of voluntary guidance to prevent thefts from or hijackings of ‘sub-SOLAS’ vessels through effective access control arrangements and the undertaking of appropriate training of vessel crews in security matters

⁸² IMO Measures to Enhance Maritime Security: The Harbour Craft Transponder System (HARTS) in the Port of Singapore: Submitted by Singapore IMO MSC 83rd session, Agenda Item 4, IMO Doc MSC 83/INF.11 (25 July 2007)

⁸³ IMO Measures to Enhance Maritime Security: Enhancement of the security of ships other than those already covered by SOLAS Chapter XI-2 and the ISPS Code: Submitted by the United States IMO MSC 83rd session, Agenda Item 4, IMO Doc MSC 83/INF.17 – which provided an overview of the US National Small Vessel Security Summit (NSVSS) held on 19 - 20 June 2007. The NSVSS resolved to establish an on-going dialogue between Government agencies and the small vessel owners and operators from the commercial and recreational community – with the findings of that event being provided for general information and available at: http://www.dhs.gov/xprevprot/programs/gc_1175627911698.shtm.

⁸⁴ Notwithstanding the reservations expressed by the delegations of Argentina, Denmark, Finland, Germany, Greece, Malta, Norway and Sweden about the inclusion of pleasure craft: IMO Report of the Maritime Safety Committee on its Eighty-Third Session IMO MSC 83rd session, Agenda Item 28, IMO Doc MSC 83/28 (26 October 2007), 4.39

⁸⁵ IMO Report of the Maritime Safety Committee on its Eighty-Third Session IMO MSC 83rd session, Agenda Item 28, IMO Doc MSC 83/28 (26 October 2007), 4.39 – 4.40

⁸⁶ IMO Measures to Enhance Maritime Security: Report of the Correspondence Group on security arrangements for vessels which do not fall within the scope of SOLAS chapter XI-2 and the ISPS Code: Submitted by Japan, the

Correspondence Group was released in the form of non-mandatory IMO security guidance for sub-SOLAS vessels – covering risk assessment, security awareness and culture, and security considerations for international voyages.⁸⁷ Three years later, at its 89th session in May 2011, the MSC noted a report from the United States regarding its release of Department of Homeland Security Small Vessel Security Implementation Plan (SVS-IP) which implemented its Small Vessel Security Strategy which had been advised to the MSC at its 84th session in May 2008. Following a formal presentation the US delegation provided copies of the SVS-IP to other delegations for their information.⁸⁸

In summary, the above IMO proceedings indicate a consensus amongst contracting governments for “sub-SOLAS” security arrangements to be addressed through the development of voluntary guidance, rather than “extending downwards” the compulsory application of the ISPS Code. The records of the proceedings of the IMO’s Maritime Safety Committee do not explicitly state the reasons for States preferring to address the limitations of the ISPS Code through voluntary guidance rather than extending its mandatory application. However as Scott points out, the most plausible explanation is that developing states may not perceive the same degree of maritime security threats as the United States and other major developed states; that they may lack the economic and technological capacity to implement advanced maritime security measures; and perceive the ISPS Code as an onerous cost which does not provide many tangible benefits.⁸⁹

[4.2.4] Inconsistent application of ISPS Code to offshore platforms

As [4.2.1] noted, the ISPS Code applies to Mobile Offshore Drilling Units (MODUs) ‘engaged on international voyages’.⁹⁰ This narrow definition excludes many MODUs that navigate only

United Kingdom and the United States IMO MSC 85th session, Agenda Item 4, IMO Doc MSC 85/4/1 (22 August 2008). The appendices of this report provided more specific guidance on examples of suspicious activity; avoidance of attacks by pirates, prevention of stowaways. The appendices also provided guidance for operators of commercial non-passenger vessels, passenger vessels, fishing vessels, pleasure craft; and for harbour, port and marina authorities

⁸⁷ IMO *Non-mandatory guidelines on security aspects of the operation of vessels which do not fall within the scope of SOLAS Chapter XI-2 and the ISPS Code* IMO Doc MSC.1/Circ.1283 (22 December 2008)

⁸⁸ IMO *Report of the Maritime Safety Committee on its Eighty-Ninth Session* IMO MSC 89th session, Agenda Item 25 IMO Doc MSC 89/25 (27 May 2011), 4.21

⁸⁹ Shirley Scott “Whose Security is it and how much of it do we want? The US influence on the International Law against Maritime Terrorism” in Natalie Klein, Joanna Mossop and Donald Rothwell (eds) *Maritime Security: International Law and Policy Perspectives from Australia and New Zealand* (Routledge, 2010), 90 - 91

⁹⁰ ISPS Code Part A, Section 3.1.1

within the waters of one coastal State, as well as many supply vessels and shuttle tankers that service offshore platforms within the waters of the same coastal State.⁹¹ The IMO has confirmed the ISPS Code does not apply to floating production, storage and offloading units (FPSOs) and floating storage and offloading units (FSOs).⁹² Whilst the non-mandatory Part B of the ISPS Code recommends that contracting governments ‘should consider establishing appropriate security measures for fixed and floating platforms and MODUs on location’,⁹³ in contrast to the extensive guidance it provides for operators of SOLAS ships and port facilities as noted in [4.2.1] above, Part B provides no further guidance on what such ‘appropriate measures’ should entail. The paucity of the ISPS Code’s guidance on preventative security arrangements for offshore platforms has been criticised by commentators – who point out that while many FSOs, FPSOs and offshore platforms operate with ISPS security plans, other offshore platforms have little or no security arrangements to maintain an awareness of vessel movements in the vicinity, and to prevent weapons or explosives being introduced onto offshore platforms – leading to inconsistent security arrangements internationally.⁹⁴ For instance, in September 2010, an offshore installation off the coast of Nigeria was attacked by insurgents utilising a vessel resembling a petroleum supply ship.⁹⁵

Similarly to the preventative security arrangements for supply chains outside the ship/port interface examined in [4.2.2], and for ‘sub-SOLAS’ vessels examined in [4.2.3], contracting governments have indicated a preference to address security arrangements for fixed and floating platforms through non-mandatory guidance, rather than extending the mandatory application of the ISPS Code. Relevantly, Resolution 7 of the December 2002 Diplomatic Conference on Maritime Security ‘encouraged’ contracting governments, when exercising their responsibilities for [MODUs] and for fixed and floating platforms operating on their Continental Shelf or within their EEZ, to ensure that any security provisions applying to such

⁹¹ Mikhail Kashubsky *Offshore Petroleum Security: Analysis of Offshore Security Threats, Target Attractiveness, and the International Legal Framework for the Protection and Security of Offshore Petroleum Installations* (PhD thesis, University of Wollongong, 2011), 284 - 285

⁹² IMO *Guidance Relating to the Implementation of SOLAS Chapter XI-2 and the ISPS Code*, IMO Doc MSC/Circ.1097 (20 August 2003), Annex 1

⁹³ ISPS Code Part B, Section 4.19

⁹⁴ Kashubsky, above n 91, 285 – 286; Rupert Herbert-Burns ‘Tankers, Specialised Production Vessels and Offshore Terminals: Vulnerability and Security in the International Maritime Oil Sector’ in Rupert Herbert-Burns, Sam Bateman and Peter Lehr (eds) *Lloyds MIU Handbook of Maritime Security* (CRC Press, 2009), 139; Lee Cordner ‘Offshore Oil and Gas Industry Security Risk Assessment: An Australian Case Study’ in Rupert Herbert-Burns, Sam Bateman and Peter Lehr (eds) *Lloyds MIU Handbook of Maritime Security* (CRC Press, 2009), 171

⁹⁵ Kashubsky, above n 91, 288

units and platforms allow interaction with those applying to ships covered by [SOLAS] Chapter XI-2, that serve, or operate in conjunction with, such units or platforms.’⁹⁶

In contrast to the extensive guidance provided to assist contracting governments and operators of SOLAS ships and port facilities in implementing the requirements and recommendations of the ISPS Code, the IMO’s activities in relation to offshore platform security have as at 1 October 2013 been very limited. The 87th session of the MSC in May 2010 approved the issuance of a non-mandatory guidance circular addressing safety, security, and environment protection considerations for FPSOs and FSUs.⁹⁷ This is the only guidance on preventative security measures for offshore platforms to have been issued by the IMO, and has been criticised for its paucity.⁹⁸ After considering how terrorists have, and could in future attack offshore platforms, [6.3.2] examines the consequences of the lack of consistent application of the ISPS Code to offshore platforms.

[4.2.5] Concerns about Ship Security Alert System arrangements

Concerns have been expressed about how the arrangements for responding to activations of Ship Security Alert Systems (SSAS)⁹⁹ might operate in practice. Timlen noted concerns amongst merchant vessel captains that when activated aboard vessels under threat of terrorist or pirate attack, SSAS might not be as effective as a silent alarm activated within premises on land.¹⁰⁰ In particular, he identified significant uncertainties regarding the division of

⁹⁶ IMO *Consideration and Adoption of the International Ship and Port Facility Security (ISPS) Code* Conference of Contracting Governments to the International Convention for the Safety of Life at Sea, 1974 Agenda Items 7 and 8, IMO Doc SOLAS/CONF.5/34 (17 December 2002) Annex 2, 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’), 8; Kashubsky, above n 91, 286 – 287

⁹⁷ IMO Guidance for the Application of Safety, Security and Environmental Protection Provisions to FPSOs and FSUs, IMO Doc MSC-MEPC.2/Circ 9 (25 May 2010)

⁹⁸ Kashubsky, above n 91, 289 - 290

⁹⁹ SSAS is mandated by SOLAS Chapter XI-2, Regulation 6. The term ‘SSAS arrangements’ here refers to the whole network of entities and actors that might be involved in the response to an SSAS alert – including but not limited to the vessel activating the SSAS alert, the authorities of the vessel’s flag state, the company operating the vessel and the authorities of nearby coastal and other states that could respond to the SSAS alert and render assistance – as opposed to the SSAS equipment aboard individual vessels

¹⁰⁰ Thomas Timlen *The Use of SOLAS Ship Security Alert Systems* Institute of Defence and Strategic Studies Working Paper No. 154 5 March 2008. On land “silent alarms” are widely used in sensitive commercial and government premises (for example banks and cash handling facilities). Personnel who are subject to threats (for example an armed hold up) are able to discretely activate a silent alarm which does not raise an audible signal, but instead notifies a security monitoring centre – which is then able to immediately arrange an appropriate response – such as the attendance by police or private security personnel to attend the scene and take appropriate actions

responsibilities and lack of coordination in responding to SSAS alerts between flag states (which are the initially recipients of SSAS alerts), and nearby coastal States (which would be the nearest to respond to SSAS alerts, although not necessarily the first to be informed),¹⁰¹ noting this could be particularly problematic in areas with contested maritime boundaries such as the South China Sea. From his review of the “responsible agency arrangements” for receiving and responding to SSAS alerts amongst fifteen flag states,¹⁰² he identified considerable variation in the number of responsible agencies and steps involved in responding to SSAS alerts.¹⁰³ Whilst details of national agencies responsible for receiving SSAS alerts from vessels flying their flags is available on the IMO website,¹⁰⁴ as [4.2.6] below explains, the IMO has expressed concerns about the timeliness of information communicated by contracting governments to it pursuant to SOLAS Regulation XI-13.4 – meaning that such information might not be entirely up to date and accurate. Timlen also noted concerns within shipping industries about verifying whether SSAS alerts are genuine alerts or false activations, leading to scepticism and complacency within maritime industries about the value of SSAS alerts - being akin to “the boy who cried wolf”.¹⁰⁵ More recently, a 2011 report submitted by the Republic of Korea to the 89th session of the MSC reported malfunction rates of around eleven per cent from a periodical survey of SSAS systems.¹⁰⁶

Timlen also noted concerns amongst merchant vessel captains regarding the actions that might be taken by nearby states after receiving an SSAS alert, including the use of force by authorities – citing one senior merchant vessel captain querying ‘*Do I dare activate the SSAS?*’¹⁰⁷ He also noted the lack of information contained within SSAS alerts, opining in relation to the 2002 attack on the MV *Limburg* ‘... considering the speed with which this attack was carried out,

¹⁰¹ There have also been concerns expressed about whether nearby coastal states are in fact **obliged** to respond to SSAS alerts

¹⁰² Including the Bahamas, China, Denmark, Greece, Hong Kong, Liberia, Malta, Marshall Islands, North Korea, Singapore, St Kitts & Nevis, the Netherlands, the United Kingdom and the United States of America

¹⁰³ Timlen, above n 100, 3 - 6

¹⁰⁴ IMO Global Integrated Shipping Information System <http://gis.imo.org/Public/ISPS/Default.aspx>

¹⁰⁵ Timlen, above n 100, 6

¹⁰⁶ IMO Measures to Enhance Maritime Security: Consideration of Periodical Survey to Ship Security Alert System (SSAS): Submitted by the Republic of Korea IMO MSC 89th Session, Agenda Item 4, IMO Doc MSC 89/4/2 (8 March 2011). This report summarised the results of 801 inspections of SSAS inspections by South Korean radio inspectors in which 87 malfunctions were identified – equating to a malfunction rate of around 11 per cent, which the ROK noted ‘was not a satisfactory figure in terms of the reliability of SSAS’. The report also noted these malfunctions were largely outside the control of ships’ personnel – and included poor reception of GPS signals; damage of main control boards for SSAS; defective connections between antenna and cable; malfunctions of SSAS connection boards; actual activation without intention; deletion of ship’s particular information; and SSAS-related systems going down after transmitting ship security alerts

¹⁰⁷ Timlen, above n 100, 6

even if there had been an SSAS installed and activated as soon as the motorboat was spotted, it is not likely that any responders could have done anything to prevent the incident'.¹⁰⁸ He proposed several refinements to the operation of SSAS systems, including accelerating the SSAS alert management process possibly through linking SSAS alerts into vessels' AIS systems in order to alert ships in the near vicinity (but as [4.3.1.2] below explains, concerns have also been raised about the likely effectiveness of AIS in the maritime security context); addressing the false alert problem; expanding the amount of information contained in SSAS alerts; also utilising other means of communications (such as audible alarms) to alert nearby authorities of threats to a ship's security; and updating the IMO guidance on piracy and armed robbery against ships to address the use of SSAS.¹⁰⁹

Refining the operation of SSAS has been on the IMO's agenda for several years. At the 81st session of the MSC in May 2006, based on reports from several European contracting governments about difficulties in identifying ships transmitting SSAS,¹¹⁰ the MSC released guidance on the information that should be included in transmitted SSAS alerts.¹¹¹ At its 82nd session in December 2006, the MSC determined that SSAS systems should be excluded from periodic examinations by radio inspectors during compulsory ship surveys to safeguard the confidentiality of the ship's ISPS Code security arrangements. Whilst the 82nd session of the MSC flagged the issue of compulsory inspections of SSAS, the MSC resolved that SSAS inspections should remain a matter for decision by contracting governments.¹¹²

Five years later, the 89th session of the MSC in May 2011 noted a report submitted by the Republic of Korea (which as noted above had reported malfunction rates of 11 per cent during a periodic survey of SSAS systems) which had proposed mandatory requirements for inspections of SSAS by radio inspectors in conjunction with the periodical ship surveys

¹⁰⁸ Timlen, above n 100, 7

¹⁰⁹ Timlen, above n 100, 20 - 22

¹¹⁰ *IMO Measures to Enhance Maritime Security: Performance Standards for the ship security alert system: Submitted by Austria, Belgium, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, the United Kingdom and by the European Commission* IMO MSC 81st session, Agenda Item 5, IMO Doc MSC 81/5/11 (27 February 2006)

¹¹¹ *IMO Guidance on the provision of information for identifying ships when transmitting ship security alerts* IMO Doc MSC.1/Circ.1190 (2 June 2006). This circular outlined the required information to include the ship's name, IMO Ship identification number, its call sign, its Maritime Mobile Service Identity, its latitudinal and longitudinal position, and the date and time of the SSAS alert

¹¹² *IMO Report of the Maritime Safety Committee on its Eighty-Second Session* IMO MSC 82nd session, Agenda Item 24, IMO Doc MSC 82/24 (18 December 2006), 4.67

required by SOLAS regulations I/7 and I/8.¹¹³ However after extensive debate,¹¹⁴ MSC 89 reaffirmed the decision made at MSC 82 in December 2006 that requirements for inspections of SSAS should remain a matter for contracting governments.¹¹⁵

In spite of the above technical problems and uncertainties relating to arrangements for coordinating responses to SSAS activations, [5.2.2.5] explains that SSAS systems have proven to be very effective in alerting nearby coalition naval forces of commercial vessels under threat of attack by pirate vessels around the Gulf of Aden since 2005. However [5.2.2.6] reasons that because maritime terrorist attacks could conceivably occur at a greater range of locations compared to the more predictable locations of where piracy is prevalent (and where there may not be naval forces accustomed to responding as rapidly as in the Gulf of Aden), SSAS should not be seen as a panacea against maritime terrorist attacks. Chapter 9 reasons there is scope for the IMO to facilitate further refinements in the coordination of response arrangements to SSAS alert activations.

[4.2.6] Challenges in assessing the actual implementation of the ISPS Code

Both before and since its entry into force on 31 July 2004, the IMO has developed and promulgated extensive guidance on measures to assist contracting governments to implement and administer the requirements and recommendations of SOLAS Chapter XI-2 and the ISPS Code.¹¹⁶ Furthermore as [5.2.2.4] explains, since 2009 the IMO has actively cooperated with

¹¹³ IMO *Measures to Enhance Maritime Security: Consideration of Periodical Survey to Ship Security Alert System (SSAS): Submitted by the Republic of Korea* IMO MSC 89th Session, Agenda Item 4, IMO Doc MSC 89/4/2 (8 March 2011)

¹¹⁴ During which views were expressed on the need for confidentiality; the diversity of SSAS equipment *vis-à-vis* the difficulty of introducing clear regulations; whether a periodic testing regime mandated by the ISPS Code was an adequate substitute for an inspection; and national regulation by the flag State as opposed to global regulation

¹¹⁵ IMO *Report of the Maritime Safety Committee on its Eighty-Ninth Session* IMO MSC 89th session, Agenda Item 25 IMO Doc MSC 89/25 (27 May 2011), 4.1.4 – 4.27

¹¹⁶ See for example IMO *Early Implementation of the Special Measures to Enhance Maritime Security* IMO Doc MSC/Circ.1067 (17 March 2003); IMO *Directives for Maritime Rescue Co-ordination Centres (MRCCs) on Acts of Violence Against Ships* IMO Doc MSC/Circ.1073 (19 June 2003); IMO *Interim Guidelines for the Authorization of RSOs Acting on Behalf of the Administration and/or Designated Authority of a Contracting Government* IMO Doc MSC/Circ.1074 (2 July 2003); IMO *Guidelines for the Implementation of SOLAS Chapter XI-2 and the ISPS Code* IMO Doc MSC/Circ.1097 (20 August 2003); IMO *Implementation of SOLAS Chapter XI-2 and the ISPS Code* IMO Doc MSC/Circ.1104 (28 January 2004); IMO *Implementation of SOLAS Chapter XI-2 and the ISPS Code Implementation of SOLAS Chapter XI-2 and the ISPS Code to Port Facilities* IMO Doc MSC/Circ.1106 (4 May 2004); IMO *False Security Alerts and Distress/Security Double Alerts* IMO Doc MSC/Circ.1109/Rev.1 (23 June 2004); IMO *Matters Related to SOLAS Regulations XI-2/6 and XI-2/7* IMO Doc MSC/Circ.1110 (23 June 2004); IMO *Shore Leave and Access to Ships under the ISPS Code* IMO Doc MSC/Circ.1112 (23 June 2004); IMO *Guidance to Masters, Companies and Duly Authorized Officers on the Requirements Relating to the Submission of Security-related Information Prior to the Entry of a Ship into Port*

the International Chamber of Shipping (ICS) to develop preventative security ‘Best Management Practices’ for commercial vessels transiting the piracy-affected waters off Somalia. However as this section explains, it is very challenging (if not impossible) to assess the extent to which ISPS Code security measures have become ingrained amongst contracting governments, ships and port facilities.

The IMO has emphasised that ‘... although a ship or a port facility may operate in accordance with an approved security plan, unless all contracting governments put in place and maintain the necessary arrangements to address all the objectives and the functional requirements of the ISPS Code, the actual level of security will not be enhanced’.¹¹⁷ Since the ISPS Code’s entry into force on 1 July 2004, whilst several short book chapters have overviewed the legislative and institutional arrangements used by a select number of contracting governments to implement the ISPS Code.¹¹⁸ In comparison to LRIT systems, in relation to which as [4.3.2.2] explains the International Mobile Satellite Organisation has an auditing function through its role as LRIT Coordinator, the IMO does not have a central oversight and auditing function for the ISPS Code.¹¹⁹ Nevertheless as outlined below, reports from port state control regimes and the IMO provide both positive and negative indications on how rigorously the ISPS Code has been implemented internationally; and the IMO has also expressed concerns regarding delays

IMO Doc MSC/Circ.1130 (12 January 2005); IMO *Guidance Relating to the Implementation of SOLAS Chapter XI-2 and of the ISPS Code* IMO Doc MSC/Circ.1132 (3 February 2005); IMO *Guidelines on Training and Certification for Company Security Officers* IMO Doc MSC/Circ.1154 (3 February 2005); IMO *Guidance on the Access of Public Authorities, Emergency Response Services and Pilots Onboard Ships to which SOLAS Chapter XI-2 and the ISPS Code Apply* IMO Doc MSC/Circ.1156 (2 June 2005); IMO *Interim Scheme for the Compliance of Certain Cargo Ships with the Special Measures to Enhance Maritime Security* IMO Doc MSC/Circ.1157 (2 June 2005); IMO *Guidance on the Message Priority and the Testing of Ship Security Alert Systems* IMO Doc MSC/Circ.1155 (6 June 2005); IMO *Guidance Relating to the Implementation of SOLAS Chapter XI-2 and the ISPS Code* IMO Doc MSC/Circ.1111 (11 August 2005); IMO *Guidance on Provision of Ship Security Alert Systems* IMO Doc MSC/Circ.1072 (11 August 2005); IMO *Guidelines on Training and Certification for Port Facility Security Officers* IMO Doc MSC.1/Circ.1188 (2 June 2006); IMO *Guidance on the Provision of Information for Identifying Ships When Transmitting Ship Security Alerts* IMO Doc MSC.1/Circ.1189 (5 June 2006); IMO *Interim Scheme for the Compliance of Special Purpose Ships with the Special Measures to Enhance Maritime Security* IMO Doc MSC.1/Circ.1190 (2 June 2006); and IMO *Further Reminder of the Obligation to Notify Flag States when Exercising Control and Compliance Measures* IMO Doc MSC.1/Circ.1191 (7 June 2006). A more recent and very comprehensive source of practical security guidance for operators of ships and port facilities was the 250 page Maritime Security Manual – Guidance for Port Facilities, Ports and Ships IMO Doc MSC 89/INF.13 (5 March 2011) Submitted by Canada

¹¹⁷ IMO Frequently Asked Questions about the ISPS Code:

<http://www.imo.org/OurWork/Security/FAQ/Pages/Maritime-Security.aspx>, Accessed 1 October 2013

¹¹⁸ See for example Joshua Ho ‘Managing Port and Ship Security in Singapore’, John Lavers ‘Canada and the ISPS Code’, Devinder Grewal ‘The ISPS Code: The Australian Experience and Perspective’, and Noor Apandi Osnin ‘ISPS Code: Implementation in Malaysia’ in Rupert Herbert-Burns, Sam Bateman and Peter Lehr (eds) *Lloyds MIU Handbook of Maritime Security* (CRC Press, 2009)

¹¹⁹ IMO Frequently Asked Questions about the ISPS

Code:<http://www.imo.org/OurWork/Security/FAQ/Pages/Maritime-Security.aspx> Accessed 1 October 2013

and inconsistencies in reports from contracting governments about their implementation of SOLAS Chapter XI-2 security measures.

Reports by regional Port State Control regimes on ship detentions for maritime security-related deficiencies since 2005 show that the proportion of such detentions has thus far been comparatively low, as depicted in Table 11 below. Whilst SOLAS Regulation XI-2/9 enables port states to exercise various control and compliance measures with respect to ships (including port state control inspections), in relation to maritime security such inspections are limited to verifying that the ship has a current ISSC; and such inspections will not normally extend to examining Ships' Security Plans except in very limited circumstances.¹²⁰ It can therefore be said that the low numbers of port state control detentions for maritime security-related deficiencies provide limited indicia about the extent to which ISPS Code security measures have been implemented and applied within SOLAS ships worldwide.

¹²⁰ SOLAS Regulation XI-2/9/1.1 'Control and compliance measures: Control of ships in port'

Table 11: Summary of Port State Control detentions of ships for maritime security-related deficiencies: 2005 - 2011

MOU	2005	2006	2007	2008	2009	2010	2011
Latin American MOU ¹²¹	569 (3.7%)	942 (5.2%)	1004 (3.9%)	774 (3.1%)	508 (2.3%)	442 (2.1%)	
West and Central African MOU ¹²²							
Black Sea MOU ¹²³	194 (0.8%)	451 (1.9%)	225 (0.9%)	410 (1.5%)	471 (2.1%)	437 (2.0%)	
Caribbean MOU ¹²⁴					2 (2.4%)	4 (0.92%)	
Indian Ocean MOU ¹²⁵	No stats	41 (0.2%)	60 (0.4%)	32 (0.2%)	59 (0.3%)	57 (0.3%)	64 (0.3%)
Mediterranean MOU ¹²⁶							
Paris MOU ¹²⁷	817 (1.3%)	735 (1.1%)	775 (1.0%)	951 (1.1%)	764 (1.0%)	865 (1.3%)	
Riyadh MOU ¹²⁸							
Tokyo MOU ¹²⁹					2011 (2.3%)	2750 (2.95%)	2933 (2.75%)

Source: Compiled by author from statistics in the annual reports of regional port state control regimes for the years between 2005 and 2011¹³⁰

Reports from the IMO MSC indicate raise concerns that whilst several contracting governments are noted to rigorously and continually monitor, test and evaluate compliance with the requirements and recommendations of SOLAS Chapter XI-2, other contracting governments (and maritime industry participants) have appeared to simply “pay lip service” to such requirements – for example, not undertaking (or falsifying) further training and testing of

¹²¹ The Latin American Agreement on Port State Control of Vessels: <http://www.acuerdolatino.int.ar/>

¹²² Memorandum of Understanding on Port State Control for the West and Central African region <http://www.abujamou.org/index.php>

¹²³ Black Sea Memorandum of Understanding on Port State Control <http://www.bsmou.org/>

¹²⁴ Caribbean Memorandum of Understanding on Port State Control <http://www.caribbeanmou.org/>

¹²⁵ Indian Ocean Memorandum of Understanding on Port State Control <http://www.iomou.org/>

¹²⁶ Regional Memorandum of Understanding on Port State Control for Mediterranean Countries <http://www.medmou.org/>

¹²⁷ Paris Memorandum of Understanding on Port State Control <http://www.parismou.org/>

¹²⁸ Riyadh Memorandum of Understanding on Port State Control <http://www.riyadhrou.org/>

¹²⁹ Memorandum of Understanding on Port State Control in the Asia-Pacific Region <http://www.tokyo-mou.org/>

¹³⁰ Table 11 depicts the yearly reported number of Port State Control (PSC) detentions for maritime security deficiencies and shows them as a percentage of total PSC detentions for each year. The areas shaded in grey depict situations where either no annual reports were from the PSC regime were available; or statistics on PSC detentions for maritime security-related deficiencies were not listed for the relevant year

Ship Security Plans, Port Facility Security Plans and ISSCs (as applicable) once these authorisations are approved and granted.

The IMO's progress report on the implementation of the ISPS Code tabled at the 79th session of the MSC on 24 September 2004¹³¹ noted considerable progress having been made, particularly in the number of training courses provided in developing regions.¹³² However this report also noted that implementation levels had varied, with the approval of Port Facility Security Plans in Africa,¹³³ Eastern Europe and the Commonwealth of Independent States¹³⁴ being slower than the global average.¹³⁵

In his opening remarks to the MSC at its 80th session in May 2005, the IMO Secretary-General noted ISPS Code security measures leading to reductions in both the number of reported thefts in security-restricted port facilities and in the number of reported stowaways since 1 July 2004. However he noted with concern indications that some contracting governments had not given full effect to all provisions of SOLAS Chapter XI-2 and the ISPS Code, and that levels of stringency in implementing, adhering to and enforcing such measures were reported to have

¹³¹ IMO *Progress report on the implementation of the special measures to enhance maritime security detailed in SOLAS chapter XI-2 and the ISPS Code: Note by the Secretariat* IMO MSC 79th Session, Agenda Item 5, IMO Doc MSC 79/5/1 Secretariat (24 September 2004). As at 1 October this has been the only formal survey by the IMO regarding the implementation of the ISPS Code internationally

¹³² The IMO's progress report noted that between April 2002 and 1 September 2004, 18 regional or sub-regional seminars/workshops on maritime security were held under the IMO's Global Technical Co-operation Programme on Maritime Security – and that by 1 September 2004, 74 national training courses/advisory missions had been organized, totalling 3,505 persons having been trained through the process.

¹³³ IMO *Progress report on the implementation of the special measures to enhance maritime security detailed in SOLAS chapter XI-2 and the ISPS Code: Note by the Secretariat* IMO MSC 79th Session, Agenda Item 5, IMO Doc MSC 79/5/1 Secretariat (24 September 2004) Annexure 2 (*Status of Implementation by Geographical Regions*) noted that of the 30 African states which were SOLAS Contracting Governments, 17 (56.7 per cent) had approved Port Facility Security Plans

¹³⁴ IMO *Progress report on the implementation of the special measures to enhance maritime security detailed in SOLAS chapter XI-2 and the ISPS Code: Note by the Secretariat* IMO MSC 79th Session, Agenda Item 5, IMO Doc MSC 79/5/1 Secretariat (24 September 2004) at Annexure 2 (*Status of Implementation by Geographical Regions*) noted that of the 19 Eastern European and Commonwealth of Independent States which were SOLAS Contracting Governments, 12 (52.6 per cent) had approved Port Facility Security Plans

¹³⁵ IMO *Progress report on the implementation of the special measures to enhance maritime security detailed in SOLAS chapter XI-2 and the ISPS Code: Note by the Secretariat* IMO MSC 79th Session, Agenda Item 5, IMO Doc MSC 79/5/1 Secretariat (24 September 2004) at Annexure 2 (*Status of Implementation by Geographical Regions*) noted that of the percentages of Port Facility Security Plans approved in other regions were: Arabian and Mediterranean region (90.9 per cent), Asian and Pacific region (87.1 per cent), Latin American and Caribbean regions (93.3 per cent), North and West Europe (84.2 per cent), and North America (100 per cent). A later report indicated that at 21 January 2005, almost 94 per cent of Contracting Governments to the SOLAS Convention had approved security plans for 97 per cent of declared port facilities – with estimates of more than 9,600 ports being ISPS Code-compliant; and as at 6 August 2004, more than 90 per cent of vessels subject to the ISPS Code had been issued with International Ship Security Certificates

been relaxed in some instances. He concluded by urging all contracting governments to take any necessary corrective actions without delay.¹³⁶

The 81st session of the MSC in May 2006 received reports from the International Chamber of Shipping (ICS)¹³⁷ and the International Confederation of Free Trade Unions,¹³⁸ as well as several written and verbal reports from contracting governments about the failures of port and coastal states to notify the flag state when exercising control and compliance measures – thus raising serious concerns about the implementation of SOLAS Chapter XI-2 internationally.¹³⁹ Immediately following MSC 81, the MSC issued Circular 1194,¹⁴⁰ which formally acknowledged these concerns¹⁴¹ and urged contracting governments, if they had not already done so (almost two years after the entry into force of the ISPS Code), to establish appropriate national oversight programmes for ensuring compliance with SOLAS Chapter XI-2 and the ISPS Code.¹⁴²

¹³⁶ IMO Report of the Maritime Safety Committee on its Eightieth Session, IMO MSC 80th Session, Agenda Item 24, IMO Doc MSC 80/24 (24 May 2005), 5.4

¹³⁷ IMO Measures to Enhance Maritime Security: The effective implementation of SOLAS Chapter XI-2 and the ISPS Code: Submitted by the International Chamber of Shipping IMO MSC 81st Session, Agenda Item 5, IMO Doc MSC 81/5/15 (22 March 2006), which noted concerns about several port facilities internationally lacked fundamental security measures such as adequate lighting and access controls. It also noted concerns about Port Facility Security Officers being absent from port facilities and failing to respond to calls for assistance from ships under attack by armed robbers

¹³⁸ IMO Measures to Enhance Maritime Security: The effective implementation of SOLAS Chapter XI-2 and the ISPS Code: Submitted by the International Confederation of Free Trade Unions IMO MSC 81st Session, Agenda Item 5, IMO Doc MSC 81/5/8 (14 February 2006). Based on surveys of unions representing around 700,000 seafarers, this report noted that 58 per cent of respondents (70 per cent for Filipino respondents) had reportedly been denied access to shore leave after long voyages – with many seafarers feeling they had been looked upon as “potential terrorists”

¹³⁹ IMO Report of the Maritime Safety Committee on its Eighty-First Session IMO MSC 81st session, Agenda Item 25, IMO Doc MSC 81/25 (24 May 2006), 5.69

¹⁴⁰ IMO Effective Implementation of SOLAS Chapter XI-2 and the ISPS Code IMO Doc MSC.1/Circ.1194 (30 May 2006)

¹⁴¹ The concerns noted in Circular 1194 included: lax or non-existent security measures in some port facilities; continuing difficulties faced by seafarers in accessing ships and shore leave; officials in several contracting governments disregarding access control requirements on board ships subject to the ISPS Code; contracting governments failing to notify flag states when exercising control measures against ships under SOLAS regulation XI-2/9; and contracting governments providing incomplete, outdated or inaccurate information to the IMO for inclusion on the IMO’s Global Integrated Shipping Information System, pursuant to SOLAS regulation XI-2/13 (Communication of information)

¹⁴² IMO Effective Implementation of SOLAS Chapter XI-2 and the ISPS Code IMO Doc MSC.1/Circ.1194 (30 May 2006) Annex (Guidance on basic elements of national oversight programmes for SOLAS Chapter XI-2 and the ISPS Code) – which urged that national oversight programmes should ensure that contracting governments meet their obligations under SOLAS Chapter XI-2 and the ISPS Code; verify that their ships and port facilities comply with the ISPS Code and continually apply their approved security plans; ensure their officials conduct themselves in a manner conducive to the aims and objectives of the ISPS Code; and promptly take appropriate corrective actions in relation to non-compliance with the ISPS Code.

The MSC at its 81st session in May 2006 also approved the release of two circulars providing guidance for contracting governments and operators of SOLAS ships and port facilities to undertake voluntary self-assessments of their preventative security arrangements for ships¹⁴³ and port facilities¹⁴⁴ through detailed questionnaires.¹⁴⁵ These questionnaires asked contracting governments about their arrangements for implementing and ensuring compliance with SOLAS Chapter XI-2 and the ISPS Code;¹⁴⁶ arrangements for the conduct, approval and re-assessment of Port Facility and Ship Security Assessments and Port Facility and Ship Security Plans;¹⁴⁷ arrangements for setting and communicating changes to security levels to ships and port facilities;¹⁴⁸ and (if applicable) delegation of tasks and duties to Recognised Security Organisations.¹⁴⁹ More detailed questions were included for operators of SOLAS ships and port facilities.¹⁵⁰ Although SOLAS Regulation XI-2/13 does not require contracting governments to report compliance with the ISPS Code by ships flying their flag, these two circulars invited contracting governments to report the results of the experience gained from the use of these circulars in assessing their maritime security arrangements to the IMO MSC. However, as outlined below, responses to these invitations by contracting governments have thus far been quite scant.

¹⁴³ IMO *Guidance on Voluntary Self-Assessment by Administrations and for Ship Security* IMO Doc MSC.1/Circ.1193 (30 May 2006)

¹⁴⁴ IMO *Guidance on Voluntary Self-Assessment by SOLAS Contracting Governments and by Port Facilities* IMO Doc MSC.1/Circ.1192 (30 May 2006)

¹⁴⁵ As the content of these questions was largely similar in both IMO MSC Circulars – with some minor differences between the questions applicable to ships in MSC.1/Circ 1193 and to port facilities in MSC.1/Circ 1192 - for the sake of brevity the summaries of these questions has been combined generically here

¹⁴⁶ Including details of Designated Authorities, national implementing legislation, guidance to industries, means of communication with ships, shipping companies and port facilities regarding ISPS Code implementation, processes in place to document initial and subsequent compliance, the designation of points of contact for ships to request assistance and report security incidents, guidance provided to officials for exercising control and compliance measures against ships, the adopted definition a Port Facility, details of bilateral or multilateral agreements with other Contracting Governments on alternative security agreements, port facilities authorised to implement equivalent security arrangements, and the arrangements for notifying and updating the IMO with information in accordance with SOLAS regulation XI-2/13

¹⁴⁷ And also the measures in place for safeguarding against their unauthorised access and disclosure

¹⁴⁸ And also the designated contact points and procedures for receiving ships' security level information in the Contracting Government, and for notifying ships of contact details, and the procedures used to determine when a Declaration of Security is required, and the minimum timeframe that a Declaration of Security is required to be retained

¹⁴⁹ Including the oversight measures in place to ensure the integrity and independence of such organisations

¹⁵⁰ Including organisational arrangements for ensuring the performance of security duties; access control arrangements; arrangements for monitoring the areas surrounding port facilities and ships – and also restricted areas within port facilities; arrangements for controlling the embarkation of persons and their effects to and from ships; arrangements for the supervision of the handling of cargo and ship's stores; ensuring the effectiveness and protection of security communication equipment and procedures; and the conduct of training, drills and exercises

The MSC at its 86th session in June 2009 received two positive reports in response to the invitations in MSC Circulars 1192 and 1193 from the Islamic Republic of Iran¹⁵¹ and from Singapore.¹⁵² Several contracting governments welcomed these reports, with some delegations providing verbal reports on actions taken to implement the requirements and recommendations of SOLAS Chapter XI-2 and the ISPS Code.¹⁵³

The 87th session of the MSC in May 2010 received a report from Colombia¹⁵⁴ on the outcomes of the 2009 *Third Latin American Forum on Maritime and Port Security*. This forum had examined issues arising in the region after five years' implementation the ISPS Code, and consensus was reached about the importance of continuing to ensure the requirements and recommendations of the ISPS Code were continually and actively implemented.¹⁵⁵ Members of the Spanish delegation who had attended the Latin American Forum emphasized the importance of continually ensuring the training of port facility personnel in security matters.¹⁵⁶ MSC 87 also received a verbal report by the observer from the African Union (AU) – who advised that the last meeting of the AU held in Durban in April 2010 had adopted an updated

¹⁵¹ *IMO Measures to enhance maritime security: A brief report on how the ISPS Code has been implemented – Measures taken to enhance security policies and activities: Submitted by the Islamic Republic of Iran* MSC 86th Session, Agenda Item 4, IMO Doc MSC 86/4/1 (11 March 2009) – which reported no security incidents had occurred in Iran's ports or territorial waters; that ISPS Code security measures had not adversely affected the smooth operation of its ports; and that it was ready to share its experiences with other contracting governments. Iran also advised it had used MSC.1/Circ.1192 and MSC.1/Circ.1194 to tailor security assessment tools to meet its national requirements

¹⁵² *IMO Measures to enhance maritime security: Guidance on port facility security audits: Submitted by Singapore* MSC 86th Session, Agenda Item 4, IMO Doc MSC 86/4/4, (1 April 2009), 1 – 7. Singapore reported it had actively participated in multilateral and bilateral capacity building programmes to share expertise and contribute to technical assistance – including to the APEC ISPS Code Assistance Programme and contributing to maritime security-related courses in Cambodia, Myanmar, the Philippines and Thailand under Japan's Maritime Transport Security Programme for ASEAN countries. Singapore was also the first international port to participate in the US Coast Guard's International Port Security Programme, which sought to share best practices; and advised Singapore was prepared to further share its experience and exchange of ideas with other contracting governments to enhancement maritime security internationally

¹⁵³ *IMO Report of the Maritime Safety Committee on its Eighty-Sixth Session* IMO MSC 86th Session, Agenda Item 26, IMO Doc MSC 86/26 (12 June 2009), 4.5

¹⁵⁴ *IMO Measures to Enhance Maritime Security: Report of the Third Latin American Forum on Maritime and Port Security: Submitted by Colombia* IMO MSC 87th Session, Agenda Item 4, IMO Doc MSC 87/4/1 (18 January 2010)

¹⁵⁵ This forum was held in Cartagena de Indias, Colombia, from 28 to 30 September 2009, and was attended by over 300 registered participants from Argentina, Brazil, Costa Rica, Ecuador, Guatemala, Mexico, Panama, Paraguay, Peru, the United States, Uruguay, Venezuela and Colombia – including representatives of port and shipping concerns and private security companies; training bodies in the maritime and ports sector and the security world; merchant marine officers; and representatives of civil protection bodies, port service providers and security technology providers: *IMO Report of the Maritime Safety Committee on its Eighty-Seventh Session* IMO MSC 87th Session, Agenda Item 26, IMO Doc MSC 87/26 (25 May 2010), 4.11

¹⁵⁶ *IMO Report of the Maritime Safety Committee on its Eighty-Seventh Session* IMO MSC 87th Session, Agenda Item 26, IMO Doc MSC 87/26 (25 May 2010), 4.12

African Charter on Maritime Transport, and had resolved to increase efforts to ensure maritime safety and security in waters off the coast of Africa.¹⁵⁷

The 88th session of the MSC in December 2010 noted with concern the absence of responses from contracting governments to the self-assessment guidance and questionnaires released at MSC 86 in June 2009.¹⁵⁸ The 89th session of the MSC in May 2011 received a report from the Republic of Korea,¹⁵⁹ and at its 90th session in May 2012, the MSC received a report from Australia.¹⁶⁰ Aside from these submissions, and despite repeated urgings from the MSC for contracting governments to submit responses at MSC 86,¹⁶¹ MSC 88,¹⁶² MSC 89¹⁶³ and MSC 90,¹⁶⁴ it remains to be seen whether contracting governments will respond to the IMO's repeated invitations to report on their voluntary self-assessments of their maritime security arrangements.

The IMO has also expressed concerns regarding the slowness of many contracting governments to communicate updated information about Port Facility Security Plans as required by SOLAS Regulation XI-2/13.4.¹⁶⁵ For instance, the MSC at its 87th session in May 2010 noted with concern that an audit by the IMO Secretariat of port facility security information in the IMO's Global Integrated Shipping Information System (GISIS) had found that less than 50 out of 159 contracting governments had advised the IMO about updates to port facility security plans since

¹⁵⁷ IMO *Report of the Maritime Safety Committee on its Eighty-Seventh Session* IMO MSC 87th Session, Agenda Item 26, IMO Doc MSC 87/26 (25 May 2010), 4.13

¹⁵⁸ As noted in Notes 143 and 144 above, these were IMO *Guidance on Voluntary Self-Assessment by Administrations and for Ship Security* IMO Doc MSC.1/Circ.1193 (30 May 2006) and IMO *Guidance on Voluntary Self-Assessment by SOLAS Contracting Governments and by Port Facilities* IMO Doc MSC.1/Circ.1192 (30 May 2006): Noted in IMO *Report of the Maritime Safety Committee on its Eighty-Sixth Session* IMO MSC 86th Session, Agenda Item 26, IMO Doc MSC 88/26 (25 December 2010), 4.23

¹⁵⁹ IMO *Measures to enhance maritime security: Implementation of the ISPS Code: Submitted by the Republic of Korea* IMO MSC 89th Session, Agenda Item 4, IMO Doc MSC 89/4/3 (27 May 2011), 4.19

¹⁶⁰ IMO *Measures to enhance maritime security: Australia's implementation of the ISPS Code*; Submitted by Australia IMO MSC 90th Session, Agenda Item 4, IMO Doc MSC 90/4/1 (29 February 2012)

¹⁶¹ IMO *Report of the Maritime Safety Committee on its Eighty-Sixth Session* IMO MSC 86th Session, Agenda Item 26, IMO Doc MSC 86/26 (12 June 2009), 4.9

¹⁶² IMO *Report of the Maritime Safety Committee on its Eighty-Sixth Session* IMO MSC 86th Session, Agenda Item 26, IMO Doc MSC 88/26 (25 December 2010), 4.24

¹⁶³ IMO *Report of the Maritime Safety Committee on its Eighty-Ninth Session* IMO MSC 89th session, Agenda Item 25 IMO Doc MSC 89/25 (27 May 2011), 4.18

¹⁶⁴ IMO *Report of the Maritime Safety Committee on its Ninetieth Session* IMO MSC 90th session, Agenda Item 28, IMO Doc MSC 90/28 (31 May 2012), 4.4

¹⁶⁵ SOLAS Regulation XI-2/13.4 - which states that 'Contracting Governments shall, at five year intervals after 1 July 2004, communicate to the Organisation a revised and updated list showing all the approved port facility security plans for the port facilities located within their territory together with the location or locations covered by each approved port facility security plan and the corresponding date of approval (and the date of approval or any amendments thereto) which will supersede and replace all information communicated to the Organisation pursuant to paragraph 3, during the preceding five years'.

1 April 2009; and that many contracting governments had not advised updates such as changes to the national authorities and/or individuals responsible for ship and port facility security.¹⁶⁶ A year later, the 89th session of the MSC in May 2011 noted a similar review by the IMO Secretariat finding that for a significant proportion of port facilities subject to the ISPS Code, updates on security plans had not been advised to the IMO since initial port facility security plans were approved prior to 1 July 2004.¹⁶⁷ Similar concerns were noted by the MSC at its 91st session in December 2013,¹⁶⁸ and its 92nd session in June 2013.¹⁶⁹ These repeated urgings by the IMO for contracting governments to ensure the provision of accurate and timely information about their maritime security arrangements, nearly ten years after the ISPS Code's entry into force, call into question the extent to which SOLAS Chapter XI-2 and the ISPS Code have become accepted internationally amongst contracting governments.

[4.2.7] Prospects for the ISPS Code to prevent maritime terrorism incidents: Best case / worst case scenarios factors

Whilst SOLAS Chapter XI-2 and the ISPS Code have put in place an internationally consistent security risk management framework since its entry into force in July 2004, this framework is not a perfect one without limitations. As [4.2.2] to [4.2.5] explained, since the ISPS Code's entry into force in July 2004, contracting governments have preferred to address the recognised limitations of the ISPS Code through developing voluntary guidance rather than extending its mandatory application. Whilst [4.2.6] noted several positive reports about the implementation of the ISPS Code by contracting governments, it also identified several concerns being expressed within the IMO – particularly regarding delays and inconsistencies in the provision of up-to-date information by contracting governments about maritime security arrangements to the IMO, and low response rates by contracting governments to voluntary self-assessment questionnaires about their experiences in implementing ISPS Code security arrangements. These considerations make it very challenging (if not impossible) to make an overall assessment about the extent to which the security measures mandated and recommended by

¹⁶⁶ IMO Report of the Maritime Safety Committee on its Eighty-Seventh Session IMO MSC 87th Session, Agenda Item 26, IMO Doc MSC 87/26 (25 May 2010), 4.5

¹⁶⁷ IMO Report of the Maritime Safety Committee on its Eighty-Ninth Session IMO MSC 89th session, Agenda Item 25 IMO Doc MSC 89/25 (27 May 2011), 4.6

¹⁶⁸ IMO Report of the Maritime Safety Committee on its Ninety-First Session IMO MSC 91st session, Agenda Item 22 IMO Doc MSC 91/22 (17 December 2012), 4.1

¹⁶⁹ IMO Report of the Maritime Safety Committee on its Ninety-Second Session IMO MSC 92nd session, Agenda Item 26 IMO Doc MSC 92/26 (30 June 2013), 4.1

the ISPS Code have become genuinely accepted amongst contracting governments and within maritime industries.

Nevertheless, taking account of the observations made in [4.2.2] to [4.2.6], it is possible to identify six generalised factors which will influence the likelihood of “best case” and “worst case” scenarios of the SOLAS Chapter XI-2 and ISPS Code security measures lessening the scope for the occurrence of maritime terrorism incidents.

The **first factor** would be the size and type of vessel involved in a maritime terrorism incident. A “**best case**” **scenario** could be more likely to apply if larger vessels subject to the ISPS Code preventative security requirements¹⁷⁰ were targeted (examined in Chapter 5); utilised for perpetrating one or more of the dangerous or disruptive actions examined in Chapter 6; or being used as a means of enabling the perpetration of subsequent terrorist attacks on land (examined in Chapter 7). By contrast a “**worst case**” **scenario** could be more likely to apply if smaller vessels (particularly fishing vessels) not subject to the ISPS Code preventative security requirements were involved. Chapters 5, 6 and 7 discuss the extent to which large and small vessels have been either targeted or utilised by terrorists.

The **second factor** would be whether terrorists controlled the vessel involved in a maritime terrorism incident in the first instance. A “**best case**” **scenario** could be more likely to apply if terrorists did not have either complete or partial control¹⁷¹ over vessels in the first instance that were either being targeted (examined in Chapter 5); being utilised for perpetrating one or more of the dangerous or disruptive actions examined in Chapter 6; or as a means of enabling the perpetration of subsequent terrorist attacks on land (examined in Chapter 7). For instance, if terrorists sought to hijack a large vessel and then utilise to perpetrate dangerous or disruptive acts examined in Chapter 6, rigorously-implemented security measures (discussed in the third point below) could lessen the scope for hijacking attempts to succeed. Conversely a “**worst case**” **scenario** would clearly apply if terrorists had control over the vessel in the first instance.

The **third factor** would be the rigour of the application of the security measures mandated and recommended by the ISPS Code by the SOLAS ships and other entities interfacing with it,

¹⁷⁰ Or other maritime security arrangements as required by contracting governments

¹⁷¹ For instance a sympathiser within the ship’s crew

including port facility operators, and government authorities.¹⁷² Compared to the “vessel interdiction provisions” of UNCLOS and the 2005 SUA Conventions (examined in Chapters 6 and 7), which are only exercised by the authorities of States when necessary to interdict vessels, as explained in [4.2.1], as a risk management framework, the ISPS Code measures need to be implemented and maintained continuously - not just at the times when Ship and Port Facility Security Plans are audited and approved.

On the basis of his maritime industry experience and discussions with ship owners and crews, Murphy explains that ‘ ... it is likely that ISPS will only succeed if owners and managers in the ship and port industries are convinced that the increased costs will either yield commercial benefits or be borne equally by competitors, not just in their own countries but around the globe. *It will also succeed only once an active, day-to-day commitment to security has been accepted, and demonstrated, by seamen and port workers at all levels, whatever their training and background.* Results to date have therefore been patchy but progress is being made’.¹⁷³ [Emphasis added]

Along similar lines, Jones noted anecdotal evidence of many Ship Security Plans having been applied in an “off the shelf” manner, rather than being carefully tailored to address the characteristics of individual ships. He also noted reports of complacency about security developing after Ship Security Plans have been approved – with these two factors resulting in a tendency towards a “box-ticking” compliance mentality towards maritime security matters.¹⁷⁴ When considered in light of the negative indications about the ISPS Code’s implementation in [4.2.6], and the fact that ISPS Code security arrangements remain confidential for security reasons, such anecdotal evidence may well be the best “indicator” of the extent to which the ISPS Code security measures and recommendations may be applied “at the coalfaces” of maritime industries – that is ships and port facilities which could be subject to terrorist targeting and/or utilisation. Taking account of the above observations, Table 12 below formulates several generalised factors likely to influence whether a “best case” or “worst case” scenario of ISPS

¹⁷² Particularly designated authorities and Recognised Security Organisations

¹⁷³ Martin Murphy *Small Boats, Weak States and Dirty Money: Piracy and Maritime Terrorism in the Modern World* (Hurst & Company 2009), 193

¹⁷⁴ Steven Jones ‘Implications and Effects of Maritime Security on the Operation and Management of Merchant Vessels’ in Rupert Herbert-Burns, Sam Bateman and Peter Lehr (eds) *Lloyds MIU Handbook of Maritime Security* (CRC Press, 2009), 95 – 96 and 104 - 108

Code security measures would be more likely to apply and therefore lessen the scope for the occurrence of maritime terrorism incidents.

Table 12: “Best case” / “Worst case” scenarios: Rigour of implementation

Rigorous implementation: Best case scenario	Non-rigorous implementation: Worst case scenario
Well thought out / researched	Hastily drawn up
Customised	Applied “off the shelf”
All personnel having effective training	Brief / superficial training
Well / regularly rehearsed	Complacency
Genuinely accepted	Regarded as a burden
Understood by all crew etc	Not understood / only understood by a few
Access to ship / port continually controlled	Access to ship / port lax
Consistency between all relevant entities	Variations between relevant entities
Communication between all entities	Lack of communication between relevant entities
Vigilance	Inattentiveness
Comprehensively audited by authorities	Treated as a “box-ticking” exercise
Continuously evaluated and adjusted if needed	Remaining static

To illustrate the above points, a large ship in which preventative security measures were genuinely accepted and well-rehearsed, and where the crew maintained a vigilant awareness of vessel movements in the vicinity would be more likely to identify (and possibly evade) a vessel-based terrorist attack. Conversely in a large ship where such measures were not well-accepted and rehearsed, the chances of evading such attacks might well be decreased. Similarly, rigorous access controls within both port facilities and aboard vessels could decrease the scope for terrorists to smuggle weaponry or operatives onto a vessel to be transported to another location to enable subsequent terrorist attacks; whereas lax access controls might increase the scope for such utilisations of vessels.

The **fourth factor** would be whether a maritime terrorism incident involved an entity subject to the ISPS Code - such as a security-regulated port facility or offshore platform. Chapter 5 considers “best case” scenarios of vessels being targeted by terrorists from inside security-controlled port facilities or controlled land areas; and “worst case” scenarios where attacks were launched from outside these controlled confines as being less “preventable”. Chapter 7 considers best case scenarios where terrorists might seek to transfer weaponry or terrorist-connected persons within a regulated port facility; and worst case scenarios where terrorists might seek to do so outside the “ship/port interface”; or at even clandestinely at sea.

The **fifth factor** would be the form of a maritime terrorist attack. A “**best case**” scenario would be more likely to apply where terrorists launched a “more manageable” form of attack such as a “negotiable” hostage-taking. However as Chapters 2 and 3 explained, such attacks are not characteristic of contemporary terrorism – with Chapter 5 showing such tactics being more characteristic of attacks by pre-contemporary terrorist groups and by pirates. Conversely a “**worst case**” scenario would be more likely to apply where terrorists launched a “more challenging” forms of attack – involving either an overwhelming amount of force such using an explosives-laden small boat in a suicide attack as in the USS *Cole* and MV *Limburg* bombings discussed in [3.3]; or if they utilised unconventional forms of attack such as ramming an aircraft into a target vessel.

The **sixth factor** would be the effectiveness of government oversight and response capabilities. A key factor would be the coordination of SSAS¹⁷⁵ arrangements – with [4.2.5] noting several concerns regarding how these arrangements might function in the event of a maritime terrorist attack. A “best case” scenario would be more likely to apply where an SSAS alert was actioned immediately by the threatened vessel’s flag state, and/or where authorities in the vicinity of the threatened vessel’s vicinity were able to promptly render assistance. Conversely a “worst case” scenario would be more likely to apply where an SSAS alert was not actioned immediately by the threatened vessel’s flag state, and/or where authorities in the vicinity of the threatened vessel’s vicinity were not able to promptly render assistance. Other measures that could influence the effectiveness of such measures would be the timeliness and accuracy with which changes to security levels were promulgated to ships and port facilities by the authorities of contracting governments;¹⁷⁶ control over vessel movements in sensitive areas such as in proximity to major ports; and the ability of law enforcement or naval forces to render assistance to vessels under threat of attack in a timely manner. After reviewing how the various forms of maritime terrorism have previously occurred, and might occur in future, Chapters 5, 6 and 7 apply the above best and worst case factors to analysing the prospects for ISPS Code security measures to prevent maritime terrorism incidents.

¹⁷⁵ Ship Security Alert Systems: SOLAS Chapter XI-2, Regulation 6

¹⁷⁶ SOLAS Chapter XI-2, Regulation 7

[4.3] SOLAS CHAPTER V VESSEL IDENTIFICATION AND TRACKING MEASURES

This section analyses the prospects for the AIS and LRIT regulations under Chapter V of SOLAS to lessen the scope for terrorists to target and/or utilise vessels through facilitating the identification and tracking of vessel movements – over short ranges in the case of AIS, and long-ranges in the case of LRIT. The section focuses on examining developments relating to these requirements since their entry into force.

[4.3.1] Automatic Identification Systems

Since 31 December 2004, all ships over 300 gross tonnes engaged on international voyages, cargo ships over 500 gross tonnes not engaged on international voyages, and all passenger ships irrespective of size have been required to be equipped with Automatic Identification Systems (AIS).¹⁷⁷ AIS must be capable of automatically providing information about the ship's identity, type, position, course, speed, navigational status to other safety-related information to appropriately equipped shore stations, other ships and aircraft; receive such information automatically from similarly fitted ships and monitor and track other shipping movements; and exchange data with shore-based facilities.¹⁷⁸

The IMO has explained that the intent of AIS (which is estimated to apply to around 40,000 ships) is to lessen the scope for vessel collisions through facilitating automatic transmissions of ships' navigational information at regular intervals – including the identification of vessels, the tracking of targets and reducing the necessity for the verbal exchange of navigational information – thereby improving situational awareness.¹⁷⁹ Whilst SOLAS Chapter V Regulation 19 requires AIS to be in operation when ships are underway or at anchor, the IMO has acknowledged if ships' masters believe the operation of AIS might compromise the safety or security of the ship (for instance in areas where pirates and armed robbers are known to operate), the AIS may be switched off.¹⁸⁰

¹⁷⁷ SOLAS Chapter V, Regulation 19/2.4, para .1 - .4

¹⁷⁸ SOLAS Chapter V, Regulation 19/2.4, para .5

¹⁷⁹ IMO *Guidelines for the Onboard Operational Use of Shipborne Automatic Identification Systems (AIS)*, A 22/Res.917, 22nd Session, Agenda Item 9, IMO Doc A 22/Res.917 (25 January 2002), 4

¹⁸⁰ IMO *Guidelines for the Onboard Operational Use of Shipborne Automatic Identification Systems (AIS)*, A 22/Res.917, 22nd Session, Agenda Item 9, IMO Doc A 22/Res.917 (25 January 2002), 21

Whilst reducing the scope for vessel collisions, several shortcomings of AIS within the maritime security context have been identified. These include the limited range of AIS systems; the less than universal implementation of AIS (meaning that AIS cannot facilitate the identification of all large commercial vessels); the potential for AIS system malfunctions to lead to the transmission of incorrect and/or misleading information; the less than complete coverage of AIS in certain parts of the world; and the possibility that AIS may contribute to the “information overload” affecting ship's bridge teams.¹⁸¹

However the most significant identified shortcoming of AIS is the free availability and accessibility of AIS information – given that AIS signals are broadcast and able to be received by anyone with an appropriate receiver (which are commercially available for a few hundred dollars), and with AIS data having been commonly accessible via the internet. This has raised concerns about pirate and maritime terrorist groups monitoring AIS transmissions in order to track and select vessels to target.¹⁸² Anecdotal evidence indicates these concerns have prompted numerous ships’ masters to deactivate their AIS transmitters within maritime areas of known pirate activity.¹⁸³

These concerns have been acknowledged by the IMO’s MSC – which at its 79th session in December 2004 condemned the publication of AIS data on the internet, urged contracting governments to discourage such practices, and also urged masters of vessels not to deactivate their AIS transponders due to such concerns.¹⁸⁴ However almost five years later the 86th session of the MSC in June 2009 noted there had been no clear evidence of Somali pirate groups having utilised AIS to target ships in that no arrested pirate vessels had been found to be equipped with AIS receivers.¹⁸⁵ This may have influenced the recommendation within counter-piracy guidance (discussed in [5.2.2]) that vessel masters should not deactivate their AIS transponders

¹⁸¹ Martin Murphy ‘Lifeline or Pipedream? Origins, Purposes and Benefits of Automatic Identification Systems, Long Range Identification and Tracking, and Maritime Domain Awareness’ in Rupert Herbert-Burns, Sam Bateman and Peter Lehr (eds) *Lloyds MIU Handbook of Maritime Security* (CRC Press, 2009), 16 - 17

¹⁸² Murphy, above n 181, 16

¹⁸³ Murphy, above n 181, 16

¹⁸⁴ *IMO Report of the Maritime Safety Committee on its Seventy-Ninth Session* IMO MSC 79th Session, Agenda Item 263 IMO Doc MSC 79/23 (15 December 2004), 5.99; re-affirmed at MSC 86: *IMO Report of the Maritime Safety Committee on its Eighty-Sixth Session* IMO MSC 86th Session, Agenda Item 26, IMO Doc MSC 86/26 (12 June 2009), 18.44 – 18.47

¹⁸⁵ *Report of the Maritime Safety Committee on its Eighty-Sixth Session* IMO MSC 86th Session, Agenda Item 26, IMO Doc MSC 86/26 (12 June 2009), 18.48

while transiting the High Risk Area.¹⁸⁶ However in light of the reasoning in Chapter 3 that in comparison to localised pirate groups, terrorists might attack at a wider range of locations, and carefully plan attacks on vessels, the shortcomings of AIS noted above cannot be ignored. Chapters 5 and 6 consider how AIS might function in practice in providing advanced warning of maritime terrorist attacks, and Chapter 9 argues that the IMO should continue to actively facilitate international efforts to further address the concerns noted above about AIS in the maritime security context.

[4.3.2] Long Range Identification and Tracking

The 2002 IMO Diplomatic Conference on Maritime Security resolved to develop measures to enable the long range and tracking (LRIT) of ships in order to complement the preventative security measures introduced by the ISPS Code.¹⁸⁷ Following extensive negotiations within the IMO, provisions to mandate the LRIT of larger ships engaged on international voyages were introduced into SOLAS through Chapter V Regulation 19-1, with these provisions being unanimously adopted by the MSC at its 81st session in May 2006.¹⁸⁸

SOLAS Chapter V Regulation 19-1 applies to specified ships engaged on international voyages¹⁸⁹ and mobile offshore drilling units¹⁹⁰ - which are required to transmit specified 'LRIT information' about the ship. Such LRIT information (which must be able to be received by the ship's flag state) includes the ship's identity, its latitudinal and longitudinal location, and the date and time of the position reported¹⁹¹ anywhere in the world;¹⁹² by contracting

¹⁸⁶ IMO *Piracy and Armed Robbery Against Ships in Waters off the Coast of Somalia: Best Management Practices for Protection against Somalia-based Piracy* IMO Doc MSC.1/Circ.1339 (14 September 2011), Annex 2, 7.3

¹⁸⁷ IMO Conference Resolution 3, Further Work by the International Maritime Organisation Pertaining to the enhancement of maritime security, adopted on 12 December 2002, para 2 in the Conference of Contracting Governments to the International Convention for the Safety of Life at Sea, 1972, Agenda items 7 and 8, SOLAS/CONF.5/34, Consideration and adoption of the International Ship and Port Facility Security Code, Consideration and adoption of the resolutions and recommendations and related matters, SOLAS/CONF.5/34, 17 December 2012. Cited in Martin Tsamenyi and Mary-Ann Palma 'Legal Considerations in the Implementation of Long-range Identification and Tracking Systems for Vessels' (2007) 13 *Journal of International Maritime Law* 42 - 43

¹⁸⁸ IMO *Report of the Maritime Safety Committee on its Eighty-First Session* IMO MSC 81st session, Agenda Item 25, IMO Doc MSC 81/25 (24 May 2006), Annex 2

¹⁸⁹ Which include passenger vessels, including high speed craft; and cargo ships, including high speed craft, of 300 gross tonnage and upwards: SOLAS Chapter V Regulation 19-1/2.1 .1 and .2

¹⁹⁰ SOLAS Chapter V Regulation 19-1/2.1/.3

¹⁹¹ SOLAS Chapter V Regulation 19-1/5

¹⁹² SOLAS Chapter V Regulation 19-1/8.1/.1 – provided the ship is not located within waters landward of the baselines of another SOLAS Contracting Government

governments for ships that have indicated their intention to enter their port facilities.¹⁹³ Coastal states may receive LRIT information from ships navigating at distances of up to 1000 nautical miles from their coastlines.¹⁹⁴ SOLAS Regulation 19.1/8.2 requires contracting governments to specify and communicate to the IMO their policies pertaining to the receipt of LRIT information as provided under SOLAS Regulation 19.1/8.2.

Overseen by the International Mobile Satellite Organisation (IMSO) as LRIT Coordinator, the LRIT system consists of six inter-related components. These including the shipborne LRIT information transmitting equipment, Communication Service Provider(s), Application Service Provider(s), National, regional and cooperative LRIT Data Centre(s) (including any related Vessel Monitoring System(s)), LRIT Data Distribution Plans and the International LRIT Data Exchange.¹⁹⁵

Several potential shortcomings and uncertainties regarding the LRIT system have been noted within maritime security studies. First¹⁹⁶ the restricted application of LRIT to larger ships, and the exclusion of many smaller ships such as fishing vessels,¹⁹⁷ which frequently operate within proximity to sensitive offshore installations, often undertake significant international voyages, and which could conceivably be utilised for a range of nefarious purposes to threaten maritime security,¹⁹⁸ has been criticised as a significant gap in the application of LRIT.¹⁹⁹ Second, it has been noted that the limited scope of LRIT information would not be sufficient, on its own, to determine whether a vessel constitutes a security threat to nearby state(s)²⁰⁰ – and that additional information and intelligence would usually be required to determine what, if any, action(s) should be taken in relation to ‘suspicious’ ships.²⁰¹ Third, it is also unclear what measures States might permissibly take against suspicious ships based on the receipt of LRIT

¹⁹³ SOLAS Chapter V Regulation 19-1/8.1/.2

¹⁹⁴ Provided such ships are not located within waters landward of the baselines of another contracting government; or within the territorial sea of the vessel’s flag state: SOLAS Chapter V Regulation 19-1/8.1/.2/.3 and /.4

¹⁹⁵ IMO ‘Long Range Identification and Tracking: Overview’

<http://www.imo.org/ourwork/safety/navigation/pages/lrit.aspx> Accessed 1 October 2013

¹⁹⁶ Similarly to criticisms of the lack of internationally consistent application of the ISPS Code to smaller vessels: see [4.1.4] above

¹⁹⁷ Notwithstanding that many fishing vessels are subject to national and/or regional vessel monitoring systems: Martin Tsamenyi and Mary-Ann Palma ‘Long-Range Identification and Tracking Systems for Vessels: Legal and Technical Issues’ in Rupert Herbert-Burns, Sam Bateman and Peter Lehr (eds) *Lloyds MIU Handbook of Maritime Security* (CRC Press, 2009), 217

¹⁹⁸ The various ways that terrorists have previously successfully utilised, and attempted to utilise, fishing vessels for nefarious purposes are overviewed in Chapters 5, 6 and 7

¹⁹⁹ Tsamenyi and Palma, above n 197, 217; Murphy, above n 181, 21

²⁰⁰ Tsamenyi and Palma, above n 187, 42

²⁰¹ Tsamenyi and Palma, above n 187 42

information,²⁰² with SOLAS Chapter V emphasising that LRIT does not create or affirm any new rights of States, nor does it prejudice any existing rights for States.²⁰³ When discussing Maritime Domain Awareness (which by analogy, could be extended to LRIT) Perry raised the possibility that ‘... failure [by a vessel] to report location information could be viewed as the rough equivalent of driving [a car] with a broken tail light – and might establish reasonable suspicion to conduct an interdiction’.²⁰⁴ Finally, concerns were expressed by several States during the IMO LRIT negotiations about the confidentiality of LRIT information.²⁰⁵ As a result, the final version of SOLAS Chapter V Regulation 19-1 requires contracting governments to give undertakings to implement measures to safeguard the confidentiality of LRIT information.²⁰⁶

SOLAS Regulation 19.1 entered into force on 1 January 2008.²⁰⁷ At that time it was envisaged around one year would be sufficient to enable contracting governments to establish and test their LRIT systems, with such systems to be operational no later than the first radio survey after 31 December 2008, or in the case of ships operating in Sea Area A4²⁰⁸ – no later than the first radio survey after 1 July 2009.²⁰⁹ However the predictions of Tsamenyi and Palma that practical, financial and legal concerns associated with LRIT system might delay its timely implementation²¹⁰ have proven valid. None of the IMO Maritime Safety Committee’s reports before the 88th session of the MSC in December 2010 included statistics about the implementation of LRIT by contracting governments; however as outlined below the implementation levels progressively and significantly improved since early 2011.

²⁰² Tsamenyi and Palma, above n 197, 224; Jason Krajewski ‘Out of Sight, Out of Mind? A Case for Long Range Identification and Tracking of Vessels on the High Seas’ 56 (2008) *Naval Law Review* 219

²⁰³ SOLAS Chapter V Regulation 19-1/1 provides that ‘Nothing in this regulation or the provisions of performance standards and functional requirements adopted by the Organisation in relation to the long-range identification and tracking of ships shall prejudice the rights, jurisdiction or obligations of States under international law, in particular the legal regimes of the high seas, the exclusive economic zone, the contiguous zone, the territorial seas or the straits used for international navigation and archipelagic sea lanes’. Cited in Martin Tsamenyi and Mary-Ann Palma ‘Long-Range Identification and Tracking Systems for Vessels: Legal and Technical Issues in Rupert Herbert-Burns, Sam Bateman and Peter Lehr (eds) *Lloyds MIU Handbook of Maritime Security* (CRC Press, 2009), 224

²⁰⁴ Timothy Perry ‘Blurring the Ocean Zones: The Effect of the Proliferation Security Initiative on the Customary International Law of the Sea’ (2006) 37 *Ocean Development and International Law*, 43

²⁰⁵ Tsamenyi and Palma, above n 197, 225

²⁰⁶ Tsamenyi and Palma, above n 187, 47

²⁰⁷ Tsamenyi and Palma, above n 197, 228

²⁰⁸ ‘Sea Area A4’ refers to the remote polar regions:

<http://www.inmarsat.com/Maritivesafety/gmdss1.htm>

²⁰⁹ Tsamenyi and Palma, above n 197, 229

²¹⁰ Tsamenyi and Palma, above n 197, 228

At the 88th session of the MSC in November 2010, 98 out of the 159 contracting governments (69 per cent) had communicated their national policies on the receipt of LRIT information as required by SOLAS Regulation 19.1/8.2, 10 (6 per cent) had communicated part of this information and 51 (32 per cent) had not communicated any such information to the IMO.²¹¹ The MSC also noted that 59 LRIT Data Centres²¹² were operating in the live production environment, 11 Data Centres were still undergoing testing and four Data Centre had not yet started testing.²¹³ Six months later, the 89th session of the MSC in May 2012 noted that as at 6 May 2011, 64 Data Centres²¹⁴ were operating in the production environment, and that 10 Data Centres were still undergoing testing.²¹⁵ Whilst it noted a report from Canada about problems in receiving LRIT information entering its ports,²¹⁶ it also noted that the LRIT International Data Exchange²¹⁷ and observed that the majority of Data Centres operating in the production environment had satisfactorily completed modification testing.²¹⁸ The 89th session of the MSC also noted positive feedback received by the IMO Secretariat regarding the LRIT Information Distribution Facility which had been established at IMO Headquarters to provide flag state LRIT information to NATO and other European naval forces operating around the Gulf of

²¹¹ IMO *Report of the Maritime Safety Committee on its Eighty-Sixth Session* IMO MSC 86th Session, Agenda Item 26, IMO Doc MSC 88/26 (25 December 2010), 6.2

²¹² Which were providing LRIT services to 87 SOLAS Contracting Governments

²¹³ IMO *Report of the Maritime Safety Committee on its Eighty-Sixth Session* IMO MSC 86th Session, Agenda Item 26, IMO Doc MSC 88/26 (25 December 2010), 6.2

²¹⁴ Which were providing LRIT services to 93 SOLAS Contracting Governments – the LRIT IDE reports that as at April 2011, LRIT Data Centres for the following states were connected to the LRIT IDE in the production environment: Algeria, Antigua and Barbuda, Argentina, Australia, Azerbaijan, Bahamas, Bahrain, Bangladesh, Barbados, Belize, Bolivia, Brunei Darussalam, Canada, Chile, China, Comoros, Democratic People's Republic of Korea, Dominica, Ecuador, Egypt, India, Indonesia, Israel, Jamaica, Japan, Jordan, Kenya, Kuwait, Liberia, Malaysia, Marshall Islands, Mauritius, Montenegro, Morocco, Myanmar, Nigeria, Pakistan, Panama, Philippines, Qatar, Republic of Korea, Russian Federation, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Seychelles, Sierra Leone, Singapore, South Africa, Thailand, Turkey, Ukraine, United Arab Emirates, United Republic of Tanzania, United States of America, Vanuatu, Venezuela, Bermuda (United Kingdom), Cayman Islands (United Kingdom), Isle of Man (United Kingdom), Faroe Islands (Denmark); and also the EU Cooperative LRIT Data Centre (which provides LRIT services to 27 EU member states, as well as Iceland and Norway), the Brazil Regional LRIT Data Centre, the Pacific Cooperative LRIT Data Centre, and the Information Distribution Facility located at IMO Headquarters in London (which is discussed in the next paragraph)

²¹⁵ IMO *Report of the Maritime Safety Committee on its Eighty-Ninth Session* IMO MSC 89th session, Agenda Item 25 IMO Doc MSC 89/25 (27 May 2011), 6.6

²¹⁶ IMO *LRIT-Related Matters: Report on the performance of the LRIT system from a port State tracking perspective: Submitted by Canada* IMO MSC 89th Session, Agenda Item 6, IMO Doc MSC 89/6/7 (15 March 2011)

²¹⁷ Since 2 March 2011 the LRIT International Data Exchange has been operated by the European Maritime Safety Agency in Lisbon, Portugal – with the United States Coastguard (which operated the interim LRIT International Data Exchange) providing a disaster recovery site: IMO *Report of the Maritime Safety Committee on its Eighty-Ninth Session* IMO MSC 89th session, Agenda Item 25 IMO Doc MSC 89/25 (27 May 2011), 6.12 – 6.17; <http://www.emsa.europa.eu/see-also-lrit-ide/171-lrit-international-data-exchange/471-long-range-identification-international-data-exchange-lrit-ide.html> Accessed 1 July 2012

²¹⁸ IMO *Report of the Maritime Safety Committee on its Eighty-Ninth Session* IMO MSC 89th session, Agenda Item 25 IMO Doc MSC 89/25 (27 May 2011), 6.10

Aden for counter-piracy duties. Naval force commanders had advised that LRIT information received through the LRIT Information Distribution Facility had been ‘invaluable’ in helping them to build a more accurate picture of the commercial ships operating in areas of high piracy risk – thereby enabling the optimal deployment of naval resources to protect transiting commercial ships.²¹⁹ Therefore, the first “operational test” of the value of LRIT information (and indeed the LRIT system overall) can be seen as being a successful one.

Recent reports to the IMO on audits of national and regional LRIT Data Centres undertaken by the International Mobile Satellite Organisation (IMSO) as LRIT Coordinator have been quite positive. These reports have found nearly all LRIT Data Centres to be substantially in compliance with the technical and operational requirements of the LRIT system during the periods examined by the audits - including 4 for the period 18 November 2009 to 9 April 2010,²²⁰ 17 (and the LRIT International Data Exchange) for the period 10 April 2010 to 21 September 2010,²²¹ and 15 (and the LRIT International Data Exchange) for the period 22 September 2010 to 7 March 2011.²²² For the most recent reported period from 7 March 2011 to 8 December 2011,²²³ 39 LRIT Data Centres audits were reported as satisfactorily

²¹⁹ IMO *Report of the Maritime Safety Committee on its Eighty-Ninth Session* IMO MSC 89th session, Agenda Item 25 IMO Doc MSC 89/25 (27 May 2011), 6.19

²²⁰ IMO *LRIT-related matters: Summary Audit Reports of the LRIT Data Centres: Note by the Secretariat* IMO MSC 87th Session, Agenda Item 6, IMO Doc MSC 87/6/8 (16 April 2010). These LRIT Data Centres included Bahamas, Brazil, Canada and Marshall Islands

²²¹ IMO *Summary audit reports of the International LRIT Data Exchange and LRIT Data Centres: Note by the Secretariat* IMO MSC 88th Session, Agenda Item 6, IMO Doc MSC 88/INF.14 (21 October 2010) These LRIT Data Centres included Antigua and Barbuda, Australia, Barbados, Belize, Cayman Islands (United Kingdom), Chile, European Union Cooperative Data Centre; India, Isle of Man (United Kingdom), Jamaica, Japan, Liberia, Republic of Korea, Saint Vincent and the Grenadines, Singapore, United States and Vanuatu

²²² IMO *Summary audit reports of the International LRIT Data Exchange and LRIT Data Centres: Note by the Secretariat* IMO MSC 89th Session, Agenda Item 6, IMO Doc MSC 89/INF.14 (8 March 2011) These LRIT Data Centres included Bahrain, Bermuda (United Kingdom), China, Croatia, Faroe Islands (Denmark), Indonesia, Jordan, Morocco, Myanmar, Pakistan, Panama, Russian Federation, Saint Kitts and Nevis, Sierra Leone and South Africa

²²³ IMO *Consideration of LRIT-related matters: Summary audit reports of the LRIT Data Centres: Submitted by the International Mobile Satellite Organisation, Sub-Committee on Radio Communications and Search and Rescue* 16th Session, Agenda Item 13, IMO Doc COMSAR 16/13/1 (9 December 2011)

completed,²²⁴ 17 audits (including the LRIT International Data Exchange) as being in progress,²²⁵ two as overdue,²²⁶ one as cancelled²²⁷ and one as not progressing.²²⁸

So overall, as at 1 October 2013 it may be confidently concluded that despite the initial delays in its implementation, the LRIT system has achieved widespread acceptance internationally; that it has been objectively judged to function as required; and that the information derived through the LRIT system has already been proven to be of “maritime security value” in the counter-piracy context. However the uncertainties regarding the measures that contracting governments may permissibly take based on LRIT information noted in above still remain, and it remains to be seen whether any legal or jurisdictional problems relating to LRIT will arise in future.

[4.4] 2003 REVISED SEAFARER IDENTITY DOCUMENTS CONVENTION

Since 9/11 concerns have been raised that terrorist and criminal groups might exploit vulnerabilities in the availability (and ease of forgery) of seafarer identification documentation.²²⁹ At the same time, it has been recognised that due to the demanding nature and isolation of their work, seafarers need access to shore leave, and for these reasons, should not remain confined to their vessels while in ports.

[4.4.1] Provisions of the 2003 SID Convention

²²⁴ Antigua and Barbuda, Australia, Azerbaijan, the Bahamas, Bahrain, Barbados, Belize, Bolivia, Brazil RDC, Canada, Cayman Islands (United Kingdom), China, the Democratic People's Republic of Korea, Egypt, European Union CDC, India, Isle of Man (United Kingdom), Israel, Jamaica, Japan, Kuwait, Liberia, the Marshall Islands, Mauritius, Montenegro, Myanmar, Nigeria, the Philippines, Qatar, the Republic of Korea, Sierra Leone, Singapore, Thailand, Turkey, Ukraine, the United Arab Emirates, the United Republic of Tanzania, the United States and Vanuatu:

²²⁵ Algeria, Bermuda (United Kingdom), Brunei Darussalam, Chile, Ecuador, Faroes (Denmark), Jordan, Kenya, Malaysia, Morocco, Pakistan, Panama, Russian Federation, Saint Kitts and Nevis, Saint Vincent and the Grenadines, South Africa, and the LRIT IDE

²²⁶ Meaning the LRIT Data Centre did not cooperate with IMSO within the time frame required to enable the satisfactory completion of an audit of its performance (Pacific and Venezuela)

²²⁷ Meaning the LRIT Data Centre declined to be audited (Bangladesh)

²²⁸ Meaning the LRIT Data Centre had not communicated its acknowledgement to the audit at the time of the report (Indonesia)

²²⁹ See for example Martin Rudner ‘Misuse of Passports: Identity Fraud, the Propensity to Travel and International Terrorism’ (2008) 31(2) *Studies in Conflict and Terrorism* 95 and Martin Tsamenyi, Mary Ann Palma and Clive Schofield ‘International Legal Regulatory Framework for Seafarers and Maritime Security Post-9/11’ in Rupert Herbert-Burns, Sam Bateman and Peter Lehr (eds) *Lloyds MIU Handbook of Maritime Security* (CRC Press, 2009), 237 – 238

To strike a balance between these two competing concerns, the 91st session of the International Labour Conference in June 2003, agreed to update and extend the requirements of the 1958 Identity Documents Convention (1958 SID Convention).²³⁰ The outcome of this process was the 2003 Revised Seafarers' Identity Documents Convention (2003 SID Convention),²³¹ which requires signatory states to ensure that seafarers subject to their jurisdiction are issued with verifiable identification documents that minimise the scope for forgery or tampering.²³²

Such identification documents are required to incorporate several features – including the name, contact details and official seal or stamp of the issuing authority; date and place of issue; a digital or original photograph of the seafarer; and certain information about the seafarer – including his or her full name; date and place of birth; nationality; special physical characteristics that may assist identification and signature. Also required to be included is the expiration date, conditions, and identification number of the identity document – as well as mechanisms to enable the biometric identification of the seafarer.²³³

The term 'seafarer' is broadly defined by Article 1(1) of the 1958 SID Convention to mean: '... any person who is employed or is engaged or works in any capacity on board a vessel, other than a ship of war, ordinarily engaged in maritime navigation'. Furthermore, Article 1(2) of the 1958 Convention provides that 'In the event of any doubt whether any categories of persons are to be regarded as seafarers for the purpose of this Convention, the question shall be determined in accordance with the provisions of this Convention by the competent authority of the State of nationality or permanent residence of such persons after consulting with the shipowners' and seafarers' organizations concerned'. Article 1(3) of the 2003 Revised Convention provides that the term 'seafarers' may be extended to include persons involved in commercial fishing.²³⁴ Article 4 of the 2003 Revised SID Convention requires state parties to develop and maintain a National Electronic Database as a facility for storing records of each seafarer's identity document issued, suspended or withdrawn by it. Furthermore, Article 4(4) requires state parties to designate a permanent 'focal points' [of contact] for responding to

²³⁰ *Seafarers Identity Documents Convention*, opened for signature 13 May 1958, ILO Convention No. 108 (entered into force 19 February 1961)

²³¹ *Seafarers Identity Documents Convention (Revised)*, opened for signature 19 June 2003, 2304 UNTS 121 (entered into force 9 February 2005)

²³² 2003 SID Convention Article 2

²³³ 2003 SID Convention Article 3

²³⁴ It provides that 'After consulting the representative organizations of fishing-vessel owners and persons working on board fishing vessels, the competent authority may apply the provisions of this Convention to commercial maritime fishing'

inquiries, from the immigration or other competent authorities of all members of the ILO, concerning the authenticity and validity of the seafarer's identity document issued by its authority, and Article 4(5) provides that the details requested shall at all times be immediately accessible to the immigration or other competent authorities in member states of the ILO, either electronically or through the focal point required in Article 4(4).

[4.4.2] Implementation status of 2003 SID Convention

The 2003 SID Convention entered into force on 9 February 2005, and as at 1 October 2013, has been ratified by 24 States.²³⁵ A 2005 summary of the 19 States that supply the highest number of seafarers showed a high level of acceptance of the 2003 Revised SID Convention – including by the Philippines (second highest supplier), Russia (sixth highest supplier), Indonesia (seventh highest supplier), Croatia (fifteenth highest supplier) and Brazil (eighteenth highest supplier).²³⁶

Providing it is implemented thoroughly and consistently by the state parties, the 2003 Revised SID Convention could contribute to harmonising international efforts to lessen the scope for terrorist groups to utilise fraudulent identification documentation to facilitate their movements internationally. However, as [7.3.2] reasons, the checking of such enhanced identity documentation would normally be restricted to formal entry points into a state (for example international ports). If for example terrorists and/or criminal groups sought to enter a state at a remote location, it is possible that such identity documentation may not be subject to such checking.

[4.5] CONCLUSION

This chapter explained how the ISPS Code and other SOLAS Chapter XI maritime security measures have developed an improved framework for consistently managing maritime security risks. It undertook the first comprehensive analysis of how the recognised limitations of the ISPS Code have been addressed within the IMO since its entry into force in July 2004. This

²³⁵ International Labour Organisation 'Ratifications of C185 – Seafarers' Identity Documents Convention (Revised), 2003 (No. 185)' http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO::P11300_INSTRUMENT_ID:312330; Accessed 1 October 2013

²³⁶ Cited in Tsamenyi, Palma and Schofield, above n 229, 235

review highlighted both encouraging and concerning indications, as well as the preference amongst contracting governments to address these limitations through the development of voluntary guidance, rather than extending the compulsory application of the ISPS Code. It also explained how it is impossible to make an overall assessment about the extent to which the ISPS Code has become ingrained internationally, particularly due to the potential unreliability of information provided to the IMO by contracting governments. Therefore, it articulated the factors likely to influence the prospects for the ISPS Code to succeed in lessening the scope for maritime terrorism incidents to occur. The “best case” and “worst case” scenarios developed with these criteria are considered against the previously successful, attempted, planned and postulated maritime terrorism incidents in Chapters 5, 6 and 7. For the vessel identification and tracking measures under SOLAS Chapter V (AIS and LRIT), it noted whilst these measures have contributed to improved maritime security, several uncertainties remain – particularly the actions States might take based on LRIT information. Finally it explained how the 2003 Revised SID Convention has contributed to lessening the scope for terrorists to travel internationally under fraudulent seafarer identification documentation.

Chapter 5 analyses the prospects for ISPS Code preventative security measures to succeed in lessening the scope for terrorist attacks on vessels from the five sources noted in the Threat Matrix.²³⁷ After reviewing the previous instances of successful, attempted, planned and postulated terrorist attacks on vessels, it applies the “best case” / “worst case” scenarios of the ISPS Code. It reasons that the scope for many terrorist attacks on vessels may be significantly lessened through rigorously-implemented preventative security measures. It also distinguishes the patterns of vessel-based attacks by maritime terrorists from those of pirates, and explains the different consequences this has for the application of preventative security measures.

²³⁷ That is, from other vessels, from the land, from beneath the surface, from within the vessel and from the air

CHAPTER 5

COUNTERING TERRORIST TARGETING OF VESSELS

[5.1] INTRODUCTION

This Chapter analyses the prospects for SOLAS Chapter XI-2 and the ISPS Code, and AIS, to prevent terrorists from targeting (ie attacking) high profile vessels.¹ Terrorist targeting of high profile vessels has accounted for around 193 of the 228 (85 per cent) recorded maritime terrorist attacks since 1968.² The chapter examines how terrorist attacks on vessels have previously occurred, been attempted or planned, and postulated by maritime security specialists – showing the geographical and jurisdictional locations of these attacks, fatalities resulting, the increasing use of suicide tactics, and types of vessels involved.³ Vessel-based attacks (accounting for most attacks) are examined first, followed by attacks from land locations, from inside the vessel, from beneath the surface and finally from the air.

The application of the “best case / worst case” scenario factors for considering the likely success of the ISPS Code from Chapter 4 highlights the importance of security measures being rigorously and continuously applied by ships, port facilities and contracting governments to preventing terrorist attacks on vessels. The Chapter also argues there are both positive and negative inferences to be drawn from the maritime sector’s experiences in preventing (comparatively more prevalent and predictable) vessel-based attacks by pirates around the Gulf

¹ This Chapter addresses the fourth sub-question posed in [1.2.2], namely ‘(4) Considering how maritime terrorism incidents have previously occurred, and might occur in the future, how might the international agreements apply in practice in preventing maritime terrorism incidents?’ Chapters 6, 7 and 8 also address this question.

² As [1.4] explained, Chapters 5, 6 and 7 are ordered according to the “lead warning time” for the maritime terrorism incidents they examine. Because terrorist attacks on vessels could occur with little or no “lead warning time”, they are examined in this Chapter - before Chapters 6 and 7 which examine terrorist utilisations of vessels – as these maritime terrorism incidents would involve longer “lead warning times”. Also, terrorist targeting of vessels would be the most imminent of the forms of maritime terrorism conceptualised by the Threat Matrix

³ As [1.6.1] explained, because this Study examines many statistics about terrorist attacks, statistical trends and notable case studies are discussed in the chapters to illustrate the arguments of the Study, with complete details being recorded in the appendices. Appendix G summarises all maritime terrorist attacks. It records the following information about successful maritime terrorist attacks: (i) Date; (ii) Location and status of attacked vessel (OP = Offshore Platform, U = Underway, P = In port, A = At anchor); (iii) Perpetrators; (iv) Attacked vessel; (v) Method and effect of attack; (vi) Maritime Terrorism Threat Category; (vii) Injuries; (viii) Fatalities and (ix) Source of information. However As [3.5.2] noted, in several cases the source of previous terrorist attacks on vessels (that is, from another vessel, the land, beneath the waterline, within the vessel or from the air) were not stated, and whilst the best efforts have been made to ascertain more precise details about such incidents, this has not been possible in all cases – meaning that 59 previous maritime terrorist attacks are recorded in Appendix Gas ‘Target: Unknown’.

of Aden since 2005. It reasons that whilst preventative security measures have been demonstrably effective in deterring pirate attacks since 2005,⁴ it would be erroneous to uncritically assume that fanatical terrorists prepared to martyr themselves⁵ would be deterred by the prospects of apprehension as economically-motivated pirates have been. It also reasons that while the experience of preventing vessel-based attacks by pirates may have honed security arrangements aboard commercial vessels, such vessels should not completely “drop their guard” once outside the Somali High Risk Area where they might be the target of an unanticipated terrorist attack.

[5.2] COUNTERING TERRORIST TARGETING OF VESSELS FROM OTHER VESSELS

[5.2.1] Threat context: Previous occurrences

	Successful	Attempted	Planned	Postulated
	At least 67	2	8	6

Vessel-based attacks on high profile vessels account for the highest number of recorded successful maritime terrorist attacks between 1968 and 2013. Appendix G records at least 67 of the 228 recorded maritime terrorist attacks (29 per cent) being vessel-based, with these attacks resulting in 173 fatalities. Notable examples have included the 2000 suicide attack by an explosives-laden dinghy on the USS *Cole* in Aden Harbour, Yemen killing 17 and injuring 39, and the 2002 suicide attack by an explosives-laden speedboat on the oil tanker MV *Limburg* off the Yemeni coast, killing 1 and injuring 12 crew members, which were discussed in [3.3.1].

Vessel-based terrorist attacks have been reasonably consistent between 1968 and 2011, averaging around one to three attacks per year. Attacks have occurred in several locations, including around the Caribbean region (mostly during the 1970s and early 1980s), Southeast

⁴ [5.2.2] explains that whilst the ISPS Code was introduced in response to the 9/11 attacks to lessen the scope for terrorist incidents, the IMO has acknowledged ISPS Code security measures are also applicable to preventing attacks on vessels by pirates and armed robbers. Additionally, whilst this Study focuses on maritime terrorism - it has significantly been the first to undertake a detailed review of the effectiveness of the SOLAS Chapter XI-2 and other preventative security arrangements in preventing attacks on commercial vessels by pirates from the IMB Annual Reports on Piracy and Armed Robbery Against Ships since 2005 (notwithstanding the acknowledged problems of under-reporting of pirate attacks on vessels)

⁵ As in the USS *Cole* and MV *Limburg* attacks

Asia (with many attacks occurring in the Philippines and Indonesia), throughout the Mediterranean Sea, off the coast of North West Africa (with attacks around the Niger Delta becoming prominent from 2006 onwards), Yemen and the Red Sea, the Irish Sea and Sri Lanka. The yearly numbers of attacks were high in 1994 (four), 1997 (five), 2006 and 2007 (four each) and 2008 (seven), with most of those attacks being perpetrated by the LTTE around Sri Lanka.

A range of vessel types have been targeted through vessel-based attacks – including cargo ships (19), fishing vessels (17) – but mostly in areas where there have been long-running conflicts, petroleum industry vessels (eight), naval vessels (six), tankers (six), passenger ferries (four), yachts and sailing vessels (three), and cruise ships (one). The vessel types for seven targeted vessels were not specified.

Around 30 vessel-based attacks resulting in hostage-takings have occurred continuously between 1968 and 2013. However since 2006 these maritime hostage-takings have been largely confined to the Niger Delta region and perpetrated by groups such as MEND – which as [3.3] noted, are regarded more as insurgents than as terrorists. This reflects the trend noted in Chapters 2 and 3 about the decreasing prevalence of “negotiable” hostage-takings by contemporary terrorist groups. Around 25 “stand-off” attacks (whereby terrorists fire rockets or grenades at the target vessels) have also occurred between 1968 and 2013. The most deadly “stand-off” attack was perpetrated by the LTTE on 9 September 1997, involving the firing of rocket-propelled grenades from speedboats at the Chinese ship MV *Cordiality* whilst it was underway off the coast of Pulmoddai, Sri Lanka – killing 37 and injuring 10,⁶ and ranking as the third most deadly maritime terrorist attack.⁷ Furthermore, since 1997 the LTTE and Al-Qaeda-linked groups have perpetrated seven “significant casualty” vessel-based attacks (resulting in over ten fatalities per attack);⁸ whereas before 1997 vessel-based attacks caused only around one to two fatalities per attack. This illustrates the points made in [2.5.1] and [3.3.1] about the increased tendency of contemporary terrorist groups to perpetrate significant casualty attacks.

⁶ RAND Database of Worldwide Terrorism Incidents: http://smapp.rand.org/rwtid/search_form.php; National Consortium for the Study of Terrorism and Responses to Terrorism Global Terrorism Database <http://www.start.umd.edu/gtd/>

⁷ After the bombings of *Super Ferry 14* (killing 116) and *Our Lady of Mediatrix* (killing 40), which are discussed in [5.3.2]

⁸ As [3.3.1] explained, given that maritime terrorist attacks have only constituted around 2 per cent of all recorded terrorist attacks since 1968, this Study notes attacks involving more than 10 fatalities as “significant casualty” attacks – which are summarised in Appendix G ‘Chronology of successful maritime terrorist attacks: 1961 – 2013’

However the most notable aspect of vessel-based attacks by contemporary terrorist groups since around 2000 has been the prevalence of suicide attacks involving explosives-packed small boats being rammed into target vessels. Aside from the attacks on the USS *Cole* and MV *Limburg* by Al Qaeda-linked groups, and one attack by an unknown perpetrator off Oman in 2010, five vessel-based suicide attacks have been perpetrated by the LTTE between 2000 and 2008 – with fatalities ranging from 14 to 17 per attack. Examples of such suicide attacks include the LTTE detonating five small boats alongside the Sri Lankan Navy oil tanker *Silk Pride* whilst it was underway off Point Pedro, Sri Lanka on 30 October 2001, killing 10 and disabling the vessel,⁹ and on 22 March 2008 an LTTE speedboat exploding alongside a Sri Lankan Navy Super Dvora patrol boat, killing 14.¹⁰ Furthermore, several vessel-based attacks by the LTTE have involved multiple “attacking” vessels. For example on 11 May 2006, 15 small boats attacked the Sri Lankan troop ship *Pearl Cruise II*, killing 17,¹¹ and one month later on 29 June 2006 around 20 small boats hiding amongst fishing vessels launched attacks on several Sri Lankan naval vessels around 100nm north of Colombo, again killing 17.¹² Whilst coordinated attacks such as those perpetrated by the LTTE have thus far been confined to Sri Lanka, they nevertheless illustrate the scope for determined non-state actors to perpetrate coordinated attacks within the maritime domain. Relevantly, [2.5.1] noted that simultaneously-coordinated suicide attacks being characteristic of attacks by contemporary terrorist groups.

Whilst most vessel-based attacks have involved speedboats as the attacking vessel, it is also conceivable that terrorists could utilise large vessels as kinetic ramming weapons – which [6.2.1.4] examines. As Appendix G notes, most (at least 25) vessel-based attacks have occurred while the target vessel has been underway, however the target vessels’ distances from land have either not been specified, or described vaguely (for example ‘in international waters’ or ‘off the coast of xxx’). Four vessels have been attacked whilst at anchor, and one (the USS *Cole*) was attacked whilst alongside in port.

⁹ RAND Database of Worldwide Terrorism Incidents: http://smapp.rand.org/rwtid/search_form.php; National Consortium for the Study of Terrorism and Responses to Terrorism Global Terrorism Database <http://www.start.umd.edu/gtd/>

¹⁰ Martin Murphy *Small Boats, Weak States and Dirty Money: Piracy and Maritime Terrorism in the Modern World* (Hurst & Company 2009), 319

¹¹ Murphy, above n 10, 317

¹² Murphy, above n 10, 317 - 318

In addition to the successfully perpetrated vessel-based attacks discussed above, two recorded **attempts** by terrorists to attack high-profile naval vessels with explosives-packed small boats in 2000 also evidence the resolve of contemporary terrorist groups to perpetrate significant casualty, suicide attacks. On 3 January 2000 an Al Qaeda-linked group had attempted to launch a suicide attack on the destroyer USS *Sullivans* in Aden Harbour, Yemen, and whilst this heavy explosives-laden dinghy sank, the lessons learned from this attempt were applied a year later in the USS *Cole* bombing.¹³ Later that year on 7 November 2000, members of Hamas attempted to detonate a fishing boat within proximity of an Israeli patrol craft north of Rafah in the Gaza Strip; however this vessel exploded prematurely.¹⁴

Furthermore, numerous reports have indicated **plans** by Al Qaeda and associated groups such as Jemaah Islamiyah (JI) to launch vessel-based attacks on high profile vessels. The use of explosives-packed zodiac speed boats to ram warships and other ships was reportedly part of Al Qaeda's 'Four Pillars' maritime strategy developed by its former chief of maritime operations Abd al-Rahmin Al Nashiri, nicknamed Al Qaeda's 'Prince of the Sea'.¹⁵ US Navy warships around Southeast Asia have reportedly been targets for such plans. In early 2000 Tafi Muhammad Saleh bin Roshayd bin Attash (one of the alleged planners of the USS *Cole* bombing) had reportedly plotted attacks on visiting US Navy ships in Malaysia in 2000,¹⁶ and less than a year later Malaysian intelligence reportedly foiled a plan to attack a second US ship.¹⁷ In December 2001, members of JI had reportedly planned attack attacks on US naval vessels docked at Singapore's Changi Naval Base;¹⁸ in January 2002 Singaporean intelligence officials discovered sophisticated and detailed reconnaissance of US naval facilities and ships in the region by JI members, with plans to launch multiple simultaneous attacks against US warships around Singapore in the following months;¹⁹ and similar attacks on US naval vessels

¹³ Michael Richardson *A Time Bomb for Global Trade: Maritime Terrorism in an Age of Weapons of Mass Destruction* (Institute of Southeast Asian Studies, 2004), 17 – 18; Peter Lehr 'Maritime Terrorism: Locations, Actors and Capabilities' in Rupert Herbert-Burns, Sam Bateman and Peter Lehr (eds) *Lloyd's MIU Handbook of Maritime Security* (CRC Press, 2008), 68

¹⁴ Joshua Sinai 'Future Trends in Worldwide Maritime Terrorism' (March 2004) 3(1) *The Quarterly Journal*, 61; Murphy, above n 10, 296; Tanner Campbell and Rohan Gunaratna 'Maritime Terrorism, Piracy and Crime' in Rohan Gunaratna (ed) *Terrorism in the Asia-Pacific: Threat and Response* (Eastern University Press 2003), 71

¹⁵ Richardson, above n 13, 20

¹⁶ Richardson, above n 13, 24

¹⁷ Richardson, above n 13, 24

¹⁸ 'Sweeping Asian Terror Alliance Uncovered' *CNN* 19 September 2002 Cited in Catherine Zara Raymond *Maritime Terrorism in Southeast Asia: A Risk Assessment* Institute of Defence and Strategic Studies Paper No. 74, March 2005, 16; Richardson, above n 13, 23 - 24

¹⁹ Campbell and Gunaratna, above n 14, 77

were reportedly planned by JI around August 2003.²⁰ The Mediterranean has also been within the sights of planned vessel-based attacks by Al Qaeda-linked groups. Three suspected members of Al Qaeda in the Islamic Maghreb were arrested by Moroccan authorities in June 2002 for reportedly planning to attack US, UK and Israeli merchant and naval vessels transiting the Straits of Gibraltar,²¹ and Turkish intelligence reports revealed indications of Al Qaeda operative Lauai Sakka planning to attack Israeli cruise ships ‘in international waters’ with explosives-packed speedboats in mid-2005.²²

Finally, maritime security specialists have **postulated** scenarios of vessel-based terrorist attacks on high profile vessels at least six times, with these scenarios envisaging the use of small explosives-packed speedboats to attack warships, oil tankers, cruise liners and ferries. In 2005 Bateman and Bergin outlined four scenarios of vessel-based attacks on high profile vessels, and also noted ports and Southeast Asian waterways as being possible locations for such attacks. The scenarios they postulated included ‘... an attack²³ on ships transiting the Indonesian or Philippines archipelagos carrying trade to or from Australia’; ‘... a small-boat suicide attack against a high-value target such as a warship, cruise liner, ferry or oil tanker alongside in an Australian port, or moving within the port’; ‘... an attack against a cruise liner or passenger ferry, including a harbor ferry’; and ‘... an attack on a warship, especially a US Navy vessel, alongside in an Australian port, or a Royal Australian Naval vessel in an overseas port’.²⁴ In 2006 Greenberg et al discussed two scenarios of terrorists using ‘... a small, high-speed boat to attack an oil tanker ... to affect international petroleum prices or cause major pollution’; and also ‘directly targeting a cruise liner or passenger ferry to cause mass casualties by ... ramming the vessel with a fast-approach, small, attack craft’.²⁵

Whilst many of the significant maritime terrorist attacks reviewed above such as the *Cole* and *Limburg* bombings occurred over ten years ago, and while the most recent reported attempts and plans occurred before the LTTE’s military defeat in 2009, [2.8] concluded that there are

²⁰ Peter Day ‘US Fears Terrorist Attack in the Straits of Malacca’ *Financial Review* 16 June 2003, 2. Cited in Zara-Raymond, above n 18, 14

²¹ Campbell and Gunaratna, above n 14, 77; Richardson, above n 13, 19 – 20

²² Akiva Lorenz *The Threat of Maritime Terrorism to Israel* (International Institute for Counter Terrorism) 24 September 2007, 23

²³ However Bateman and Bergin did not specify the source of such an attack

²⁴ Sam Bateman and Anthony Bergin *Future Unknown: The Terrorist Threat to Australian Maritime Security* (Australian Strategic Policy Institute, 2005), 35 (Scenarios 4, 5, 6 and 7)

²⁵ Michael Greenberg, Peter Chalk and Henry Willis *Maritime Terrorism: Risk and Liability* (RAND Corporation: 2006), 27 (Scenarios 6 and 7)

no grounds for concluding that the threat of terrorism globally has disappeared. This means that the possibility of terrorist attacks involving vessels cannot be entirely ruled out, and could conceivably occur with little or no warning. Chapter 2 also showed that attacks by contemporary terrorist groups have occurred at a wide range of locations around the world, and have been perpetrated with considerable lethality through the use of innovative tactics. Chapter 4 reinforced the importance of continual vigilance at all times through the rigorous application of ISPS Code preventative security measures in order to prevent the occurrence of maritime terrorism incidents.

[5.2.2] Comparative analysis: Countering vessel-based attacks by terrorists and by pirates

Since around 2005, vessel-based attacks by pirates on commercial vessels have increased significantly, dwarfing maritime terrorist attacks in their regularity. The majority of these pirate attacks have occurred around the Gulf of Aden²⁶ and also in the waters of Western Africa – although recorded pirate attacks in Southeast Asian waters have decreased due to concerted efforts by State authorities in this region.²⁷ A 2010 study estimated piracy and armed robbery against ships to have cost the international community between \$7 to 12 billion per year.²⁸ As explained below, these increases in pirate attacks have prompted several international developments – including the development of regional maritime security cooperation frameworks, the deployment of multinational naval taskforces around the Gulf of Aden to protect commercial vessels, UN Security Council mandates for the interdiction of pirate vessels, and increased preventative security guidance developed through the IMO for

²⁶ Pirate attacks on vessels around the Gulf of Aden between 2008 and 2012 have accounted for at least one quarter of all reported actual and attempted pirate attacks on commercial vessels worldwide. These statistics are derived from the 2011 *Annual ICC-International Maritime Bureau Report on Piracy and Armed Robbery Against Ships*, 5 – 6. According to the present author's calculations, the percentages of actual and attempted pirate attacks on commercial vessels in these areas in comparison to the global total were: 2008 = 31 per cent; 2009 = 37 per cent; 2010 = 18 per cent; and 2011 = 18 per cent

²⁷ Sam Bateman 'Regional maritime security: Threats and risk assessments' in Sam Bateman and Joshua Ho (eds) *Southeast Asia and the Rise of Chinese and Indian Naval Power* (Routledge, 2010), 101. For a discussion of the maritime security cooperative efforts between Indonesia, Singapore and Malaysia which since 2005 have contributed to this reduction (including cooperative Malacca Straits Sea Patrols and the "Eyes in the Sky" maritime air patrols), see Robert Beckman 'Maritime security and the cooperative mechanism for the Straits of Malacca and Singapore' in Sam Bateman and Joshua Ho (eds) *Southeast Asia and the Rise of Chinese and Indian Naval Power* (Routledge, 2010), 114 – 126

²⁸ This figure includes costs of ransoms, increased insurance premiums, re-routing ships, security equipment aboard vessels, naval forces, prosecutions, piracy deterrent organizations and costs to regional economies Anna Bowden, Kaija Hurlburt, Eamon Aloyo, Charles Marts and Andrew Lee *The Economic Cost of Maritime Piracy* (One Earth Future Working Paper, 2010). Cited in *Review of Maritime Transport*, 2011 United Nations Conference on Trade and Development, 29

commercial vessels transiting the Gulf of Aden.²⁹ Not surprisingly, as the following sections reason, since around 2005 threats of piracy and armed robbery against ships have come to assume comparatively greater prominence than terrorism on maritime security agendas.³⁰ While threats of piracy remain high, there are numerous indicators that preventative security measures mandated and recommended by SOLAS Chapter XI-2 and the ISPS Code including the sounding of alarms, implementation of evasive manoeuvres, activations of Long Range Acoustic Devices (LRADs) and the presence of on-board security (including Privately Contracted Security Personnel (PCASP)),³¹ combined with the presence of coalition naval forces ready to assist ships under threat of pirate attack, have been effective in deterring vessel-based attacks on commercial vessels by pirates since 2005. Although [4.2.1] explained the ISPS Code was developed following the 9/11 attacks to lessen the scope for maritime terrorism incidents, the IMO has also acknowledged that the ISPS Code is equally applicable to lessening the scope for pirate attacks against vessels.³²

After reviewing the various responses to piracy around the Gulf of Aden since 2005, [5.2.2.6] reasons that both positive and negative inferences for countering vessel-based terrorist attacks may be drawn from the combination of international efforts to counter pirate attacks on vessels since around 2005. It cautions that fanatical contemporary terrorists (possibly intending to ram ships with explosives-packed craft in suicide missions) may well not be deterred from attacking by measures such as embarked security personnel or the prospects of apprehension from approaching coalition naval forces to the same extent as economically-motivated Somali pirates have demonstrably been. Nor can it be assumed that naval and other forces always be within one hour's response time following the activation of distress or SSAS alerts as they have been in Gulf of Aden. [5.2.2.6] argues that in order to counter less localised and predictable maritime terrorist attacks, ships need to be continually vigilant – and not “drop their guard”

²⁹ As [5.2.2.5] explains, this guidance has been developed cooperatively between the IMO and the International Chamber of Shipping

³⁰ Although responses to a 2007 survey on seafarers' risk and threat perceptions by the Nautilus International Seafarers Union noted that 53 per cent of respondents considered terrorism as the major threat compared to 43 per cent considering piracy the major threat, it is possible these comparative percentages may have changed in recent years. Cited in Murphy, above n 10, 190

³¹ This abbreviation is widely used within maritime security publications

³² The IMO's 'Frequently Asked Questions on the ISPS Code' answer the question 'Will the new security measures imposed after 1 July 2004 will help reduce the piracy and armed robbery incidents?' by stating 'Logically it should be so. In the months leading up to the 1 July 2004 deadline of the ISPS Code, there has been a reduction in the number of incidents reported to have occurred during the first quarter of 2004. There could be a possible correlation between the two but only a careful monitoring over a longer period would give a firm indication of the long-term trend in this respect.' IMO Frequently Asked Questions: Maritime Security: <http://www.imo.org/OurWork/Security/FAQ/Pages/Maritime-Security.aspx> Accessed 1 November 2012

once out of the Somali High Risk Area – given that (as [5.2.1] showed) maritime terrorist attacks have occurred, and have been attempted, planned and postulated to occur at wider range of locations.

[5.2.2.1] Distinguishing maritime terrorism from piracy

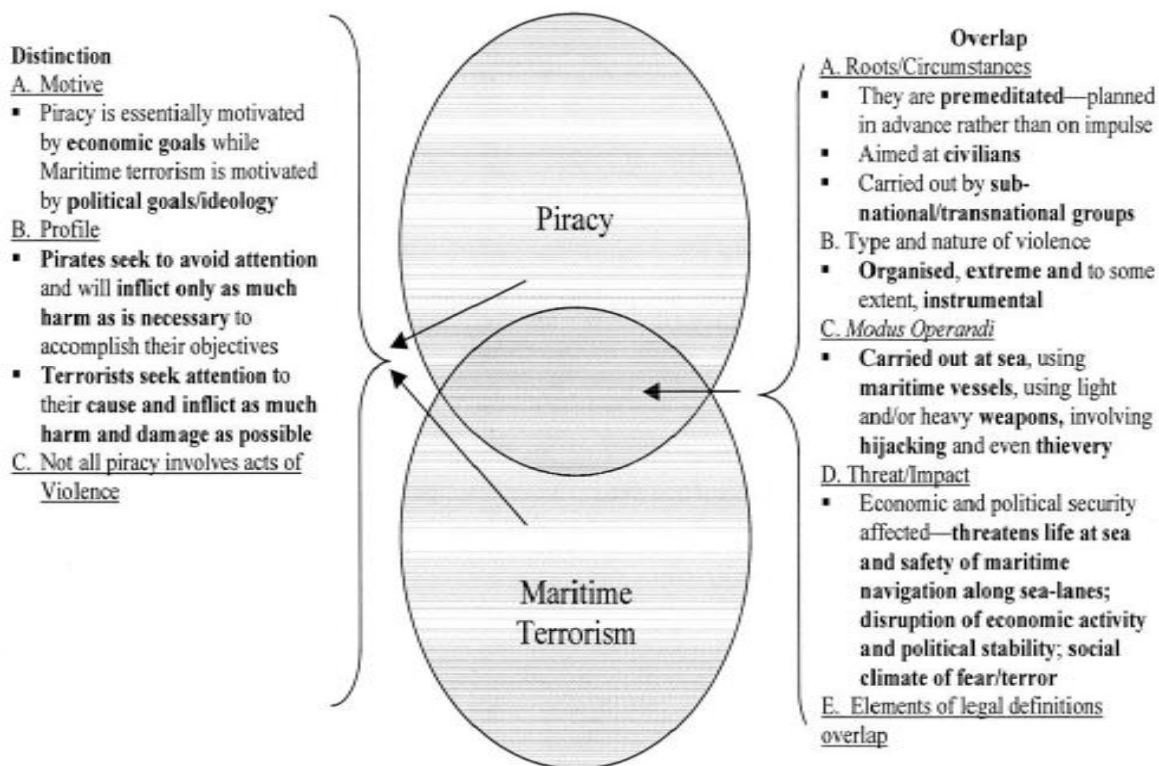
Figure 6 below depicts the generalised distinctions and overlaps between the motives and profiles of piracy and maritime terrorism. [5.2.2.5]³³ illustrates the points made in Figure 6 about the economic goals of pirates³⁴ influencing the profiles of their attacks, and in particular, pirates being deterred by various security measures and the prospects of apprehension. By contrast, as Chapters 2 and 3 explained, and as [5.2.1] further demonstrated, the political and ideological and goals of maritime terrorists frequently drive them to seek attention and perpetrate as much damage as possible – with several of the significant contemporary maritime terrorist attacks since the late 1990s involving large casualties and causing significant costs to maritime industries. More recently Schmid et al made similar observations to those depicted in Figure 6 when formulating four criteria to distinguish the motives and profiles of terrorist and organised criminal groups on a global basis.³⁵

³³ Effectiveness of preventative security measures against pirate targeting of vessels

³⁴ The economic goals of piracy are reflected in the ‘private ends’ requirement of UNCLOS Article 101 – which defines piracy as being ‘(a) any illegal acts of violence or detention, or any act of depredation, committed for *private ends* by the crew or the passengers of a private ship or a private aircraft, and directed: (i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft; (ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State; (b) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft; (c) any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b).’ [Emphasis added]

³⁵ Schmid et al noted that terrorist groups are usually ideologically or politically motivated - whereas organised crime groups are usually profit oriented; secondly that whilst terrorist groups often wish to compete with governments for legitimacy – whereas organised crime groups do not; thirdly that terrorist groups usually relish media attention – whereas organised crime groups do not; and fourth that terrorist victimisation is generally less discriminate than the violence used by organised crime groups: Alex Schmid (ed) *The Routledge Handbook of Terrorism Research* (Routledge, 2011), 85

Figure 6: Overlaps and distinctions between piracy and maritime terrorism³⁶



³⁶ Graham Gerard Ong *Ships Can Be Dangerous Too: Coupling Piracy and Maritime Terrorism in Southeast Asia's Maritime Security Framework* Institute of South East Asian Studies Working Paper: International Politics & Security Issues Series No. 1 (2004), 14

The comparison between the profiles of piracy and maritime terrorism depicted in Figure 6 above are illustrated in Table 13 below – with the 403 fatalities from the 5,479 recorded³⁷ pirate attacks between 1995 and 2012 standing in contrast to the 624 fatalities from the 228 recorded maritime terrorist attacks between 1968 and 2012. Fatalities from pirate attacks have been explained to result from botched hijackings, rather than being the intent of pirates. It has also been noted that fatalities from individual pirate attacks have generally been low, with one reported exception being the 1998 pirate hijacking of the MV Cheung Son in the South China Sea - where the pirates killed 23 crew members.³⁸

Table 13: Yearly global summary of piracy attacks and acts of violence, 1995 - 2012³⁹

Year	Assaulted	Hostage	Injured	Kidnap /Ransom	Killed	Missing	Threatened	Total pirate attacks
2012	4	585	28	26	6	0	13	662
2011	6	802	42	10	8	0	895	439
2010	6	1174	37	27	8	0	1270	445
2009	4	1050	69	12	10	8	1167	410
2008	7	889	32	42	11	21	1011	293
2007	29	292	35	63	5	3	433	263
2006	2	188	15	77	15	3	317	239
2005	6	440	24	13	0	12	509	276
2004	12	148	59	86	32	30	401	329
2003	40	359	88	0	21	71	644	445
2002	9	191	38	0	10	24	327	370
2001	16	210	39	0	21	0	331	335
2000	9	202	99	0	72	26	480	469
1999	22	402	24	0	3	1	473	300
1998	58	244	37	0	78	0	485	202
1997	23	419	31	0	51	0	643	248
1996	9	193	9	0	26	0	293	228
1995	2	320	3	0	26	0	410	188
Totals	264	8108	709	356	403	199	10102	6141

³⁷ Regarding the under-reporting of pirate attacks, see Murphy, above n 10, 65 - 72

³⁸ Murphy, above n 10, 155

³⁹ As at 1 October 2013 the statistics for piracy attacks during 2013 were not yet available

Source: Derived by author's analysis of the International Maritime Bureau's *Annual Reports on Piracy and Armed Robbery Against Ships* for the years between 1995 and 2012

Furthermore, notwithstanding that Somali pirates have reportedly attacked as far south as the Seychelles and as far east as the Indian coastline, maritime security specialists generally agree that piracy is a localised phenomenon, in comparison to the globally-focused phenomena of contemporary terrorism as outlined in Chapter 2.⁴⁰ Nevertheless, since 9/11 several assertions have been made (but also challenged) about linkages between pirate and terrorist groups - including claims of 'pirate to terrorist linkages' whereby pirates provide training to terrorists, and terrorist groups deriving funds from piratical activities. Concerns have also been raised about pirate groups having political objectives which could prompt them to undertake terrorist acts. Examples include the 2005 attack on the *Seabourne Sprit* off the coast of Somalia which was alleged to have been politically motivated, and several reports of GAM engaging in piratical acts around the coast of Aceh (notwithstanding that linkages between Al Qaeda and GAM have been questioned).⁴¹ However such assertions have been criticised as lacking in evidence,⁴² and more likely to be opportunistically short-term rather than long-term and entrenched.⁴³ Further still, Hansen's 'Four Circles Model' depicted in Figure 7 below shows the scope for both overlaps and distinctions between piracy, maritime terrorism, insurgency and organised crime – with several groups reported as previously perpetrating more than one of these four forms of illegal maritime activity.⁴⁴

⁴⁰ See for example Murphy, above n 10, 123, 177

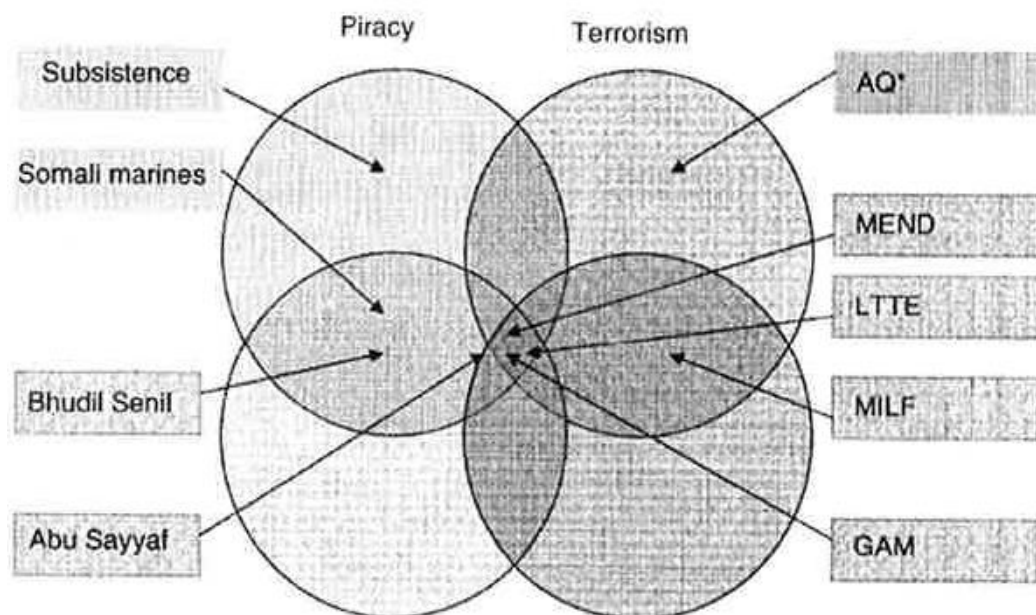
⁴¹ Murphy, above n 10, 161

⁴² Murphy, above n 10, 159

⁴³ Schmid et al, above n 35 at 191 also noted '... lately the resurgence of piracy off the coast of Somalia has led to the use of the term "maritime terrorism". To the extent that civilian sailors are taken hostage and held for ransom, there are indeed similarities, but this is basically piracy, which is robbery of ships, not terrorism'.

⁴⁴ Hans Tino Hansen 'Distinctions in the Finer Shades of Gray: The "Four Circles Model" for Maritime Security Threat Assessment' in Rupert Herbert-Burns, Sam Bateman and Peter Lehr (eds) *Lloyds MIU Handbook of Maritime Security* (CRC Press, 2009), 75 - 78

Figure 7: Four Circles Model: Piracy, Terrorism, Insurgency and Organised Crime



Source: Hans Tino Hansen ‘Distinctions in the Finer Shades of Gray: The “Four Circles Model” for Maritime Security Threat Assessment’ in Rupert Herbert-Burns, Sam Bateman and Peter Lehr (eds) *Lloyd’s MIU Handbook of Maritime Security* (CRC Press, 2008), 78

[5.2.2.2] International counter-piracy maritime security cooperation frameworks

Since 2004, increases in piracy and armed robbery against ships have prompted the development of a number of international maritime security cooperation frameworks. The Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP) has facilitated dialogue, capacity building and practical cooperation against piracy and armed robbery in Asia amongst its 19 contracting coastal and maritime user states.⁴⁵ Since November 2006 the ReCAAP Information Sharing Centre has facilitated the secure exchange of information on a 24/7 basis among ReCAAP Focal Points to enable responses to

⁴⁵ The nineteen Contracting Parties to ReCAAP are Australia, the People’s Republic of Bangladesh, Brunei Darussalam, the Kingdom of Cambodia, the People’s Republic of China, the Kingdom of Denmark, the Republic of India, Japan, the Republic of Korea, the Lao People’s Democratic Republic, the Republic of the Union of Myanmar, the Kingdom of the Netherlands, the Kingdom of Norway, the Republic of the Philippines, the Republic of Singapore, the Democratic Socialist Republic of Sri Lanka, the Kingdom of Thailand, the United Kingdom and the Socialist Republic of Viet Nam: <http://www.recaap.org/AboutReCAAPISC.aspx> Accessed 1 October 2013. ReCAAP was finalised on 11 November 2004, and entered into force on 4 September 2006: Douglas Guilfoyle *Shipping Interdiction and the Law of the Sea* (Cambridge University Press, 2009), 53

piracy incidents and to gather intelligence about piracy activities.⁴⁶ The Maritime Organization of West and Central Africa (MOWCA) has progressively developed a regional maritime security framework,⁴⁷ with an IMO-MOWCA forum in October 2005, agreeing to form an integrated regional coast guard network.⁴⁸ A meeting of MOWCA ministers in September 2007 agreed to establish coastguard co-ordinating centres in Abidjan, Dakar, Lagos, Pointe Noire, Accra and Luanda,⁴⁹ and in April 2008 a meeting of MOWCA governments agreed to the formalisation of a Memorandum of Understanding for a Subregional Coastguard Network.⁵⁰

Regional efforts to counter piracy around the Gulf of Aden were significantly advanced through the formalisation of the Djibouti Code of Conduct on 29 January 2009, which was adopted at the 102nd session of the IMO Council.⁵¹ Modelled on ReCAAP,⁵² the Djibouti Code of Conduct facilitates cooperation amongst 20 states around the Gulf of Aden⁵³ through information sharing, enabling the interdiction of suspected pirate ships and aircraft, and

⁴⁶ Relevantly, Article 9 (Information Sharing) of the ReCAAP Agreement provides, inter alia, that ‘(1) Each Contracting Party shall designate a focal point responsible for its communication with the Center, and shall declare its designation of such focal point at the time of its signature or its deposit of an instrument of notification provided for in Article 18’; and ‘(3) Each Contracting Party shall ensure the smooth and effective communication between its designated focal point, and other competent national authorities including rescue coordination centres, as well as relevant non-governmental organizations’.

⁴⁷ Maritime Organization of West and Central Africa (MOWCA)
<http://www.amssa.net/framework/MOWCA.aspx>, Accessed 1 October 2013

⁴⁸ This forum was held in Dakar, Senegal from 23 to 25 October 2005, and was attended by around 160 participants and observers from the 22 Member States of MOWCA – including Angola, Benin, Burkina Faso, Cameroon, Cape Verde, Central African Republic, Congo, Côte d’Ivoire, Democratic Republic of the Congo, Equatorial Guinea, Gabon, Gambia, Ghana, Guinea Bissau, Guinea, Mauritania, Niger, Nigeria, Sao Tome and Principe, Senegal, Sierra Leone and Togo – as well as representatives of maritime user states and international organisations: *IMO Report of the Maritime Safety Committee on its Eighty-Second Session* IMO MSC 82nd session, Agenda Item 24, IMO Doc MSC 82/24 (18 December 2006), 17.19 – 17.23

⁴⁹ *IMO Report of the Maritime Safety Committee on its Eighty-Third Session* IMO MSC 83rd session, Agenda Item 28, IMO Doc MSC 83/28 (26 October 2007), 19.27

⁵⁰ Soon after the MoU was adopted and opened for signature, 11 of the 20 coastal Member States of MOWCA, representing 55 per cent of the membership, immediately signed the MoU (including Cameroon, Cape Verde, the Republic of Congo, the Democratic Republic of the Congo, Côte d’Ivoire, Gabon, Guinea, Guinea-Bissau, Nigeria, Senegal and Togo), with other MOWCA member states expressing their intent to sign it in due course: *IMO Report of the Maritime Safety Committee on its Eighty-Fifth Session* IMO MSC 85th session, Agenda Item 26, IMO Doc MSC 85/26 (19 December 2008), 18.38

⁵¹ *IMO Protection of Vital Shipping Lanes: Sub-regional meeting to conclude agreements on maritime security, piracy and armed robbery against ships for States from the Western Indian Ocean, Gulf of Aden and Red Sea areas: Note by the Secretary-General* IMO Council 102nd Session, Agenda Item 14, IMO Doc C 102/14 (3 April 2009) Annex ‘Code of Conduct concerning the Repression of Piracy and Armed Robbery against Ships in the Western Indian Ocean and the Gulf of Aden’

⁵² *IMO Report of the Maritime Safety Committee on its Eighty-Sixth Session* IMO MSC 86th Session, Agenda Item 26, IMO Doc MSC 86/26 (12 June 2009), 18.6

⁵³ Including Comoros, Djibouti, Egypt, Eritrea, Ethiopia, Jordan, Kenya, Madagascar, Maldives, Mauritius, Oman, Saudi Arabia, Seychelles, Somalia, South Africa Sudan, Tanzania, Yemen, Mozambique and the United Arab Emirates:

<http://www.imo.org/MediaCentre/PressBriefings/Pages/27-mozambiqueDCOC.aspx> Accessed 1 October 2013

enabling the apprehension and/or prosecution⁵⁴ of persons suspected of being involved in acts of piracy and armed robbery against ships.⁵⁵ Similarly to Security Council Resolution 1816 (discussed in [5.2.2.3] below), the provisions of the Djibouti Code of Conduct apply only to piracy⁵⁶ and armed robbery against ships,⁵⁷ with participants committing to cooperate with other States and stakeholders as necessary to repress piracy.⁵⁸ Lastly, on a multilateral level, the Contact Group on Piracy off the Coast of Somalia (established under Security Council Resolution 1851 on 14 January 2009) has provided a forum for international counter-piracy efforts amongst 60 countries⁵⁹ and 21 international organizations⁶⁰ through five counter-piracy working groups.⁶¹

Whilst these regional maritime security cooperation frameworks focus specifically on coordinating the capacities of States to counter piracy, and not maritime terrorism, [5.2.2.6], and also the concluding Chapter 9, consider the extent to which these counter-piracy frameworks may have also improved the capacities of States to counter maritime terrorism

⁵⁴ Under Article 11 of the Djibouti Code of Conduct ('Review of National Legislation'), Participants agree to review their national legislation to ensure there are appropriate national laws in place to criminalise piracy and armed robbery against ships

⁵⁵ Article 2 of the Djibouti Code of Conduct

⁵⁶ Article 4(1) of the Djibouti Code of Conduct

⁵⁷ Article 5(1) of the Djibouti Code of Conduct

⁵⁸ Article 6(2) of the of the Djibouti Code of Conduct notes that 'The Participants recognize that multiple States, including the flag State, State of suspected origin of the perpetrators, the State of nationality of persons on board the ship, and the State of ownership of cargo may have legitimate interests in cases arising pursuant to Articles 4 and 5. Therefore, the Participants intend to liaise and co-operate with such States and other stakeholders, and to coordinate such activities with each other to facilitate the rescue, interdiction, investigation, and prosecution'.

⁵⁹ These States include Antigua and Barbuda, Australia, Austria, Bahamas, Belgium, Bulgaria, Canada, China, Cyprus, Czech Republic, Denmark, Djibouti, Egypt, Ethiopia, Finland, France, Germany, Greece, India, Indonesia, Italy, Japan, Kenya, Republic of Korea, Liberia, Lithuania, Luxembourg, Malaysia, Maldives, Marshall Islands, Mauritius, Mexico, Montenegro, Morocco, Mozambique, Myanmar, Netherlands, Nigeria, Norway, Oman, Pakistan, Panama, the Philippines, Portugal, Qatar, Russia, Saudi Arabia, Seychelles, Singapore, Somali Republic(TFG), Spain, Sri Lanka, Sweden, Thailand, Turkey, Ukraine, United Arab Emirates, United Kingdom, United States of America and Yemen: <http://www.thecgps.org/about.do?action=structure>. Accessed 1 October 2013

⁶⁰ These international organisations include the African Union, the Arab League, the Baltic and International Maritime Council, the European Union, The European Union External Action Service, European Commission, the European Police Office, the International Maritime Bureau, the IMO, the International Criminal Police Organisation, International Chamber of Shipping, the International Group of P&I Clubs, NATO, the Oil Companies International Marine Forum, the Seaman's Church Institute, the UN, the World Food Programme, Seafarers International Union, the International Association of Independent Tanker Owners, the European Naval Force Somalia, the UN Office on Drugs and Crime and the International Association of Dry Cargo Shipowners <http://www.thecgps.org/about.do?action=structure> Accessed 1 October 2013

⁶¹ Working Group 1 (chaired by the United Kingdom) facilitates the coordination of naval forces and promotes regional capacity development; Working Group 2 (chaired by Denmark) facilitates international cooperation on the legal and judicial aspects of countering piracy; Working Group 3 (chaired by the Republic of Korea) facilitates efforts to improve the capacities of shipping industries to counter pirate attacks; Working Group 4 (chaired by Egypt) facilitates the dissemination of public information about counter-piracy efforts; and Working Group 5 (chaired by Italy) coordinates international efforts to identify and disrupt the financial networks of pirate leaders and their financiers: <http://www.thecgps.org/work.do?action=work> Accessed 1 October 2013

threats through developing the necessary lines of communication between States to facilitate the interdiction of suspected terrorist vessels.

[5.2.2.3] Multinational naval deployments and strengthened mandates for interdicting pirate vessels

In addition to the international maritime security cooperative arrangements noted above, since 2006 a very considerable number of naval forces from various maritime user states have been deployed around the Gulf of Aden to protect commercial vessels from pirate attacks. Naval ships and aircraft have been deployed by the European Union as part of Operation Atalanta, by NATO through Operations Allied Provider, Allied Protector, and Ocean Shield, and as part of successive US-led combined maritime task forces. Additionally, several maritime user states have deployed naval resources to the Gulf of Aden independently.⁶² As [5.2.2.5] notes, these naval forces have been able to quickly respond to assist commercial vessels under threat of attacks by pirates.

The international legal basis for interdicting pirate vessels around the Gulf of Aden were given a significant boost through Security Council Resolution 1816, adopted unanimously on 2 June 2008. Resolution 1816 specifically authorised States cooperating with the then Transitional Federal Government of Somalia in the fight against piracy and armed robbery at sea off the coast of Somalia to:

‘(a) Enter the territorial waters of Somalia for the purpose of repressing acts of piracy and armed robbery at sea, in a manner consistent with such action permitted on the high seas with respect to piracy under relevant international law; and (b) Use, within the territorial waters of Somalia, in a manner consistent with action permitted on the high seas with respect to piracy under relevant international law, all necessary means to repress acts of piracy and armed robbery.’⁶³

⁶² For the details of naval force deployments into the Gulf of Aden since 2006, see Robin Geis and Anna Petrig *Piracy and Armed Robbery at Sea: The Legal Framework for Counter-Piracy Operations in Somalia and the Gulf of Aden* (Oxford University Press, 2011), 17 – 25

⁶³ UNSC Res 1816 (2 June 2008), UN Doc S/RES/1816, paras 7(a) and (b)

Resolution 1816 emphasised that the authorisation it provided for naval forces of patrolling states to enter the territorial sea of Somalia applies⁶⁴ only with respect to the piracy situation in Somalia, with this authorization being specifically approved by the (then) Somali Transitional Federal Government. It also emphasised that the Resolution did not affect the rights or obligations or responsibilities of member states under international law, including UNCLOS, and that it did not establish any customary international legal norms.⁶⁵ The mandate for piracy interdictions provided by Resolution 1816 has been progressively extended for twelve monthly intervals by five subsequent Security Council Resolutions, and as at 1 October 2013, is still in force.⁶⁶

Through being specifically limited in its geographical,⁶⁷ temporal⁶⁸ and subject matter⁶⁹ focus, and emphasising that it does not establish customary international law, Resolution 1816 and its subsequent extensions contrast to the post-9/11 counter-terrorism Security Council Resolutions reviewed in [2.7.1] – which have imposed a range of obligations on UN member states that are neither geographically nor temporally limited. The divergent views amongst international legal scholars about the extent to which the post-9/11 counter-terrorism Security Council Resolutions might add further justification to the interdiction of vessels suspected of illicitly transporting WMD materiel are examined in Chapter 7 (which focuses on UNCLOS) and Chapter 8 (which focuses on Article 51 of the UN Charter).

[5.2.2.4] IMO counter-piracy security guidance for commercial vessels

In addition to the considerable numbers of naval forces deployed around the Gulf of Aden, carefully targeted counter-piracy information has been made available to commercial vessels

⁶⁴ The present tense was used within Resolution 1816, and is retained here in this present form because as at 1 October 2013, this authorisation is still valid – having been progressively extended by five subsequent resolutions. See Note 65 below

⁶⁵ Following receipt of the letter from the Permanent Representative of the Somalia Republic to the United Nations to the President of the Security Council dated 27 February 2008 conveying the consent of the Somali Transitional Federal Government: UNSC Res 1816 (2 June 2008) UN Doc S/RES/1816, para 9

⁶⁶ UNSC Res 1846 (2 December 2008) UN Doc S/RES/1846, para 10; UNSC Res 1897 (30 November 2009) UN Doc S/RES/1897 para 7; UNSC Res 1950 (23 November 2010) UN Doc S/RES/1950 para 7; UNSC Res 2020 (22 November 2011) UN Doc S/RES/2020 para 9; and UNSC Res 2077 (21 November 2012) UN Doc S/RES/2077, para 12

⁶⁷ That is, through only applying to the area around the Somali territorial sea

⁶⁸ That is, through only applying for 12 monthly intervals which have been specifically extended

⁶⁹ That is, through only applying to piracy

transiting the Gulf of Aden. The Maritime Security Centre – Horn of Africa⁷⁰ (MSCHOA) and the UK Maritime Trade Operations Centre – Dubai have been established as security contact points for vessels transiting the Gulf of Aden through providing piracy alerts, facilitating the registration of commercial vessel movements, and providing up to date advice for transiting commercial vessels.⁷¹

Since 2009 the International Chamber of Shipping (ICS) has promulgated ‘Best Management Practices to Deter Piracy in the Gulf of Aden and off the Coast of Somalia’ (BMPs), with the fourth and current version of these BMPs being released with the approval of the IMO in September 2011 (BMP 4).⁷² BMP 4 provides recommendations to operators of ships transiting the ‘Somali High Risk Area’⁷³ – covering patterns of Somali pirate activity,⁷⁴ risk assessment,⁷⁵ typical profiles of pirate attacks,⁷⁶ vessel reporting procedures,⁷⁷ company planning,⁷⁸ ship masters’ planning,⁷⁹ and ship protection measures,⁸⁰ recommended measures in the event of a military response, and post incident reporting. Of most relevance to this section’s comparison between countering vessel-based attacks by pirates and by terrorists, BMP 4 firmly cautions ships’ crews not to resist pirates that succeed in gaining control of the vessel. In such cases, paragraph 10.3 of BMP4 recommends that ships’ crews should ‘Offer no resistance to the

⁷⁰ The Maritime Security Centre – Horn of Africa provides these services through a secure website: <http://www.mschoa.org/>, Accessed 1 October 2013

⁷¹ Robin Geis and Anna Petrig *Piracy and Armed Robbery at Sea: The Legal Framework for Counter-Piracy Operations in Somalia and the Gulf of Aden* (Oxford University Press, 2011, 28 - 29

⁷² IMO *Piracy and Armed Robbery Against Ships in Waters off the Coast of Somalia: Best Management Practices for Protection against Somalia-based Piracy* IMO Doc MSC.1/Circ.1339 (14 September 2011), Annex 2

⁷³ Being an area bounded by Suez and the Strait of Hormuz to the North, 10°S and 78°E): IMO *Piracy and Armed Robbery Against Ships in Waters off the Coast of Somalia: Best Management Practices for Protection against Somalia-based Piracy* IMO Doc MSC.1/Circ.1339 (14 September 2011), Annex 2, 4

⁷⁴ Noting the more common times of pirate attacks, and the influence of regional monsoon systems on pirate attack patterns

⁷⁵ Including preparation for attacks, use of muster points and barricaded citadels for crews, the influence of the height of the targeted vessel’s freeboard, and the influence of the targeted vessel’s speed (noting at para 3.4 that whilst there have been no reported attacks where pirates have boarded vessels travelling at over 18 knots, it is possible that pirate tactics could develop to enable them to board faster moving vessels)

⁷⁶ Including the use of mother-ships, typical weapons used by pirates, methods used by pirates to get aboard targeted vessels and their typical practices once aboard - usually heading to the bridge to gain control of the targeted vessel, and the times of the day when pirate attacks most commonly occur

⁷⁷ To either UK Maritime Trade Operations Centre – Dubai or the Maritime Security Centre – Horn of Africa upon initial entry to the High Risk Area, daily reports whilst transiting the High Risk Area, and final reports upon departure from High Risk Area or arrival in port

⁷⁸ In terms of planning and preparing ships and their crews for transit through the High Risk Area

⁷⁹ Including the briefing and training of the ship’s crew, preparing contingency plans, reviewing current warnings, and navigating in waters where naval forces are concentrated

⁸⁰ Including watch keeping and vigilance, bridge protection measures, controlling access to sensitive areas of the ship; the erection of temporary physical barriers (such as razor wire, water sprays and audible alarms), manoeuvring practice, the use of Closed Circuit Television systems, upper deck lighting, the use of safe muster points and citadels, and the use of Private Maritime Security Contractors (both armed and unarmed)

pirates once they reach the bridge. Once on the bridge the pirates are likely to be aggressive, highly agitated, and possibly under the influence of drugs, (including khat, an amphetamine like stimulant), so remaining calm and cooperating fully will greatly reduce the risk of harm.’ However considering the propensity of contemporary terrorist groups to perpetrate significant casualty and suicide attacks (for example in the 9/11 attacks where terrorists hijacked commercial airliners and utilised them as weapons),⁸¹ and the contrasts between the motives and profile of pirate and maritime terrorism in [5.2.2.1], [5.2.2.6] reasons that it would be erroneous to uncritically assume that fanatical terrorists attempting to hijack a vessel would be placated to the same extent by cooperative ships’ crews. Chapter 6 discusses the range of offensive acts that terrorists in control of a hijacked vessel might conceivably undertake.⁸²

Increases in pirate attacks have also prompted the more frequent carriage of firearms for self-defence purposes aboard commercial vessels, by both ships’ crews and by embarked Privately Contracted Armed Security Personnel (PCASP). However the carriage and use of firearms aboard commercial vessels has historically been avoided within shipping industries for fears that it might encourage future attackers to also carry firearms, thereby escalating already dangerous situations, and also because firearms aboard vessels may become attractive targets for attackers. Furthermore, the use of firearms requires special training and aptitudes and the risk of accidents or wrongful discharges of weapons is considerable. For example, during early 2012 armed security personnel aboard a commercial vessel off the coast of India mistook a fishing boat in the vicinity of their ship to be a pirate boat and fired at the boat, killing two people.⁸³ In some jurisdictions, killing a national may have serious consequences even for ships’ crews acting in self-defence, and the presence of firearms aboard vessels might also contravene customs laws prohibiting the importation of weapons.⁸⁴ The IMO has historically discouraged the carriage of firearms aboard commercial vessels;⁸⁵ however since December

⁸¹ In the film *United 93* based on the actual hijacking of United Airlines Flight 93 on 11 September 2001, a passenger was overheard to remark (in reference to the Al Qaeda hijackers then in control of the aircraft ‘... we should not disturb them – they will ask for ransom and let us go!’ However as events turned out this hoped-for outcome did not eventuate.

⁸² Including the utilisation of hijacked vessels as kinetic ramming weapons or as floating bombs against a range of targets

⁸³ *IMO Report of the Maritime Safety Committee on its Ninetieth Session* IMO MSC 90th session, Agenda Item 28, IMO Doc MSC 90/28 (31 May 2012), 20.7

⁸⁴ *IMO Report of the Maritime Safety Committee on its Eighty-Sixth Session* IMO MSC 86th Session, Agenda Item 26, IMO Doc MSC 88/26 (25 December 2010), 18.13

⁸⁵ In 1993, the 62nd session of the MSC had resolved that ‘The carrying and use of firearms for personal protection or protection of a ship is strongly discouraged’: *IMO Report of the Maritime Safety Committee on its Eighty-Sixth Session* IMO MSC 86th Session, Agenda Item 26, IMO Doc MSC 88/26 (25 December 2010), 18.13

2008⁸⁶ whilst still discouraging the carriage of firearms, it has taken the approach that the carriage of firearms and the embarkation of PCASP are matters for flag states to regulate.⁸⁷ On this point there is considerable variation the laws of various states – a survey in December 2011 by the International Chamber of Shipping and European Community Shipowners Association of the laws of 27 flag States⁸⁸ regarding the carriage of firearms aboard vessels and the employment of PCASP⁸⁹ found considerable inconsistency in such laws.⁹⁰ Most states neither specifically authorised nor prohibited the carriage of firearms and PCASP, some states (including Greece and Japan) expressly prohibited it, and a small number of other states (including Denmark and Singapore) specifically allowed it. For these reasons, the MSC at its 90th session in May 2012 called upon contracting governments to make clear their positions to the IMO regarding the disembarkation and carriage by PCASP of related firearms, ammunition and security-related equipment.⁹¹ However as at 1 October 2013 there are no indications of further progress on this issue.

Again whilst as [5.2.2.6] reasons, carefully implemented non-lethal self-defence measures have been proven to be effective in deterring vessel-based attacks by economically-motivated pirates and armed robbers, it is questionable whether such measures would be equally effective in deterring fanatically motivated contemporary terrorists from targeting vessels – meaning that lethal force may be the only measure that could stop attacks such as the USS *Cole* bombing. In that incident the *Cole*'s crew were precluded by applicable US Navy Rules of Engagement from firing in self-defence at the attacking dinghy.⁹²

⁸⁶ At its 85th session in December 2008, the MSC agreed there was a need for a full re-examination of the issue of the carriage of firearms or armed personnel on board merchant vessels: IMO *Report of the Maritime Safety Committee on its Eighty-Fifth Session* IMO MSC 85th Session, Agenda Item 26, IMO Doc MSC 85/26 (19 December 2008), 18.10

⁸⁷ IMO *Report of the Maritime Safety Committee on its Eighty-Sixth Session* IMO MSC 86th Session, Agenda Item 26, IMO Doc MSC 88/26 (25 December 2010), 18.30

⁸⁸ Including Antigua and Barbuda, Bermuda, Bahamas, Belgium, Cyprus, Denmark, Finland, France, Germany, Greece, Hong Kong, Isle of Man, Italy, Jamaica, Japan, Liberia, Lithuania, Malta, Marshall Islands, Netherlands, Norway, Panama, Poland, Portugal, Singapore, Spain, United Kingdom and the United States

⁸⁹ The International Chamber of Shipping survey used the term "Private Armed Security Guards" – but the abbreviation PCASP is used here for consistency

⁹⁰ International Chamber of Shipping and European Community Shipowners Associations *Private Armed Guards Flag State Law: Comparison of Flag State Laws on Armed Guards and Arms on Board* December 2011 https://www.bimco.org/en/News/2012/09/04_Anti-piracy_shipowner_stay_on_your_toes/~media/Security/Piracy/Private_Armed_Guards_Flag_State_Laws_June_2012.ashx, Accessed 1 October 2013

⁹¹ IMO *Report of the Maritime Safety Committee on its Ninetieth Session* IMO MSC 90th session, Agenda Item 28, IMO Doc MSC 90/28 (31 May 2012), 20.11

⁹² During the USS *Cole* bombing, when the *Cole*'s crew saw a second dinghy approaching – because US Navy rules of engagement applicable at this time prohibited the USS *Cole*'s ship's company from firing upon the approaching small boat in self-defence without first obtaining permission from the *Cole*'s Commanding Officer

[5.2.2.5] Effectiveness of preventative security measures against pirate attacks

Analysis of the *Annual Reports on Piracy and Armed Robbery Against Ships* published by the International Maritime Bureau (IMB) between 2005⁹³ and 2012⁹⁴ indicates that various preventative security measures have been demonstrably effective in preventing vessel-based attacks by pirates - particularly around the Gulf of Aden where (as [5.2.2.3] noted), international naval forces have been on hand to immediately respond to SSAS alerts and distress messages from vessels threatened by pirate attacks. Measures such as activating SSAS systems, sounding alarms and/or foghorns, activations of fire hoses, firing of warning shots, activation of Long Range Acoustic Devices (LRAD),⁹⁵ requesting assistance from Coalition naval forces,⁹⁶ and taking evasive manoeuvres through increasing speed and changing course have successfully deterred at least 145 attempted pirate attacks between 2005 and 2012. These statistics include three attempted attacks in 2005, 7 in 2006, 16 in 2007, 17 in 2008, 19 in 2009, 39 in 2010, 38 in 2011, and 6 in 2012. From these 145 attempted attacks, 79 (55 per cent) occurred around the Gulf of Aden, 27 in waters and ports around the Gulf of Guinea (19 per cent), 18 in Southeast Asian waters (13 per cent), 8 occurred in South America (6 per cent), 3 in South Eastern Africa (around Tanzania, Madagascar and Mozambique) (3 per cent), 2 in the Persian Gulf in Iraqi ports and anchorage (2 per cent), and one attempted attack in an Indian anchorage (1 per cent).

or authorised delegate. One US Navy Petty Officer later explained that immediately after the attack, he was ordered not to fire on a second small boat approaching the *Cole*: ‘With blood still on my face – that’s the rules of engagement: no shooting unless we’re shot at ... In the military it’s like we’re trained to hesitate now. If somebody had seen something wrong and shot, he probably would have been court-martialed.’ Another sailor explained that if they had fired on the second approaching craft they ‘... would have been in more trouble for killing two foreigners than losing 17 American sailors’: Stephen Robinson ‘Bombed US warship was defended by sailors with unloaded guns’ *Daily Telegraph* 15 November 2000. While the *Cole* attack involved issues of military rules of engagement etc which are outside the scope of this Study, the considerations against that that apply against the use of force by a vessel subject to targeting from another vessel illustrate the limitations on the ability of non-military vessels to use force to repel attacks from pirates and terrorists.

⁹³ Given that the ISPS Code entered into force on 1 July 2004, the 2005 IMB Annual Report is the first to contain one complete years’ worth of information on the impact of the ISPS Code

⁹⁴ As Chapter 1 noted, this Study is the first to methodically investigate the effectiveness of various preventative security measures in preventing vessel-based pirate attacks since the entry into force of the ISPS Code in July 2004

⁹⁵ LRAD is a high-intensity directional acoustic hailing system used by military forces and law enforcement agencies, and which has more recently been deployed as a means of protecting commercial vessels from attacks by pirates. When activated, LRAD systems emit high intensity sound waves that are intolerably painful and potentially deafening, forcing attackers or protestors to retreat. See LRAD: Product Overview: <http://www.lradx.com/site/content/view/15/110/>, Accessed 1 October 2013

⁹⁶ Only around the Gulf of Aden

Whilst Appendix I provides detailed summaries of these attempted attacks and the effect of the security measures taken,⁹⁷ the following three sample quotations⁹⁸ from the IMB Annual Reports illustrate the effectiveness of preventative security measures in deterring attacks by economically-motivated pirates – showing how they have been deterred by prospects of apprehension by approaching naval forces. First ‘Seeing the crew's vigilance, the speedboats moved away and re-grouped near a fishing trawler in the vicinity’: Attempted attack on the Indian bulk carrier *Murshidabad* whilst underway within Indonesian waters on 4 March 2008 by 15-20 speedboats closing to within 5 metres of the stern – which implemented evasive manoeuvres including increasing speed and broadcast a security message via VHF channel 16.⁹⁹ Second ‘Seeing the alert crew and the aggressive manoeuvres, the pirates abandoned the attack’: Attempted attack on the Maltese bulk carrier *Eleni G* whilst underway in the Gulf of Aden on 29 January 2009 by six speedboats – which activated its SSAS and audible alarm, implemented evasive manoeuvres taken, activated its fire hoses activated, and notified coalition forces notified which arrived on scene 50 minutes later.¹⁰⁰ Third ‘The pirates aborted the attack upon seeing the presence of a warship and two helicopters’: Attempted attack on the Norwegian bulk carrier *Carmencita* whilst underway off the Somali coast near Oman on 22 November 2010 by ten armed pirates in two skiffs who chased and fired upon the ship; and attempted to board it several times - which activated its SSAS, sounded its alarm, increased speed; and contacted a nearby coalition warship for assistance.¹⁰¹ The above reports of economically-motivated pirates being deterred by the prospects of apprehension empirically corroborate the distinctions made by Ong (see Figure 6 above) about the contrasts between the profiles of piracy and maritime terrorism.

⁹⁷ Appendix I summarises the effectiveness of ISPS Code and other security measures in deterring pirate attacks on vessels between 2005 and 2012. For each attempted attack it includes the date; the location and navigational status of the attacked vessel (Underway (U), In port (P), At anchor (A), or Offshore platform (OP)); the name and nationality of the attacked vessel; details of the attack including the number of attackers, their weapons and means of transport; details of security measures taken by the targeted vessel; the effect of the security measures taken by the targeted vessel; and references to the *Annual Reports on Piracy and Armed Robbery Against Ships* from which these attempted attacks were reported.

⁹⁸ Only a few of the entries in the IMB Annual Reports contain such detailed descriptions of the effectiveness of security measures in deterring pirate attacks – with many other reports simply reporting statistics on attempted attacks

⁹⁹ ICC-International Maritime Bureau *Report on Piracy and Armed Robbery Against Ships 1 January – 31 December 2008*, 71

¹⁰⁰ ICC-International Maritime Bureau *Report on Piracy and Armed Robbery Against Ships 1 January – 31 December 2009*, 86

¹⁰¹ ICC-International Maritime Bureau *Report on Piracy and Armed Robbery Against Ships 1 January – 31 December 2010*, 85

[5.2.2.6] What might the experience in countering pirate attacks portend for preventing vessel-based terrorist attacks on vessels?

In summary, whilst pirate attacks have been far more prevalent than maritime terrorist attacks over recent years, and assumed a higher priority on maritime security agendas, [5.2.2.2] to [5.2.2.6] have reasoned that by virtue of their extremist motives, and demonstrated lethal profile, vessel-based attacks by contemporary terrorist groups could well be significantly more deadly and disruptive than attacks by contemporary pirate groups. In fact it may not be until attackers are actually on board and in control that an attacked vessel's crew may discover whether the attackers are pirates seeking to steal and escape from the vessel (who might be deterred by the possibility of apprehension), or maritime terrorists seeking to perpetrate a deadly and destructive attack, who might be fanatically prepared to die in the perpetration of such an attack.¹⁰² This section reasons there are both potentially positive and negative indications about what the "Somali counter-piracy experience" could portend for preventing vessel-based terrorist attacks against high profile vessels.

First, on the more positive front, the 145 reports of the effectiveness of various preventative security measures in countering pirate attacks noted in [5.2.2.6]¹⁰³ could be taken as evidence of high levels of security alertness within maritime industries, and preparedness of naval forces to respond to ships under threat of pirate attacks. This could suggest commercial vessels and naval forces are equally prepared to counter vessel-based attacks by terrorists. However, on the less positive front, it is worth recalling the distinctions articulated in [5.2.2.1] between the motives and profiles of piracy and maritime terrorism. All of the 145 reports of the effectiveness of ISPS and other security measures in deterring pirate attacks summarised in Appendix I involved pirates abandoning their attacks when targeted commercial ships increased speed or implemented evasive manoeuvres, or after being deterred by the activation of extra lighting, audible alarms or LRADs, the firing of warning shots or flares, or the prospects of being apprehended by approaching coalition naval forces. By contrast, [3.3.1] noted indications of fanatical contemporary terrorist groups being motivated to perpetrate disruptive significant casualty attacks, possibly involving suicide tactics. Therefore it would be

¹⁰² Chapter 6 discusses the range of offensive "9/11-style" acts that terrorists in control of a hijacked vessel might conceivably undertake

¹⁰³ These reports are detailed in Appendix I 'Detailed summary of the effectiveness of ISPS Code preventative security measures against pirate attacks 2005 – 2012'

erroneous to uncritically assume terrorists would be deterred from attacking by various security measures to the same extent that pirates have been.

Second, as [5.2.2.1] noted, notwithstanding reports of attacks by Somali pirates extending south to the Seychelles, and east to the West Coast of India, attacks by pirate groups are geographically concentrated in specific maritime regions.¹⁰⁴ By contrast, as Chapter 2 explained, through the combination of extremist ideologies and the growth of home-grown terrorism, contemporary terrorism has been recognised to be a global, as opposed to localised, phenomenon.¹⁰⁵ The challenges this presents to States and maritime industries is succinctly encapsulated in the ‘Comparison of enemy size/tactical footprint and aggregate intelligence effort between the cold war and the war on terror’ diagram depicted in Figure 3 in [2.7]. The localised occurrence of piracy activity provides “geographical certainty” to operators of commercial vessels in terms of knowing the maritime areas where their preventative security arrangements should be increased – with the sources of preventative maritime security guidance noted in [5.2.2.5] such as BMP 4 talking of ‘typical pirate attack patterns’.¹⁰⁶ By contrast, maritime terrorism attacks could not be said to have a similar level of predictability in terms of locations and methods - which accounts for the extensive number of maritime terrorism scenarios that have been postulated by maritime security specialists since 9/11 as noted in [3.4], to which this Study adds greater structure to through the Threat Matrix developed in [3.5]. Furthermore, [5.2.1] noted that maritime terrorist attacks have occurred at a wide range of locations around the world.

The localised and predictable profile of Somali piracy has enabled the focused deployment of naval forces;¹⁰⁷ which as [5.2.2.6] explained, have been able to rapidly respond to ships under

¹⁰⁴ For instance, the ICC-International Maritime Bureau Report on Piracy and Armed Robbery Against Ships 1 January – 31 December 2011 at 5 – 6 notes that 75 per cent of the 439 reported piracy / armed robbery attacks against shipping during the reported 12 months were reported in the following seven locations: Somalia (160), the Red Sea (39), Malaysia (16), Indonesia (46), the Gulf of Aden (37), Benin and the South China Sea (13)

¹⁰⁵ Murphy, above n 10, 386 – 387 makes similar conclusions

¹⁰⁶ IMO *Piracy and Armed Robbery Against Ships in Waters off the Coast of Somalia: Best Management Practices for Protection against Somalia-based Piracy* IMO Doc MSC.1/Circ.1339 (14 September 2011), Annex 2, 9 - 10. This IMO guidance noted six typical features of pirate attacks – including (i) the common use of two small high speed open boats (skiffs) often approaching from either quarter or the stern; (ii) common formations of vessels – including the frequent usage of “mother ships”; (iii) the increasingly frequent use of Rocket-Propelled Grenades – which are generally focused towards the ship’s bridge and accommodation areas; (iv) positioning of skiffs alongside the vessel, and the use of lightweight ladders and ropes to access the deck; (v) most attacks taking place early in the morning; and (vi) the increasing success of targeted vessels in repelling attacks through implementing appropriate preventative security measures.

¹⁰⁷ The deployment of coalition naval forces was overviewed in [5.2.2.3]

pirate attack. Appendix I records at least 80 activations of SSAS alerts (with the UK Maritime Trade Operations Centre in Dubai monitoring such alerts) from threatened ships prompting responses by coalition naval forces – with some warships and helicopters arriving on scene within one hour of the SSAS activation. However it would be erroneous to uncritically assume the same swift response would occur in many other parts of the world, with [4.2.5] noting quite complex and variable “responsible agency” arrangements, meaning that if an SSAS were to be activated outside the Somali High Risk Area such swift responses could not be guaranteed to be as forthcoming. Relevantly when discussing the 2002 MV *Limburg* bombing, Timlen concluded that ‘... considering the speed with which this attack was carried out, even if there had been an SSAS installed and activated as soon as the motorboat was spotted, it is not likely that any responders could have done anything to prevent this incident’.¹⁰⁸

Third and finally, it is possible that either before or after transiting the designated Somali High Risk Area (an area bounded by Suez and the Strait of Hormuz to the North, 10°S and 78°E)¹⁰⁹ or other known areas of pirate activity – possibly including some of the world’s key international straits, which [3.3.2] noted have reportedly been “within the sights” of planned attacks by contemporary terrorist groups, commercial vessels might well be operating at lower levels of security readiness and hence might be less prepared to counter maritime terrorist attacks. For these reasons, it would be erroneous to uncritically assume the demonstrated effectiveness of preventative security measures in deterring vessel-based attacks by pirates would automatically mean such measures would be equally successful in deterring vessel-based attacks by fanatical terrorists prepared to martyr themselves. Preventing vessel-based attacks by terrorists requires crews of ships to be both imaginative (that is thinking “outside the box” in pre-empting maritime terrorist attacks) and continuously vigilant, and to not “drop their guard” once out of Somali High Risk Area.

¹⁰⁸ Thomas Timlen *The Use of SOLAS Ship Security Alert Systems* Institute of Defence and Strategic Studies Working Paper No. 154 5 March 2008, 7

¹⁰⁹ IMO *Piracy and Armed Robbery Against Ships in Waters off the Coast of Somalia: Best Management Practices for Protection against Somalia-based Piracy* IMO Doc MSC.1/Circ.1339 (14 September 2011), Annex 2, 4

[5.2.3] Best case / worst case analysis of ISPS Code security measures preventing vessel-based terrorist attacks on vessels

This section analyses the prospects for the preventative security measures mandated and recommended by the ISPS Code to succeed in preventing vessel-based terrorist attacks on target vessels. It considers how the six “best case / worst case” scenario factors articulated in [4.2.7] might apply in light of the observations in [5.2.1] about how vessel-based attacks have previously been successfully perpetrated, attempted, planned, and postulated by maritime security specialists. It also applies the observations in [5.2.2.6] about the implications which might be drawn from the international shipping industry’s experience in countering vessel-based attacks by pirates around the Gulf of Aden and other areas since 2005.

[1] Larger or smaller vessels? [5.2.1] noted that most vessels targeted through vessel-based terrorist attacks have been in the “larger vessel” category - including cargo ships (19), petroleum industry vessels (eight), naval vessels (six), tankers (six), passenger ferries (four) and cruise ships (one), with seven other vessel types not able to be ascertained despite the best efforts of the present author. Whilst 17 fishing vessels were also targeted, since 2001 these attacks were predominantly around Sri Lanka and Western Africa. This means the ISPS Code would be more likely to apply to such targeted vessels (a “best case” scenario). While such large “target” vessels would be more likely to be fitted with AIS, [5.2.1] showed nearly all the “attacking” vessels to be small speedboats (which would not be equipped with AIS). It is also conceivable that terrorists could target vessels with large hijacked or terrorist-controlled vessels as kinetic ramming weapons – which [6.2.1.3]¹¹⁰ discusses. Furthermore, it is worth recalling that as [4.3.1.2] discussed, since 9/11 there have been widespread concerns within maritime industries about the ease with which AIS data can be publicly accessed – including by pirates and terrorists to select and track vessels for attacks, with these concerns acknowledged by the IMO.¹¹¹ However, nearly five years later the 86th session of the MSC in June 2009 noted that no apprehended Somali pirate vessels had been found to be equipped with AIS receivers¹¹² –

¹¹⁰ ‘The Vessel as a Weapon Against Other Vessels’

¹¹¹ *IMO Report of the Maritime Safety Committee on its Seventy-Ninth Session* IMO MSC 79th Session, Agenda Item 263 IMO Doc MSC 79/23 (15 December 2004), 5.99 – in which the MSC condemned the publication of AIS data on the internet, urged contracting governments to discourage such practices, and also urged masters of vessels not to deactivate their AIS transponders due to such concerns; re-affirmed at *Report of the Maritime Safety Committee on its Eighty-Sixth Session* IMO MSC 86th Session, Agenda Item 26, IMO Doc MSC 86/26 (12 June 2009), 18.44 – 18.47

¹¹² *Report of the Maritime Safety Committee on its Eighty-Sixth Session* IMO MSC 86th Session, Agenda Item 26, IMO Doc MSC 86/26 (12 June 2009), 18.48

which may have influenced the recommendation within BMP 4 that vessel masters should not deactivate their AIS transponders while transiting the Somali High Risk Area.¹¹³ Furthermore, whilst the present author's research has not found any reports of terrorists utilising AIS receivers in attempted or planned attacks on vessels, this is not to say they may not have contemplated such actions.

[2] Terrorist-controlled in first instance? [5.2.1] did not reveal any indications of terrorist involvement aboard the targeted vessels; that is crew members causing the vessel to be less able to repel a vessel-based terrorist attack.

[3] Rigor of application of ISPS Code measures? A “best case” scenario could apply if crews of vessel targeted by terrorists were vigilant and alert to vessel movements in surrounding waters, which when combined with well-rehearsed security procedures, could increase the chances of a targeted vessel identifying such “attacking” vessels and out-maneuvering such attacks, or also apply other security measures such as the activation of LRADs or the firing of warning shots. Conversely a “worst case” scenario could apply if a ship's crew was inattentive to vessel movements in surrounding waters, or un-prepared to swiftly implement appropriate security measures. Furthermore, as [5.2.2.6] reasoned, it could apply if a ship's crew completely “let down their guard” once outside of the Somali High Risk Area. Whilst as [4.2.1] explained the ISPS Code is a flexible risk management framework that is capable of being adjusted up and down as required, this Study reasons that preventative security arrangements should never be lowered to “Security Level Zero” where complacency sets in.

[4] Did the maritime terrorism incident involve a security-regulated port? The 2000 bombing of the USS *Cole*¹¹⁴ by an explosives-laden dinghy whilst alongside in Aden harbor is the only recorded vessel-based terrorist attack on a target vessel in port.¹¹⁵ Although this incident pre-dated the entry into force of the ISPS Code, it is possible the scope for this attack to occur could have been lessened through greater controls over small vessel activity around this port, particularly when high profile vessels such as the USS *Cole* were to visit the port.

¹¹³ MSC.1/Circ.1339 *Piracy and Armed Robbery Against Ships in Waters off the Coast of Somalia: Best Management Practices for Protection against Somalia-based Piracy* (14 September 2011), para 7.3

¹¹⁴ The ISPS Code would not apply to warships such as the USS *Cole*

¹¹⁵ However as [5.3] shows, a number of terrorist attacks on vessels in port have been launched from the land, from the sub-surface and from within the vessel

[5.3.5] below applies the “best case / worst case” scenario analysis in the context of port facility security measures in more detail.¹¹⁶

[5] Form of maritime terrorist attack A “best case” scenario could apply if terrorists attempted a “more constrained” form of vessel-based attack, such as seeking to get operatives on board the target vessel, or launching a “stand-off” attack, with [5.2.1] noting several such attacks occurring between 1968 and 2012. As [5.2.2.6] reasoned, alert and well-prepared ships’ crews could out-maneuver such attacks, or also apply other security measures such as the activation of LRADs or the firing of warning shots. However a “worst case” scenario could be more likely to apply if terrorists attacked with explosives-packed speedboats such as those which struck the USS *Cole* and MV *Limburg*; or attacked with multiple speedboats as [5.2.1] noted the LTTE have done. [5.2.1] also noted that such attacks have been attempted and planned by contemporary terrorist groups, and which could prove very challenging for target vessels to out-maneuver or otherwise deter.

[6] Government oversight arrangements, Coordination of SSAS arrangements, Changes to security levels; Vessel movement restrictions Given that most vessel-based terrorist attacks have occurred while the target vessels have been underway rather than within the confines of port facilities,¹¹⁷ the reasoning about the “preventative security value” of SSAS arrangements noted above in [5.2.2.6] is directly applicable here.¹¹⁸ Additionally, the prospects of a “best case” scenario applying could be improved through the timely and accurate promulgation of changes to security levels¹¹⁹ by relevant Designated Authorities could further contribute towards alerting ships’ crews of the need for extra vigilance, thereby lessening the scope for vessel-based attacks on target vessels to occur. Furthermore, the various international maritime security cooperation frameworks noted in [5.2.2.2] may have improved arrangements and lines of communication between States which could enable States to respond to ships under threats of attacks in a timely manner. Conversely the prospects of a “worst case” scenario applying could result from a failure to promulgate changes to security levels in a timely fashion.

¹¹⁶ That is, because more maritime terrorist attacks on vessels from land and from beneath the surface have occurred within the confines of port facilities

¹¹⁷ [5.3.5] below applies the “best case / worst case” scenario analysis in the context of port facility security measures in more detail

¹¹⁸ That is, that it would be erroneous to uncritically assume an SSAS alert would be swiftly responded to outside of the Gulf of Aden - where the localised and predictable nature of pirate activity and the presence of coalition naval forces able to respond have resulted in SSAS alerts being swiftly responded to

¹¹⁹ That is Security Level 1, Security Level 2 and Security Level 3 as required by ISPS Code Part A, Section 7

In summary, this section has shown that vessel-based terrorist attacks on high-profile vessels by contemporary terrorist groups over the last two decades have become increasingly lethal. Whilst such attacks have not been anywhere near as frequent (or predictable) as vessel-based attacks by pirates, it reasoned that continually and rigorously-applied preventative security measures could significantly lessen the scope for such attacks to succeed.

[5.3] COUNTERING TERRORIST TARGETING OF VESSELS FROM OTHER THAN VESSEL SOURCES

This section analyses the prospects for the ISPS Code security measures to lessen the scope for terrorist attacks on vessels from the land, from inside the vessel, from below the surface and from the air. In comparison to [5.2] it examines Port Facility security measures (in addition to Ship Security measures) because as the threat context sections explain, many of these previously recorded terrorist attacks have occurred whilst target vessels have been alongside in port. Similarly to [5.2] it shows the increased lethality of attacks by contemporary terrorists, and the applicability of the “best case / worst case” scenario analysis of the ISPS Code. It also reasons that terrorist attacks from within the vessel are the most “preventable” of all the 21 maritime terrorism incident types examined in this Study.

[5.3.1] Threat context: Vessel targeting from the land

	Successful	Attempted	Planned	Postulated
	At least 26	1	0	0

Terrorist attacks on high profile vessels launched from land locations have accounted for 26 (11 per cent) of the 228 recorded successful maritime terrorist attacks against vessels between 1968 and 2011, causing a total of 53 fatalities.

As noted in Appendix G, of the 26 targeted vessels, nine vessel types were not specified, five were cargo ships, four were passenger ferries, three were naval vessels, two were cruise ships and one was an oil tanker. The majority of land-based attacks have involved a range of vessel types being attacked whilst alongside in port – including eleven bombings and eight ‘armed

attacks' involving the firing of weapons at vessels, or the vessels being stormed by armed attackers. Such attacks have been perpetrated around the Caribbean and Latin America (mostly during the 1970s and early 1980s), in the Philippines, throughout the Mediterranean and in Sri Lanka. One land-based attack was also launched in Belfast in 1971.

Whilst smaller in number than vessel-based attacks reviewed in [5.2.1], land-based attacks evidence the propensity of attacks by contemporary terrorist groups to involve significant casualties and/or the use of suicide tactics. The most deadly land-based attack to date has been the detonation of a powerful bomb by the Moro Islamic Liberation Front at the port of Davao City in the Philippines on 1 April 2003 within proximity to the *Filipina Princess* and *Super Ferry 15* passenger ferries docked alongside, killing 16 and injuring 30.¹²⁰ Additionally on 25 July 1999, the LTTE launched a suicide bombing attack on the commercial vessel *Neuuco Endurance* docked in Trincomalee, Sri Lanka, killing two people.¹²¹ Other attacks by Islamic extremist groups during the 1990s have resulted in seven fatalities (the attack on the Italian ship *Luciana* by the Armed Islamic Group of Algeria whilst alongside in the port of Jijel on 8 July 1994) and four fatalities (being the grenade attack on the Christian missionary vessel *MV Doulous* by members of the Abu Sayyaf Group whilst in the port of Zamboanga in the Philippines on 11 August 1991, killing four).¹²²

The two recorded land-based terrorist attacks on ships underway also illustrate the increased lethality of land-based attacks by contemporary terrorist groups compared to pre-contemporary groups. On 1 June 1976, Cuban exiles opposed to Fidel Castro launched a shelling attack against a Soviet ship navigating off the coast of Cuba – but this did not result in any casualties.¹²³ Just over thirty years later on 17 July 2006, Hezbollah launched a missile attack against the Israeli naval corvette INS *Ahi Hanit* which was underway 10 nautical miles off the coast of Lebanon, killing four Israeli sailors.¹²⁴

The one recorded **attempt** to target high-profile vessels from the land evidences the innovativeness of contemporary terrorist groups. On 19 August 2005 four members of the Al

¹²⁰ Murphy, above n 10, 326

¹²¹ National Consortium for the Study of Terrorism and Responses to Terrorism Global Terrorism Database <http://www.start.umd.edu/gtd/>

¹²² Rommel Banlaoi 'Maritime Terrorism in Southeast Asia: The Abu Sayyaf Threat' (Autumn 2005) 58(62) *Naval War College Review*, 7

¹²³ RAND Database of Worldwide Terrorism Incidents: http://smapp.rand.org/rwtid/search_form.php

¹²⁴ Lorenz, above n 22, 25

Qaeda of the Two Rivers group launched rocket attacks against two US amphibious warships (*USS Ashland* and *USS Kearsarge*) moored in the port of Aqaba from a rented hilltop warehouse overlooking the port – however the rockets over-shot the two US warships and no damage or injuries resulted.¹²⁵ However in practice it is conceivable that terrorists may well have attempted more land-based attacks. The present author's research has not identified any specific instances of terrorists having **planned** land-based attacks, nor have maritime security specialists **postulated** such scenarios.

[5.3.2] Threat context: Vessel targeting from inside the vessel

	Successful	Attempted	Planned	Postulated
	At least 21	1	1	2

Terrorist attacks perpetrated from inside target vessels have accounted for at least 21 (9 per cent) of the 228 recorded **successful** maritime terrorist attacks. Collectively, such attacks have resulted in 211 fatalities (the highest of all the Threat Matrix categories), with such attacks occurring both within ports and up to 300 nautical miles offshore. Most attacks have involved the detonation of explosives aboard the vessel, and two hijackings - being the *Achille Lauro* incident discussed in [3.3.1], and the 1961 hijacking for 11 days of the Portuguese cruise ship *Santa Maria* by Portuguese rebels whilst it was underway with 600 passengers, who were all subsequently released.

Eight passenger ferries and three cruise ships have been the targets of attacks from inside the vessel, followed by three cargo and three ship types not being specified. Such attacks have occurred around the Caribbean and in the port of Los Angeles during the 1970s, around the Mediterranean, within the Caspian Sea and around Southeast Asia – with the Philippines accounting for three such attacks.

Bombings by contemporary terrorist groups have accounted for the two most deadly of all maritime terrorist attacks. On 27 February 2004, a bomb concealed inside a television set within passenger cargo exploded aboard the *Super Ferry 14* about an hour out of Manila off Corregidor Island in the Philippines, causing 116 fatalities and the sinking of the vessel – with

¹²⁵ Murphy, above n 10, 200; Lehr, above n 13, 65

this attack being attributed to the Abu Sayyaf Group.¹²⁶ On 25 February 2000, a bomb planted on a bus aboard the *Our Lady Mediatrix* passenger ferry by the Moro Islamic Liberation Front exploded when the ferry was several hundred metres away from docking at Ozamis City in the Philippines, killing 40 and wounding around 50 passengers.¹²⁷ The 2001 bombing of the Indonesian ferry *Kalifornia* caused 10 fatalities;¹²⁸ and a 1992 attack on a ferry departing Baku in Azerbaijan killed 12 passengers.¹²⁹

On 11 July 1988 three members of the Abu Nidal Organisation opened fire on passengers aboard the *City of Poros* passenger ferry approximately three nautical miles outside the port of Piraeus in Greece, with concealed weapons and hand-grenades, killing nine and injuring approximately 100, before escaping on a speed boat immediately after the attack.¹³⁰ A bomb planted aboard a Portuguese vessel by the Greek terrorist group Armed Revolutionary Action which exploded on 26 April 1971 whilst the vessel was underway off the coast of Mozambique, killing all 23 crew on board,¹³¹ ranks as the sixth most deadly recorded maritime terrorist attack – and stands out starkly in terms of the maritime attacks during the 1970s perpetrated by pre-contemporary terrorist groups.

Whilst the present author's research has identified one reported **attempt** to target a high profile vessel from within – being the 1997 discovery of a home-made bomb on a Sydney Harbour ferry which was successfully defused¹³² - in practice a significantly greater number of attacks may have been attempted but not reported publically.

Similarly, whilst in October 2002 the Israeli newspaper *Maariv* reported that Hamas' military wing Izz el-Din al-Qassam Brigades, had **planned** to bomb a passenger vessel in the Israeli port of Eilat through the use of a Palestinian suicide bomber smuggling a camera filled with explosives,¹³³ it is conceivable that terrorists may have planned numerous other attacks on vessels from inside the vessel.

¹²⁶ Banlaoi, above n 122, 6; Lehr, above n 13, 58 - 59

¹²⁷ Campbell and Gunaratna, above n 14, 77

¹²⁸ John Bradford 'The Growing Prospects for Maritime Security Cooperation in Southeast Asia' (Summer 2005) 58(3) *Naval War College Review*, 67

¹²⁹ National Consortium for the Study of Terrorism and Responses to Terrorism Global Terrorism Database <http://www.start.umd.edu/gtd/>

¹³⁰ Campbell and Gunaratna, above n 14, 82

¹³¹ RAND Database of Worldwide Terrorism Incidents: http://smapp.rand.org/rwtid/search_form.php

¹³² Campbell and Gunaratna, above n 14, 82

¹³³ Lorenz, above n 22, 22

Finally the possibility for terrorist attacks on vessels from inside has been **postulated** at least twice – with passenger vessels envisaged as likely targets. Greenberg et al postulated scenarios of the ‘hijacking of a vessel as a fund-raising exercise to support a campaign of political violence directed toward ethnic, ideological, religious or separatist designs,’¹³⁴ and of terrorists ‘directly targeting a cruise liner or passenger ferry to cause mass casualties by contaminating the ship’s food supply, or detonating an on-board explosive devices’.¹³⁵

[5.3.3] Threat context: Vessel targeting from below the surface

	Successful	Attempted	Planned	Postulated
	27	1	7	2

Underwater terrorist attacks on high profile vessels have accounted for 27 (12 per cent) of the 228 recorded maritime terrorist attacks to between 1968 and 2013, resulting in 12 fatalities overall. The majority (16) of these underwater attacks have occurred against target vessels in port through the use of magnetic limpet mines which have been attached to ships’ hulls by underwater swimmers, and at least four vessels have been targeted by the use of floating sea mines whilst underway. As Appendix G notes, the vessel types were not specified for seven of the targeted vessels, five were cruise ships, three were naval vessels, two were cruise ships, one was a passenger ferry and one was a fishing vessel.

The majority (18) of the **successful** underwater attacks occurred during the 1970s and 1980s around the Caribbean, the Mediterranean and Latin America, as the following three examples illustrate. On 4 March 1973, the *Sanya* cruise liner was sunk in Beirut harbour following an explosion caused by a magnetic limpet mine attached its keel by the Fatah unit Black September. Whilst none of the 250 American tourists were on-board the *Sanya* when this explosion occurred, significant casualties could have resulted had they been on-board.¹³⁶ During March 1984, a total of eleven Soviet, Panamanian, Dutch, Liberian and Nicaraguan vessels were sunk by sea mines in waters around Nicaragua placed by members of the Nicaraguan Democratic Force and the Democratic Revolutionary Alliance with the backing of

¹³⁴ Greenberg et al, above n 25, 27 (Scenario 3)

¹³⁵ Greenberg et al, above n 25, 27 (Scenario 7)

¹³⁶ Murphy, above n 10, 186

the CIA.¹³⁷ Later in 1984 between 9 July and 20 September a total of nineteen ships were damaged by seas mines placed along the Suez Canal by members of Hezbollah.¹³⁸

The two recorded underwater attacks by the LTTE around Sri Lanka illustrate the greater lethality of attacks perpetrated by this contemporary terrorist group. The bombing of the Philippines cargo vessel *Princess Wave* in the port of Pulmiddy on 9 August 1996 killed 5 crew members and injured 9;¹³⁹ and a suicide diver attack on the Sri Lankan Navy Supply Ship *Invincible* in the port of Trincomalee on 12 May 2008 causing the *Invincible* to sink within thirteen minutes of the initial attack.¹⁴⁰

Whilst only one **attempted** underwater attack has been specifically recorded – being the placement of 2.2 pounds of explosives on the hull of the Royal Navy hydrographic vessel *Hecate* by the Irish National Liberation Army in Nantes Harbour, France on 2 November 1984 (which was located and disarmed by clearance divers) – it is conceivable that other underwater terrorist attacks may have been attempted but not discovered.

There have been numerous reports about **plans** by Al Qaeda-linked groups to perpetrate underwater attacks on high profile vessels. The deployment of underwater demolition teams was reportedly part of Al Qaeda's 'Four Pillars' maritime terrorism strategy developed by its former chief of maritime operations Abd al-Rahmin Al Nashiri, nicknamed Al Qaeda's 'Prince of the Sea'.¹⁴¹ Additionally in late 2002 Al Qaeda's former head of operations in Southeast Asia Omar al-Faruq confessed to interrogators his direction of planned scuba attacks on US warships in Indonesia in the port of Surabaya.¹⁴² More generally, it has been widely reported that FARC had advanced capabilities to build and operate mini-submarines.¹⁴³ In June 2002 the US Coastguard went on high alert for 'suspicious scuba diving activity', leading the FBI to investigate scuba training schools throughout the US, and in November 2002, the FBI issued

¹³⁷ RAND Database of Worldwide Terrorism Incidents: http://smapp.rand.org/rwtid/search_form.php, Accessed 1 October 2013. Whilst these groups would not be commonly regarded as 'terrorist', these attacks are included here to illustrate the potential underwater attack capabilities of non-State actors - notwithstanding that as [8.3.1] explains, these groups were supplied, trained and supported by the CIA

¹³⁸ RAND Database of Worldwide Terrorism Incidents: http://smapp.rand.org/rwtid/search_form.php

¹³⁹ RAND Database of Worldwide Terrorism Incidents: http://smapp.rand.org/rwtid/search_form.php; National Consortium for the Study of Terrorism and Responses to Terrorism Global Terrorism Database <http://www.start.umd.edu/gtd/>

¹⁴⁰ Murphy, above n 10, 319 - 320

¹⁴¹ Richardson, above n 13, 20

¹⁴² Richardson, above n 13, 22 - 23

¹⁴³ Murphy, above n 10, 247 - 254

an alert about terrorists attacks on shipping, possibly through trained scuba divers placing explosives under vessels.¹⁴⁴ A further warning was issued in August 2003 by the Department of Homeland Security about terrorists planning underwater attacks.¹⁴⁵ In February 2003 the then CIA Director George Tenet told the US Senate Committee on Intelligence about reports of Al Qaeda developing the use of ‘underwater methods of attacking maritime targets’.¹⁴⁶ Hezbollah is reported to have trained operatives in scuba diving and underwater explosives techniques at terrorist camps, with captured Al Qaeda training tapes showing members learning to swim and utilise diving gear;¹⁴⁷ and following 9/11 suspicions were raised about the establishment of ‘Al Qaeda diving schools’ in the Netherlands, with reports of Al Qaeda members being trained to attach explosives to the hulls of vessels.¹⁴⁸

Underwater attacks have also been **postulated** by maritime security specialists – with Greenberg et al discussing scenarios of terrorists ‘... directly targeting cruise liners or passenger ferries to cause mass casualties ... through submersible improvised explosive device’;¹⁴⁹ and Bateman discussing the scenario of underwater swimmer attacks on ships, but classifying this as a ‘less credible’ scenario.¹⁵⁰

[5.3.4] Threat context: Vessel targeting from the air

	Successful	Attempted	Planned	Postulated
	0	0	1	0

Terrorists might conceivably ram hijacked aircraft into vessels through kamikaze attacks, or drop explosives onto large passenger cruise liners or tankers carrying volatile substances. Although such attack scenarios might be sound far-fetched and unlikely, prior to 9/11 the scenario of ramming airliners into large office towers might also have sounded far-fetched and unlikely. Thus far, the use of airplanes to ram into vessels has been reportedly planned only once, being part of Al Qaeda's ‘Four Pillars’ maritime strategy developed by its former chief

¹⁴⁴ Richardson, above n 13, 20

¹⁴⁵ Richardson, above n 13, 21

¹⁴⁶ Richardson, above n 13, 21

¹⁴⁷ Campbell and Gunaratna, above n 14, 77

¹⁴⁸ Zara-Raymond, above n 18, 16; Richardson, above n 13, 21-22; Lorenz, above n 22, 13

¹⁴⁹ Greenberg et al, above n 25, 27 (Scenario 7)

¹⁵⁰ Sam Bateman ‘Maritime Terrorism: Issues for the Asia-Pacific Region’ (October 2006) 2(3) *Kokoda Foundation Security Challenges*, 86 - 87

of maritime operations Abd al-Rahmin Al Nashiri, nicknamed Al Qaeda's 'Prince of the Sea'.¹⁵¹

[5.3.5] Best case / worst case critical analysis of SOLAS Chapter XI / ISPS Code in preventing “other than vessel-based” terrorist attacks on vessels

This section analyses the prospects for the preventative security measures mandated and recommended by the ISPS Code to succeed in lessening the scope for “other than vessel-based” terrorist attacks on vessels, through considering the six “best case / worst case” scenario factors articulated in [4.2.7] in light of the observations in [5.3.1], [5.3.2] and [5.3.3] about how such forms of attack have previously been successfully perpetrated, attempted, planned and postulated by maritime security specialists.

[1] Larger or smaller vessels? As Appendix G details, of the 23 vessels attacked by terrorists from land, five were cargo ships, four were passenger ferries, three were naval vessels, two were cruise ships and one was an oil tanker, and for nine attacked vessels, the type was not specified. The 20 vessels targeted from inside included eight passenger ferries, three cruise ships three cargo and three unspecified type ships. From the 20 vessels targeted from beneath the surface, five were cruise ships, three were naval vessels, two were cruise ships, one was a passenger ferry, one was a fishing vessel and vessel types were not specified for seven. This indicates that larger vessels have generally presented the most attractive targets for terrorists to attack - which would (from July 2004 onwards) be more likely to be subject to the ISPS Code (a “best case” scenario). However [5.3.2] noted at least 13 instances where passenger ferries were targeted from inside. If such ferries were restricted to shorter intra-state voyages, they would not ordinarily be subject to the requirements of the ISPS Code, unless the relevant state imposed security measures.¹⁵² Examples of intra-state passenger ferries targeted from inside in the Philippines include *Super Ferry 14* in 2004 - where 116 passengers were killed and the vessel was destroyed, and the *Our Lady Mediatrix* passenger ferry in 2000, where 40 passengers were killed. Whilst Appendix G notes that several fishing vessels (which would also not be subject to the ISPS Code) have been attacked, such attacks have mostly occurred in

¹⁵¹ Richardson, above n 13, 20

¹⁵² As noted in [4.2.3], ISPS Code Part B section 4.46 provides that ‘Ships below Convention size are subject to measures by which States maintain security’

locations with on-going conflicts – including the waters around Sri Lanka, Western Africa and Central America.

[2] Terrorist-controlled in first instance? Whilst none of the previous instances of targeting from within the vessel reviewed in [5.3.1] showed any cases of “inside jobs” whereby crew members of targeted ships might assist in the perpetration of a terrorist attack, paragraph [3] below emphasizes the importance of applying preventative security measures throughout shipping companies to minimize the risk of terrorist-connected persons gaining access to positions from where they might be able to facilitate attacks from within vessels.

[3] Rigor of application of ISPS Code security measures? The rigor of the application of ISPS Code preventative security measures would be a critical factor in lessening the scope for the three forms of targeting examined above. In relation to land-based attacks, given that (as [4] below notes) most recorded attacks have occurred whilst the targeted vessel was alongside at a significant port, rigorously-applied port facility security measures (such as controls on access to the port facility)¹⁵³ could significantly reduce the scope for such attacks to occur. Conversely a lack of access control measures could lessen the preventative security value of the ISPS Code. [5.3.2] noted at least 17 recorded cases where vessels have been targeted from inside through the covert placement of explosive devices within the vessel, and also a number of hijackings and armed attacks aboard vessels. The targeting of vessels by terrorists from inside is arguably the most “preventable” of all the 21 forms of maritime terrorism conceptualized by the Threat Matrix. For instance, if the baggage and personal effects of passengers had been screened and checked upon embarkation, incidents such as the 1985 *Achille Lauro* hijacking (which was on an international voyage) and the 1988 *City of Poros* grenade and gun attack might have been prevented. Preventing the smuggling of weapons or covert placement of explosives onto vessels would depend on the rigour with which preventative security measures were applied within relevant ships and shipping companies, and also port facilities (considered under [4] below). As [4.2.1.2] noted, at shipping company level the ISPS Code requires the designation of Company Security Officers¹⁵⁴ responsible for ensuring the implementation of preventative security measures throughout the company. Rigorously applied security risk management measures such as background security

¹⁵³ [4.2.1.3] provides an overview of the port facility security measures mandated and recommended by the ISPS Code

¹⁵⁴ ISPS Code Part A, Section 11

assessments on company personnel could reduce the scope for persons with links to criminal or terrorist groups to gain access to “security sensitive” positions within that shipping company – and thereby possibly aid the perpetration of terrorist attacks involving the company’s vessels.

At individual ship level, rigorously-applied Ship Security Plans could prevent weapons and other dangerous substances being taken aboard the ship, and also control access to restricted areas of the ship, such as its bridge and engine spaces - thereby reducing the scope for terrorists to gain control over vessels. Furthermore, rigorously-applied security measures could reduce the scope for other forms of targeting of vessels from inside through contaminating or interfering with food or water supplies, or air conditioning systems. However as noted in [5] below, even rigorously-applied preventative security measures might not be able to detect very carefully concealed explosives – such as the bomb concealed within a television set aboard the *Super Ferry 14*. Finally, [5.3.3] noted that nine of the 20 recorded sub-surface terrorist attacks on vessels have involved ships in port by underwater swimmers placing explosives on the hulls of vessels. Part B of the ISPS Code recommends that at Security Level 3, Ship Security Plans should make provision for (inter alia) the ‘preparation for underwater inspection of the hull of the ship’¹⁵⁵ and the ‘initiation of measures, including the slow revolution of the ship’s propellers, if practicable, to deter underwater access to the hull of the ship’.¹⁵⁶ Rigorously-applied Ship Security Plans could ensure such measures are planned and rehearsed, and possibly incorporate commercially-available underwater surveillance and deterrence systems.¹⁵⁷ Conversely a “worst case” scenario could result if ships lacked the capability to undertake searches of the ship’s hull for explosive devices or underwater swimmers.

[4] Did the maritime terrorism incident involve a security-regulated port? If terrorists sought to attack vessels within a port facility subject to the ISPS Code, rigorously-applied Port Facility Security Plans could significantly lessen the scope for terrorist attacks on vessels. As paragraph [3] above noted, controls on access to port facilities, as well as the active monitoring of activities in the areas surrounding them, could significantly reduce the scope for terrorists to target vessels from the land. However [5.3.1] noted instances of terrorists launching land-based attacks from outside the confines of port facilities – examples being the attempted attack on

¹⁵⁵ ISPS Code Part B, s 9.49(4)

¹⁵⁶ ISPS Code Part B, s 9.49(5)

¹⁵⁷ Steven Jones *Maritime Security: A Practical Guide* (The Nautical Institute, 2006), 235 provides an overview of underwater surveillance and deterrence systems available to commercial vessels

USS *Ashland* and USS *Kearsarge* in 2005 which was launched from a hilltop overlooking the port of Aqaba in Jordan where they were docked (however these missiles over-shot the two warships), and Hezbollah launching a missile against an Israeli naval vessel whilst it was underway 10 nautical miles offshore. Many port facilities where high profile cruise ships and military vessels dock are located in close proximity to publicly-accessible transport routes from which terrorists could conceivably fire weapons at target vessels – with Australian examples including Circular Quay, Woolloomooloo Bay, Darling Harbour and Botany Bay. In relation to terrorist targeting of vessels from inside, while the sources reviewed for the attacks noted in [5.3.2] did not specify the location at which the explosives were placed onto the vessels, it is reasonable to infer this took place whilst the target vessel was in port. As [4.2.1.3] noted, Port Facility Security Plans are required to include measures to control access to the port facility, and measures to prevent weapons and other dangerous substances from being taken into the port facility.¹⁵⁸ If rigorously applied, such measures could serve as a first line of protective security to prevent weapons being taken onto passenger vessels, which [5.3.2] noted have been the types of vessels previously targeted from inside the vessel. However if explosives or other weapons were introduced onto vessels at port facilities not subject to the ISPS Code, a “worst case” scenario could result. Finally, [5.3.3] noted that nine of the 20 recorded sub-surface terrorist attacks on vessels have involved ships alongside in port being targeted by underwater swimmers placing explosives on the hulls of vessels. As [3] above noted, Part B of the ISPS Code provides guidance for ships to counter such threats. Additionally, rigorously-applied Port Facility Security Plans could further reduce the scope for such attacks through monitoring of, and restrictions on, small boat activity in waters surrounding the port facility – particularly when high-profile vessels are in port. However a “worst case” scenario could result if the geography of the area surrounding the port facility enabled the undetected launching of divers. [5.3.3] also noted eight instances where terrorists have targeted vessels through deploying sea mines. It is highly unlikely that commercial vessels outside of on-going conflict situations would be on the lookout for floating sea mines – so this could result in a “worst-case” scenario. A worst case scenario might also apply if security measures in and around the port facility were not rigorously applied – with [4.2.6] noting concerns being expressed about ISPS security

¹⁵⁸ Port Facility Security Plans are required to address and include (i) measures to prevent weapons and other dangerous substances from being taken into the port facility; (ii) measures to control access to the port facility generally – particularly its “restricted areas” – and to respond to breaches of such access control measures; and (iii) measures to facilitate responses to changes in security levels set by Contracting Governments; ISPS Code Part A Section 16.3

arrangements merely being paid “lip service” – and in some cases port facility security officers not responding to calls for assistance or even being absent from the port facility.

[5] Form of maritime terrorist attack: A “best-case” scenario of the ISPS Code in lessening the scope for attacks on vessels could be more likely to result of terrorists launched more manageable and preventable forms of attack. For attacks from inside the vessel, whilst “negotiable” hostage-takings such as the *Achille Lauro* incident could be more manageable, Chapters 2 and 3 showed such tactics are more characteristic of pre-contemporary than contemporary terrorism. Also, carefully concealed explosives such as the bomb concealed within a television set aboard the *Super Ferry 14* could make a terrorist attack less manageable. Attempts by terrorists to target vessels by divers placing explosives on the hulls of vessels whilst alongside at port facilities subject to the ISPS Code could be prevented through the measures noted above. However [5.3.3] noted reports of the LTTE and FARC previously developing small submersible attack craft. Although operating such craft could require considerable resources and expertise, a worst case scenario could result if terrorists utilised such craft to attack high-profile vessels at the entrances to ports or navigational chokepoints. Finally air-based attacks, which as [5.3.4] noted were reportedly planned by Al Qaeda, would be almost impossible for even the most rigorously-applied Ship Security Plans to counter, as unarmed¹⁵⁹ non-military¹⁶⁰ commercial vessels would not be able to defend against terrorist-controlled aircraft either being rammed into them, or dropping explosives onto the vessel.

[6] Government oversight arrangements: Changes to security levels; Vessel movement restrictions: Whilst port facility security measures would in most cases be the most relevant “first line of security” against the three forms of terrorist targeting, government security controls over land areas in proximity to vulnerable waterways could lessen the scope for land-based attacks on vessels transiting littoral areas. Additionally effective surveillance arrangements over waters within proximity to navigational chokepoints could lessen the chances of sea mines being laid to target vessels from the sub-surface.

¹⁵⁹ Apart from ship’s security teams which may sometimes be armed with small arms and other non-lethal defensive equipment – such as Long Range Acoustic Devices and fire hoses. Also as [5.2.2.5] explained, several States impose significant restrictions on the carriage and use of weapons by such security teams

¹⁶⁰ Armed military vessels would in most cases have more extensive self-defence capabilities

[5.4] CONCLUSION

This chapter demonstrated the practical application of the Maritime Terrorism Threat Matrix for developing the most informed threat contexts for examining the five sources of terrorist attacks on vessels. It also analysed factors such as the previous locations of attacks, the types of vessels targeted (which have mostly been larger vessels – which since July 2004 are likely to be subject to the ISPS Code), methods of attack (for example suicide attacks as opposed to hostage-takings), and the fatalities caused. It demonstrated the increased lethality of attacks on vessels by contemporary terrorist groups compared to attacks by pre-contemporary terrorist groups. Through exploring “best case / worst case” scenarios it reasoned that the prospects for the ISPS Code and SSAS arrangements to succeed in lessening the scope for terrorist attacks on vessels will very much be determined by the rigour of its application at all levels – especially at individual ship and port facility levels. In particular, it reasoned that terrorist attacks from inside vessels are the most “preventable” through rigorously-applied preventative security measures. Finally, it reasoned that since around 2005, vessel-based attacks by pirates on high profile vessels (particularly around the Gulf of Aden) have assumed greater prominence over terrorist attacks on maritime security agendas. It explained that while the combination of various preventative security measures have been demonstrably effective in countering vessel-based attacks by pirates, it should not be uncritically assumed that fanatical terrorists would be deterred to the same extent by the prospects of apprehension. It argued that pirate and terrorist targeting of vessels should not be “conflated” and that high profile vessels should not completely “let down their guard” once outside of the Somali High Risk Area, given the global focus of contemporary terrorist groups; and concluded that ISPS Code security measures need to be continually and rigorously applied.

Chapter 6 analyses the prospects for the SOLAS security and vessel identification and tracking provisions, and UNCLOS and the SUA Treaties¹⁶¹ to succeed in preventing terrorists from offensively utilising vessels to perpetrate dangerous acts through using vessels as “weapons” (either as launching platforms or as kinetic ramming weapons) or as “floating bombs” against other vessels, land targets and offshore platforms; or the perpetration of other disruptive acts.¹⁶² It utilises the “best case” / “worst case” scenario analysis to consider the extent to which the

¹⁶¹ Pertaining to the interdiction of suspected terrorist vessels and the protection of maritime infrastructure

¹⁶² Including through disabling the vessel near critical navigational chokepoints, against the marine environment through deliberate pollution, through facilitating the laying of sea mines, and interfering with submarine cables

ISPS Code and other preventative security measures might lessen the scope for terrorists to utilise vessels in such a manner. Regarding the powers of States to interdict vessels suspected of being about to¹⁶³ be utilised by terrorists to perpetrate offensive acts, it highlights several jurisdictional gaps under UNCLOS, and considers the consequences of the currently low acceptance of the 2005 SUA treaties.

¹⁶³ As [3.6] argued, countering contemporary forms of maritime terrorism must mean preventing terrorist attacks from occurring – not responding after the event

CHAPTER 6

COUNTERING OFFENSIVE UTILISATIONS OF VESSELS BY TERRORISTS

[6.1] INTRODUCTION

This chapter analyses the prospects for the international agreements to succeed in preventing terrorists from utilising vessels to perpetrate offensive acts¹ - including the use of vessels as weapons,² or as floating bombs against various targets, or the use of vessels to perpetrate disruptive acts.³ To date such actions have been far less prevalent than the targeting of high profile vessels examined in Chapter 5,⁴ with several such actions remaining as hypothetical scenarios.⁵ As well as examining how the ISPS Code and other SOLAS maritime security and vessel identification measures might lessen the scope for such offensive acts, this chapter analyses the extent to which UNCLOS and the SUA treaties would enable States to interdict vessels⁶ suspected of being about to perpetrate such offensive acts.⁷ This analysis highlights the jurisdictional gaps under UNCLOS in relation to States' powers to protect offshore

¹ As [1.4] explained, such actions would involve a “lead warning time” greater than terrorist attacks on vessels (examined in Chapter 5), but lesser than the utilisation of vessels to enable subsequent terrorist attacks (examined in Chapter 7) – which explains why these actions are examined in this chapter

² Either as weapons-launching platforms or as kinetic ramming weapons

³ As [3.5] explained, ‘disruptive acts’ by terrorists could involve disabling vessels near critical navigational chokepoints, deliberately polluting the marine environment, facilitating the laying of sea mines, and interfering with submarine cables. This Chapter addresses the fourth sub-question posed in [1.2.2], namely ‘(4) Considering how maritime terrorism incidents have previously occurred, and might occur in the future, how might the international agreements apply in practice in preventing maritime terrorism incidents?’

⁴ As explained in [3.5.1], for enumeration purposes, this Study counts maritime terrorist attacks as (i) the vessel as a target or (ii) the vessel as a weapon or bomb according to which of the two vessels was most prominent – for example the USS Cole was the prominent vessel that was targeted – whereas the explosives-laden dinghy (the vessel as a bomb) was not a prominent vessel – and is therefore not counted. This means that the majority of previous “vessel to vessel” attacks are counted in [5.2] and not in [6.2]. Stated alternatively, this Chapter focuses on actions of the “attacking” vessel – whereas Chapter 5 focused on the “attacked” vessel. Finally in practice there could well be some overlap in between the ‘vessel as a weapon’ and the ‘vessel as a bomb’ – for example situations where a terrorist-controlled vessel were rammed and also exploded in proximity to a target.

⁵ However, as the 9/11 attacks showed, it is important to examine both “routine” attack types, and also extraordinary and unconventional ones

⁶ As [1.4] explained, whereas this chapter examines the interdiction of vessels suspected of being about to perpetrate offensive terrorist acts *within* maritime zones, Chapter 7 examines the interdiction of “laterally transiting” vessels *passing through* maritime zones that are suspected of enabling subsequent terrorist attacks through transporting WMD materiel, conventional weaponry, terrorist-connected persons or as a means of terrorist fundraising

⁷ In relation to UNCLOS and the 2005 SUA treaties, this Chapter addresses the second and third questions posed in [1.2.2] – namely (2) ‘What are the limitations of the international agreements, and how have these limitations been addressed to date?’; and (3) ‘What factors are likely to influence the prospects of the international agreements being successful in preventing maritime terrorism incidents?’. It also addresses the fourth question ‘(4) Considering how maritime terrorism incidents have previously occurred, and might occur in the future, how might the international agreements apply in practice in preventing maritime terrorism incidents?’

platforms and submarine cables from terrorist attacks, and shows how some States have sought to overcome these gaps following 9/11. It also shows the limitations of 1988 SUA treaties, and the consequences of the current low ratification of the 2005 SUA treaties.⁸ The chapter concludes by arguing for greater ratification of 2005 SUA Convention, and for the IMO to develop guidance on ensuring the security of offshore platforms and submarine cables.

[6.2] COUNTERING DANGEROUS TERRORIST UTILISATIONS OF VESSELS

[6.2.1] Threat context: Previous occurrences

This section reviews the range of ways in which terrorists have previously utilised vessels to perpetrate dangerous actions (which could immediately cause fatalities)⁹ against other vessels, and as launching platforms against vessels, as well as cases where they have attempted and planned to do so, and where maritime security specialists have postulated scenarios of such attacks. Similarly to Chapter 5, most discussions of such attacks have tended to describe the locations of previous attacks, attempts and plans in generalised terms (for example ‘in international waters’ or ‘off the coast of xxx’). Aside from one 1978 hijacking of a Greek freighter by Fatah off the coast of Israel (which was interdicted before it could be utilised firstly as a weapons-launching platform and secondly as a floating bomb), all the dangerous utilisations of vessels reviewed below have involved contemporary terrorist groups. This illustrates the propensity of contemporary terrorist groups to perpetrate innovative attacks possibly involving significant casualties and suicide tactics as outlined in [2.5], [3.3] and in Chapter 5.

Since 9/11 several maritime security specialists have postulated scenarios of terrorists utilising vessels as ‘weapons’, but without specifying the targets of such attacks. For instance Richardson postulated that ‘vessels, big and small ... can be used in a number of ways by terrorists [including] ... as weapons in their own right’,¹⁰ and Greenberg et al postulated

⁸ Chapter 8 considers the extent to which Article 51 of the UN Charter, and the doctrine of Necessity, might enable States to interdict vessels suspected of being about to perpetrate offensive acts if neither UNCLOS nor the 2005 SUA Conventions would provide a State with jurisdiction to interdict such vessels

⁹ In comparison, [6.4] examines disruptive utilisations of vessels by terrorists which could cause disruptions to the free flow of shipping, or fatalities at a later stage – including disabling vessels near critical chokepoints; laying sea mines; causing deliberate pollution or interference with submarine cables

¹⁰ Michael Richardson *A Time Bomb for Global Trade: Maritime Terrorism in an Age of Weapons of Mass Destruction* (Institute of Southeast Asian Studies, 2004), 8

terrorists ‘hijacking an LNG carrier that is then detonated as a bomb or used as a collision weapon’.¹¹

[6.2.1.1] The vessel as a weapon against land targets

	Successful	Attempted	Planned	Postulated
	At least 1	2	1	2

The utilisation of vessels as weapons could conceivably involve terrorists ramming large vessels as “kinetic collision weapons” into land targets (such as port facilities, passenger terminals, popular beaches, transportation infrastructure or iconic targets such as Sydney Opera House), or utilising smaller vessels as platforms for firing weapons such as rockets or missiles against land targets. As outlined below, both forms of utilisation have previously been successfully perpetrated, attempted and planned, through both large freighters and small speedboats, at a range of locations including Nigeria, the Middle East and Sri Lanka; and have also been postulated as conceivable maritime terrorism scenarios.

On 12 July 2009, members of MEND **successfully** utilised a speedboat from which to attack an oil offloading facility in the Niger Delta, causing five fatalities.¹² Two reported **attempts** by terrorists to utilise vessels as weapons-launching platforms against land targets have involved both large freighters and small speedboats. On 30 September 1978 Fatah had attempted to offensively utilise the hijacked Greek freighter *Agaeus Dimitrius* – first as a platform from which to fire Katyusha-122 rockets at the Israeli Port of Eilat’s oil installations, and second to detonate it in proximity to an Israeli beach (discussed separately under [6.2.1.2] below); however the hijacked freighter was interdicted by Israeli naval forces.¹³ Twelve years later in early 1990 the PLF attempted to attack Israeli coastal cities by launching 6 speedboats painted with radar-absorbent material from a PLF-controlled mother ship. One speedboat sank upon launching, another returned to Port Said as a tanker and two craft experienced mechanical failures. Of the remaining two craft, one was interdicted 22 nautical miles off the coast of

¹¹ Michael Greenberg, Peter Chalk and Henry Willis *Maritime Terrorism: Risk and Liability* (RAND Corporation: 2006), 27 (Scenario 5)

¹² Mikhail Kashubsky ‘A Chronology of Attacks on and Unlawful Interferences with, Offshore Oil and Gas Installations, 1975 – 2010’ (2011) 5(5-6) *Perspectives on Terrorism* 139 This is an example of a vessel being utilised as a weapons-launching platform

¹³ Martin Murphy *Small Boats, Weak States and Dirty Money: Piracy and Maritime Terrorism in the Modern World* (Hurst & Company 2009), 292

Gaash, and whilst the other landed at Nitzanim, it was detected by Israeli security forces with four raiders being killed and seven being captured. According to PLF leader Abu Abbas, this raid had taken nearly three years to prepare, and cost about \$3 million (which was estimated to be equivalent to US\$4.7 million in 2006 terms).¹⁴

Vessel-based attacks on land targets have also been reportedly **planned** by terrorist groups – an example being the discovery of plans by the LTTE to launch speedboat-based attacks against Colombo in May 2007.¹⁵ Such actions have also been postulated by maritime security specialists - with terrorism expert Clive Williams envisaging that ‘... terrorists could feasibly take over a large cargo ship and use it as a weapon against military targets or civilian infrastructure such as bridges’,¹⁶ and Bateman and Bergin discussing the scenario of ‘an attack on an Australian port, either by using a ship as a weapon or by causing an explosion on board a ship carrying hazardous or dangerous cargo’.¹⁷

[6.2.1.2] The vessel as a bomb against land targets

	Successful	Attempted	Planned	Postulated
	1	1	1	3

Terrorists might conceivably detonate vessels within proximity to land targets. Whilst several of the ‘WMD transporting scenarios’ reviewed in Chapter 7 have discussed WMD packed into shipping containers aboard vessels being detonated within “mega-ports”, this section focuses on conventional explosives, or volatile materials aboard the vessel being detonated in proximity to land targets. As outlined below terrorists have previously detonated, and attempted and planned to detonate, both small and large vessels in this manner.

On 18 October 2006, LTTE members disguised as fishermen **successfully** detonated their explosives-rigged fishing boats near the Dakshina Naval Base within the Port of Galle in Sri Lanka. Whilst Sri Lankan naval forces destroyed three of these boats, two successfully

¹⁴ Murphy, above n 13, 295 – 296. This incident is also noted in [7.3.1.2] ‘The Vessel as a Means: Transporting terrorist-connected persons’

¹⁵ Murphy, above n 13, 319

¹⁶ Catherine Zara Raymond *Maritime Terrorism in Southeast Asia: A Risk Assessment* Institute of Defence and Strategic Studies Paper No. 74, March 2005, 26

¹⁷ Sam Bateman and Anthony Bergin *Future Unknown: The Terrorist Threat to Australian Maritime Security* (Australian Strategic Policy Institute, 2005), 35 (Scenario 1)

detonated killing sixteen Sri Lankan naval personnel.¹⁸ On 30 September 1978, Fatah's second planned usage for the hijacked Greek freighter *Agaeus Dimitrius* discussed above at [6.2.1.1] was to ram the vessel (which had 3 tonnes of explosives on-board) onto the busy Israeli beach of Eilat; however this **attempt** failed when the freighter was interdicted by Israeli naval forces.¹⁹ The detonation of medium sized boats near slips or ports was reportedly **planned** in Al Qaeda's 'Four Pillars' maritime terrorism strategy developed by its former chief of maritime operations Abd al-Rahmin Al Nashiri, nicknamed Al Qaeda's 'Prince of the Sea'.²⁰ Finally, maritime security specialists have **postulated** the terrorist detonation of vessels in proximity to land targets at least three times – with Richardson postulating that 'vessels, big and small, or the cargo containers they carry can be used ... to deliver bombs or other means of destruction to their destination, such as a container set to explode near a port city or other target',²¹ Bateman and Bergin discussing the scenario of 'an attack on an Australian port ... by causing an explosion on board a ship carrying hazardous or dangerous cargo',²² and Zara-Raymond discussing the scenario of a tanker as a floating bomb to strike ports.²³

[6.2.1.3] The vessel as a weapon against other vessels

	Successful	Attempted	Planned	Postulated
	0	0	2	2

Similarly to the use of vessels as weapons against land targets, terrorist usage of vessels as weapons against other vessels might involve using vessels as kinetic ramming weapons, or as platforms from which to launch attacks against other vessels. The utilisation of vessels as kinetic ramming weapons against other vessels could well have devastating consequences. Two historical examples of catastrophic large vessel accidents include the aircraft carrier *HMAS Melbourne* and *HMAS Voyager* collision off Jervis Bay in New South Wales on 10 February 1964 (killing 82 on-board the *Voyager*) and the collision between *HMAS Melbourne* and the destroyer *USS Frank E Evans* in the South China Sea on 3 June 1969 (killing 74 on-board the

¹⁸ National Consortium for the Study of Terrorism and Responses to Terrorism Global Terrorism Database <http://www.start.umd.edu/gtd/>

¹⁹ Murphy, above n 13, 292

²⁰ Richardson, above n 10, 20

²¹ Richardson, above n 10, 8

²² Bateman and Bergin, above n 17 35 (Scenario 1)

²³ Catherine Zara Raymond 'Maritime Terrorism in Southeast Asia: Potential Scenarios' (2006) 14(7) *Terrorism Monitor* 2

Frank E Evans).²⁴ Many larger vessels such as container ships and tankers can take considerable time to come to a complete stop or to alter course – making other large target vessels “sitting ducks” for terrorist-controlled vessels intended to be rammed into them. More recently, the effect of the offensive use of vessels as kinetic weapons against other vessels was demonstrated in a highly publicised incident on 6 January 2010 when a Japanese whaling vessel deliberately rammed into the Greenpeace protest vessel *MY Ady Gil* in the Southern Ocean, slicing her in half.²⁵

As at January 2013 there have been no recorded instances of terrorists successfully utilising vessels as kinetic weapons against other vessels, nor attempting to do so. However two developments in 2003 raised concerns about terrorists **planning** to utilise vessels as weapons. On 26 March 2003 the chemical tanker *Dewi Madarin* was boarded off the coast of Sumatra in Indonesian waters by ten men who then manoeuvred the ship for almost one hour before disembarking from the ship with a small sum of money and kidnapping the Captain and First Officer. This incident was characterised by a 2003 Aegis Terrorism Report as being a ‘dress rehearsal’ for a terrorist hijacking;²⁶ with terrorism commentators at the time warning ‘... [t]here’s a strong possibility that we’re looking at the [maritime] equivalent of a flight training school for terrorists’.²⁷ Later in 2003 the theft of 10 tugs from an Indonesian port for no apparent purpose further raised concerns about terrorist plans to utilise such vessels as weapons against other vessels.²⁸ As noted in the [6.2.1] introduction above, the utilisation of vessels as weapons has been commonly **postulated** by maritime security specialists, but without reference to specific types of targets. On the assumption that high profile vessels such as cruise ships might present attractive targets for terrorists in control of vessels to ram into (similar to the use of hijacked aircraft in the 9/11 attacks), the two scenarios noted in [6.2.1] are counted as having been contemplated against other vessels.

²⁴ Tom Frame *Where Fate Calls: The HMAS Voyager Tragedy* (Hodder & Stoughton, 1992), and Tom Frame *The Cruel Legacy: The HMAS Voyager Tragedy* (Allen & Unwin, 2005)

²⁵ Andrew Darby ‘Japanese ship destroys whale protest boat Ady Gil’ *The Age*, 6 January 2010 <http://www.theage.com.au/environment/whale-watch/japanese-ship-destroys-whale-protest-boat--ady-gil-20100106-ltp4.html>; Natalie Klein *Maritime Security and the Law of the Sea* Oxford Monographs in International Law (Oxford University Press, 2011), 142

²⁶ Richardson, above n 10, 32 - 33

²⁷ Donna Nincic ‘The Challenge of Maritime Terrorism: Threat Identification, WMD and Regime Response’ (August 2005) 28(4) *The Journal of Strategic Studies* 629

²⁸ Richardson, above n 10, 32 - 33

[6.2.1.4] The vessel as a bomb against other vessels

	Successful	Attempted	Planned	Postulated
	0	6	2	1

Terrorists could conceivably detonate vessels within proximity to other vessels, and have **attempted** to do so on at least six recorded occasions with small vessels such as fishing boats, speedboats and even explosives-rigged life-raft – predominantly off the coast of Israel and Palestine (which mostly involved attempted suicide attacks), but also around Sri Lanka.²⁹ In April 1988, the Popular Front for the Liberation of Palestine – General Command (PFLP–GC) manoeuvred a fishing boat within proximity to an Israeli naval vessel and detonated an explosive charge, which failed to inflict either casualties or damage.³⁰ Subsequently between 1988 and 1997 Fatah, the PFLP,³¹ PFLP-GC and Shiite Muslim organisation Amal reportedly attempted five coordinated suicide attacks against Israeli naval vessels utilising small boats, all of which were unsuccessful.³² A further three attempts by Palestinian groups to detonate vessels within proximity to other vessels were recorded between 2000 and 2003. These included a Hamas-controlled-fishing vessel attempting a suicide attack against an Israeli patrol vessel on 7 November 2000;³³ two members of the Palestinian Islamic Jihad group sailing an explosives-laden fishing boat into ‘Israeli-controlled waters off northern Gaza’ on 23 November 2002 – which when approached by the *Israeli Naval Ship (INS) Daboor*, detonated the boat, killing themselves, injuring 4 sailors, and slightly damaging the *INS Daboor*;³⁴ and the location of a suspicious life raft (again by the *INS Daboor*) floating ‘within proximity of the Gaza northern maritime security zone’ on 17 January 2003. After sailors from the *INS Daboor* fired warning shots towards the life raft, the raft was detonated, and the remains of a suicide bomber were found inside.³⁵ Finally on 14 February 2007 the Indian Navy discovered an explosives-laden LTTE boat floating off the coast of South India.³⁶

²⁹ However the UNCLOS maritime zones in which these attacks occurred were not specified

³⁰ Murphy, above n 13, 295

³¹ The PFLP was a separate group from the PFLP - GC

³² Murphy, above n 13, 295. However no further details were specified as to how such attacks were planned to occur

³³ Murphy, above n 13, 296

³⁴ Akiva Lorenz *The Threat of Maritime Terrorism to Israel* (International Institute for Counter Terrorism) 24 September 2007, 18; Murphy, above n 13, 292

³⁵ Lorenz, above n 34, 18; Murphy, above n 13, 296 - 297

³⁶ Murphy, above n 13, 320

In September 2004 members of Jemaah Islamiah were reported to have been **planning** the hijacking of a large merchant vessel with the aid of local pirate groups, with the intention of using it as a floating bomb against other vessels;³⁷ and the use of explosives-packed zodiac speed boats to ram warships and other ships was reportedly part of Al Qaeda's 'Four Pillars' maritime terrorism strategy developed by its former chief of maritime operations Abd al-Rahmin Al Nashiri, nicknamed Al Qaeda's 'Prince of the Sea'.³⁸ Finally Richardson **postulated** that '... vessels, big and small, or the cargo containers they carry can be used in a number of ways by terrorists ... to deliver bombs or other means of destruction to their destination, such as a container set to explode near a port city or *other target*'.³⁹

[6.2.1.5] The vessel as a weapons launching platform against aircraft

	Successful	Attempted	Planned	Postulated
	0	0	0	1

Terrorists might conceivably utilise vessels as platforms from which to fire weapons against aircraft. This would most likely occur in close proximity to land (including internal waters in proximity to port facilities, territorial seas and within proximity to international straits) given that aircraft typically only fly at altitudes which could be within the "striking reach" of weaponry likely to be possessed by non-state actors shortly after take-off and before landing. It would be almost inconceivable for terrorists to acquire longer-range military weaponry such as Surface-to-Air Missiles, or naval warships, which are usually very secure and controlled assets and require significant expertise to successfully utilise, that would be capable of striking commercial aircraft at cruising altitudes. Thus far this scenario has only been **postulated** once by Zara-Raymond who discussed the scenario of a missile launched by terrorists at aircraft from a vessel.⁴⁰

³⁷ Peter Sherwell and Mike Kearney 'Al Qaeda Terrorists Plan to Turn Tanker into a Floating Bomb' *The Telegraph* 12 September 2004 Cited in Zara-Raymond, above n 16, 18

³⁸ Richardson, above n 10, 20

³⁹ Richardson, above n 10, 8

⁴⁰ Zara-Raymond, above n 23, 3; See also Robert Bunker 'Terrorists and Laser Weapons Use: An Emergent Threat' (2008) 31(5) *Studies in Conflict and Terrorism* 450

[6.2.2] Best case / worst case scenario analysis of SOLAS Chapter XI-2 (ISPS Code) and AIS preventing dangerous terrorist utilisations of vessels

This section analyses the prospects for the preventative security measures mandated and recommended by the ISPS Code to lessen the scope for terrorists to utilise vessels to perpetrate dangerous acts such as those noted in [6.2.1] above,⁴¹ through applying the “best case / worst case” scenario factors articulated in [4.2.7] in light of the observations in [6.2.1] about how such forms of attack have previously been successfully perpetrated, attempted, planned and postulated by maritime security specialists.

[1] Larger or smaller vessels? The sections above indicated that most previous instances of terrorists utilizing, and attempting to utilise, vessels to perpetrate dangerous acts have involved small vessels. These have included speedboats as weapons-launching platforms, explosives-rigged fishing boats and even explosives-rigged life raft. Small fishing, recreational and local transport vessels which would ordinarily be outside the scope of the ISPS Code commonly (and legitimately) navigate within close proximity to larger vessels, particularly within proximity to navigational chokepoints. Aside from the planned and postulated examples noted above, the only recorded instances where terrorists have previously attempted to utilise large vessels to perpetrate dangerous acts were the 1978 hijacking of the Greek freighter *Agaeus Dimitrius* and the 2003 hijacking of the chemical tanker *Dewi Madarin*. Such large vessels would (since 2004) be more likely to be subject to ISPS Code or other security requirements, and if not terrorist-controlled in the first instance, rigorously implemented ship security measures (possibly combined with the activation of the hijacked vessel’s SSAS) could lessen the scope for terrorists to gain control over the vessel. Additionally, if terrorists sought to hijack and utilise a large vessel as either a kinetic “ramming” weapon or as a floating bomb, it is possible such large vessels might be equipped with AIS.⁴² In a “best case” scenario, providing it had not been deactivated by the hijackers, and providing it was functioning effectively, AIS could provide a uniform basis for alerting other large potential target vessels in the vicinity of a large vessel approaching at high speed for no apparent reason. This could enable potentially target vessels to take appropriate evasive collision avoidance measures such

⁴¹ That is, through utilising the vessel as a floating bomb, weapons-launching platform or kinetic ramming weapon

⁴² As noted in [4.3.1], SOLAS Chapter V Regulation 19 provides that AIS – which enables the automatic transmission of a ship's navigational information at regular intervals - must be fitted to ships of 300 GRT and upwards engaged on international voyages, cargo ships of 500 GRT and upwards not engaged on international voyages and all passenger ships irrespective of size

as changing course and speed – notwithstanding that many very large commercial vessels might take considerable time to implement such collision avoidance measures. However a “worst case” scenario could apply if an AIS transponder was de-activated by those in control of a vessel being utilised as a kinetic weapon – either by the vessel’s master⁴³ or by hijacking terrorists. Such actions could remove the early warning of suspicious vessel movements that AIS would facilitate – notwithstanding the identified operational shortcomings of AIS identified in [4.3.1].⁴⁴

[2] Terrorist-controlled in first instance? As noted above, a “best case” scenario of the ISPS Code could apply if terrorists sought to hijack large vessels to perpetrate dangerous acts (as seen in Fatah’s hijacking of the 1978 Greek freighter *Agaeus Dimitrius* in 1978), and the plans noted in [6.2.1.3] and [6.2.1.4] to hijack and utilise large vessels for such purposes. As noted in [1] above, rigorously-implemented ISPS Code security measures could lessen the scope for such hijacking attempts to succeed; however if terrorists used over-whelming force such security measures might be less successful in preventing terrorists from gaining control of the vessel. However a “worst-case” scenario could result if vessels were terrorist-controlled in first instance - with [6.2.1] indicating that most of the small to medium vessels previously utilised in an offensive manner being terrorist-controlled in first instance.

[3] Rigor of implementation of ISPS Code security measures? Rigorously-implemented ISPS Code (and other nationally-imposed) security measures could lessen the scope for terrorist hijackings. If the hijacking was attempted whilst the vessel was underway, rigorously-implemented Ship Security Plans, possibly with the aid of embarked Privately Contracted Armed Security Personnel⁴⁵ could ensure “security vigilance” throughout vessel – particularly maintaining a careful watch on small vessel activity in surrounding waters. Such rigorously-

⁴³ [4.3.1] noted with concern anecdotal evidence of scepticism about the “maritime security value” of AIS – and that masters of vessels have the ability and discretion to turn off AIS systems due to security and safety concerns. This could ultimately detract from the “preventative value” of AIS in countering threats of vessels being utilised as kinetic weapons against other vessels

⁴⁴ These practical problems include (i) the limited range of AIS systems; (ii) the less than universal implementation of AIS – meaning that AIS cannot facilitate the identification of all vessels; (iii) the potential for AIS system malfunctions to lead to the transmission of incorrect and/or misleading information; (iv) the limited coverage of AIS in certain parts of the world; (v) the possibility that AIS may contribute to the “information overload” that affects ship’s bridge teams; and most significantly (vi) concerns that the accessibility of AIS might increase the risk of unauthorised access to AIS information by maritime terrorist and pirate groups – leading to many vessel masters turning off AIS transmitters within areas with maritime security problems – such as the waterways of Southeast Asia.

⁴⁵ [5.2.2] provided an overview of the value, as well as restrictions on the permissible activities of Privately Contracted Armed Security Personnel aboard commercial vessels

implemented security measures could reduce the scope for terrorists to access vessels whilst underway. [5.2.2] explained, with reference to numerous case studies, that vigilant crews and the implementation of preventative security measures have enabled many vessels to deter attacks by pirates and armed robbers (which have occurred far more than vessel-based terrorist attacks). To draw an analogy to the 9/11 aircraft hijackings, it has been suggested that more rigorously-implemented preventative security measures firstly at the passenger screening gates, and secondly aboard the planes (including more secure cabin doors and more effective screening for metal knives and other implements) might have reduced the scope for the 19 Al Qaeda terrorists to forcibly take over the commercial airliners and utilise them as kinetic weapons.⁴⁶

If terrorists succeeded in gaining access onto a vessel whilst it was underway, which as [6.2.1.3] noted occurred in the 2003 *Dewi Madarin* hijacking, the activation of the vessel's SSAS could alert the vessel's flag state, and then possibly nearby coastal, or other state(s) of the security threat to the vessel – and then prompt appropriate responses for threatened vessels. However, as [4.2.5] and [5.2.2.6] reasoned, it should not automatically be assumed that SSAS will be the “automatic panacea” for responding to terrorist attacks on vessels – due to problems of false activations, and delays and uncertainties in the division of responsibilities between responding states.

In summary, rigorously-applied ISPS Code preventative security measures could ensure several “layers” of preventative security⁴⁷ for vessels - firstly preventing unauthorised access onto the vessel; secondly in preventing access to the ship's bridge; and thirdly enabling the activation of the targeted vessel's SSAS. Additionally the implementation of appropriate safety measures for vessels carrying potentially explosive or volatile materials could further lessen the scope for such vessels to be utilised as floating bombs against various targets.

[4] Did the maritime terrorism incident involve a security-regulated port? If terrorists attempted to hijack a larger vessel whilst it was in port (for example [6.2.1.4] noted the theft

⁴⁶ Brian Ross and Matthew Bland ‘Ten Years Later: Could We Prevent Another 9/11?’ *ABC News* 6 September 2011 <http://abcnews.go.com/Blotter/ten-years-prevent-911/story?id=14457689>; ‘Mid-air craziness: The lessons of 9/11’ *The Economist* 15 May 2011

⁴⁷ The first layer would be preventing access onto the vessel; the second layer would be preventing access to the ship's bridge; and the third layer would be in the activation of the vessel's SSAS

of ten tug boats from an Indonesian port during 2003 for no apparent purpose),⁴⁸ rigorously implemented Ship Security Plans and Port Facility Security Plans⁴⁹ could reduce the scope for such hijackings (particularly through controlling access to sensitive areas such as ships' bridges) and also through enabling targeted vessels to summon and receive assistance from land-based authorities to counter the hijacking attempt. However, Appendix I notes at least five recorded cases of security alerts from vessels under threat from pirates or armed robbers whilst alongside in port not being responded to by port security personnel or local authorities. Whether and to what extent preventative security measures were applicable around land targets (including port facilities) that might be the focus of vessel-based terrorist attacks would be a matter for individual contracting governments and port facility operators to determine. Monitoring and controlling small vessel movements could be extremely challenging even for the ports with the most rigorously Port Facility Security Plans; and could also be challenging in and around land targets other than port facilities subject to the ISPS Code.

[5] Form of maritime terrorist attack: Similarly to Chapter 5, a “worst case” scenario of ISPS Code security measures lessening the scope for maritime terrorist attacks could result if terrorists sought to utilise large (terrorist-controlled) vessels as kinetic ramming weapons, or explosives-rigged craft, to perpetrate dangerous actions.

[6] Government oversight arrangements: SSAS, Changes to security levels; Vessel movement restrictions: In addition to ISPS Code security measures being rigorously implemented within ship and port facilities, effective government oversight arrangements could also significantly lessen the scope for terrorists to utilise vessels offensively. In particular, the arrangements in place between contracting governments for monitoring and responding to SSAS alerts would be significant if terrorists sought to hijack larger vessels. As as [4.2.5] and [5.2.2.6] reasoned, it should not automatically be assumed that SSAS will be the “automatic panacea” for responding to terrorist attacks on vessels – due to problems of false activations, and delays and uncertainties in the division of responsibilities between responding States. Finally as [4.3.2] explained, LRIT provides a basis for States to obtain information about larger vessels navigating within specified distances or times from their coastlines, and has now been implemented internationally and is functioning satisfactorily. However LRIT

⁴⁸ As noted in [6.2.1.3] above - Richardson, above n 10, 32 - 33

⁴⁹ That is, carefully tailored to the vessel's particular physical and crewing characteristics in the first instance, re-evaluated where necessary and regularly rehearsed

information would be more relevant in enabling states to monitor the longer-range movements of vessels suspected of being utilised as a means of transporting weapons and persons, or fundraising, which are examined in Chapter 7.

Although [6.2.1] showed there were relatively few examples of terrorists utilising vessels to perpetrate dangerous acts to draw upon, this section has reasoned that rigorously-applied ISPS and other security measures could lessen the scope for terrorists to utilise vessels to perpetrate dangerous acts. However if such security measures did not prevent terrorists gaining control of vessels, or if terrorists controlled vessels in the first instance, States in whose waters such acts were about to be committed might need to interdict such vessels to prevent potentially deadly attacks – with [6.2.3] examining the prospects for UNCLOS and the 2005 SUA Convention to enable States to interdict such vessels.

[6.2.3] Overview of interdictions of suspected terrorist vessels

The following sections examine the prospects for UNCLOS and the 2005 SUA Convention to enable States to prevent maritime terrorism incidents through interdicting vessels suspected of being about to perpetrate the range of dangerous acts outlined in [6.2.1]. As [3.6.2] explained, this involves considering both the coverage⁵⁰ and the acceptance⁵¹ of these instruments. UNCLOS is examined in [6.2.3], followed by the 1988 SUA Convention in [6.2.4],⁵² and the 2005 SUA Convention in [6.2.5]. After examining the respective threat contexts, [6.3] undertakes a similar analysis of the prospects for these instruments to enable States to protect offshore platforms through interdicting suspected terrorist vessels, and [6.4] considers the prospects for these instruments to enable States to interdict vessels suspected of being about to perpetrate disruptive terrorist acts including acts of deliberate pollution, the laying of sea mines, interference with submarine cables and disabling vessels within proximity to navigational chokepoints.

⁵⁰ As [3.6.2] explained, assessments of the ‘coverage’ of the international agreement consider: ‘To what extent do the relevant provisions of the international agreement enable States prevent the maritime terrorism incident from occurring?’

⁵¹ As [3.6.2] explained, assessments of the ‘acceptance’ of the international agreement consider: ‘To what extent has the international agreement become accepted internationally?’

⁵² Although the 1988 SUA Convention does not enable state parties to interdict vessels, [6.2.4] provides an overview of its provisions to provide a foundation for the subsequent analysis of the vessel boarding provisions under the 2005 SUA Convention in [6.2.5]

[6.2.3.1] Overview of interdiction powers across the UNCLOS maritime zones

Since at least the seventeenth century, the customary international law of the sea had traditionally been characterised by respect for the principle of freedom of the seas, best expressed in Dutch jurist Hugo Grotius's concept of *mare liberum*. Under the *mare liberum* principle, aside from narrow strips of seas immediately adjacent to land territories, the world's oceans were regarded as open to all users, with any claims to restrict the navigational freedoms of vessels being regarded as encroachments on freedoms of the seas. Respect for this principle was seen in the 1927 SS *Lotus* case, which held that '... jurisdiction is certainly territorial; it cannot be exercised by a state outside its territory except by virtue of a permissive rule derived from international custom or from a convention'.⁵³

However as the twentieth century progressed, the *mare liberum* concept came under challenge. Following the 1945 Truman Proclamation over the continental shelf adjacent to the United States coast, several States began to assert jurisdictional claims over surrounding oceans through claiming exclusive rights over living and non-living marine resources, and in several instances the right to control the navigation of foreign vessels. In response to concerns about such "creeping jurisdiction", the International Law Commission (ILC) embarked on the codification of customary practices relating to the international law of the sea in 1949. The ILC's draft report in 1956 formed the basis of the First UN General Assembly Conference on the Law of the Sea (UNCLOS I) held in early 1958. Whilst UNCLOS I resulted in the conclusion of four conventions and an optional protocol,⁵⁴ these instruments failed to gain the support of developed States – which regarded these agreements as conceding too much in favour of developing States. A second UN Conference on the Law of the Sea (UNCLOS II) was held in 1960 to revisit some of the provisions of the four conventions concluded at UNCLOS I – but UNCLOS II failed to garner the support of developing States.⁵⁵

⁵³ *Lotus (France v Turkey)* [1927] PCIJ Rep Series A No 10 Cited in Donald Rothwell and Tim Stephens *The International Law of the Sea* (Hart Publishing, 2010), 150

⁵⁴ These included the *Convention on the Territorial Sea and the Contiguous Zone* (entered into force 10 September 1964) 516 UNTS 205; the *Convention on the High Seas* (entered into force 30 September 1962) 450 UNTS 11; the *Convention on Fishing and Conservation of the Living Resources of the High Seas* (entered into force 23 March 1966) 559 UNTS 285; the *Convention on the Continental Shelf* (entered into force 10 June 1964) 499 UNTS 311; and the *Optional Protocol of Signature Concerning the Compulsory Settlement of Disputes* (entered into force 30 September 1962) 450 UNTS 169; Rafiqul Islam *International Law: Current Concepts and Future Directions* (LexisNexis Butterworths, 2014), 433

⁵⁵ Islam, above n 54, 433

Following further negotiations, a third UN Conference on the Law of the Sea (UNCLOS III) was held between 1973 and 1982, which resulted in the conclusion of the UN Law of the Sea Convention in 1982. UNCLOS provides a framework of rules for governing the world's oceans – including the delimitation of maritime boundaries, the management of living and non-living marine resources, maritime navigation and pollution control, and marine scientific research, and arrangements for the resolution of disputes, including the creation of the International Tribunal for the Law of the Sea (ITLOS).⁵⁶ Through its 320 substantive provisions, UNCLOS aims to balance the “inclusive interests” of the international community in the common use of the oceans with the “exclusive interests” of individual States in exerting control over the resources of waters within proximity to their coasts.⁵⁷

A key achievement of UNCLOS was the formalisation of several maritime jurisdictional zones, within which coastal States have progressively decreasing jurisdictional rights the further the distance away from the coastlines. Within their internal waters,⁵⁸ coastal states have absolute sovereignty.⁵⁹ Within their territorial seas,⁶⁰ foreign ships enjoy the right of innocent passage - subject to the (limited) rights of coastal states to take the ‘necessary steps’ to ‘prevent’ passage deemed to be ‘non-innocent’.⁶¹ Within their contiguous zones⁶² coastal states have powers to prevent and punish infringements of their customs, fiscal, immigration or sanitary laws.⁶³ Within their exclusive economic zones⁶⁴ coastal states have jurisdiction over offshore platforms,⁶⁵ including the powers to establish ‘safety zones’ around such platforms⁶⁶, and

⁵⁶ For an overview of the history and development of the international law of the sea leading to the formalization of UNCLOS in 1982, see Rothwell and Stephens, above n 53, 1 – 18; Donald Rothwell and Natalie Klein ‘Maritime Security and the Law of the Sea’ in Natalie Klein, Joanna Mossop and Donald Rothwell (eds) *Maritime Security: International Law and Policy Perspectives from Australia and New Zealand* (Routledge, 2010), 22 – 27; Klein, above n 25, 2 – 3; and Islam, above n 54, 431 – 435

⁵⁷ Klein, above n 25, 3

⁵⁸ UNCLOS Article 8(1) defines ‘Internal waters’ as the waters on the landward side of the territorial sea baseline

⁵⁹ UNCLOS Article 2(1)

⁶⁰ Under UNCLOS Article 3, the breadth of the territorial sea may not extend beyond 12 nautical miles from the baselines established in accordance with UNCLOS

⁶¹ Coastal state powers regarding innocent passage are analysed in [6.2.3.2] (examining the prevention of dangerous and disruptive acts by suspected terrorist vessels *within* the territorial sea), and [7.2.5.1] and [7.3.3.2] (examining the prevention of the lateral transit *through* the territorial sea of suspected terrorist vessels transporting weaponry or persons, or financing terrorist activities).

⁶² UNCLOS Article 33(2) provides that ‘the contiguous zone may not extend beyond 24 nautical miles from the baselines from which the breadth of the territorial sea is measured’

⁶³ These provisions are examined in Chapter 7

⁶⁴ UNCLOS Article 57 provides that ‘The exclusive economic zone shall not extend beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured’

⁶⁵ UNCLOS Article 56(b)(i) – which UNCLOS terms ‘artificial islands, installations and structures

⁶⁶ UNCLOS Article 60(5) - which are examined in [6.3.3]

powers to protect and preserve their marine environments.⁶⁷ On the high seas,⁶⁸ UNCLOS recognises traditional customary high seas freedoms of navigation and the exclusive jurisdiction of flag states.⁶⁹ It prohibits ‘interference’ by warships against foreign ships,⁷⁰ except where powers of interference derive from treaty, or where the ship is engaged in piracy, the slave trade, unauthorized broadcasting, or where the ship is “stateless”.⁷¹ Finally within straits used for international navigation⁷², UNCLOS recognises the right of transit passage,⁷³ subject to (vaguely defined) restrictions on certain activities and rights of states bordering the straits over ships undertaking transit passage – with most of these provisions applying *mutatis mutandis* to archipelagic sea lanes passage.⁷⁴

The vast majority of the world’s States have ratified UNCLOS, which entered into force in 1994.⁷⁵ Scott accounts for the wide ratification of UNCLOS by reasoning that most States have recognised the benefits of increased international peace and security through agreeing to be bound by a common framework of rules with respect to the governance of maritime spaces.⁷⁶ Whilst this Study is limited to examining the provisions of UNCLOS which enable States to interdict suspected terrorist vessels, similar observations about why States seek to adhere to rules of international law more generally have been made by international legal scholars. For instance, Triggs explains that the effectiveness of the “compliance pull” of international law (that is, the extent to which international law influences State behaviour) depends on how a State calculates its interests in abiding by the rule.⁷⁷ Along similar lines, Islam reasons that

⁶⁷ Which are examined in [6.4.3.1]

⁶⁸ UNCLOS Article 86 defines the high seas to encompass ‘... all parts of the sea that are not included in the exclusive economic zone, in the territorial sea or in the internal waters of a State, or in the archipelagic waters of an archipelagic State’

⁶⁹ UNCLOS Article 92 ‘Status of ships’

⁷⁰ However under UNCLOS Article 95, warships have complete immunity from the jurisdiction of any other state except for their flag state, and under UNCLOS Article 96, ships used only for government, non-commercial purposes also have complete immunity from the jurisdiction of any other state except for their flag state

⁷¹ UNCLOS Article 110 ‘Right of visit’ The UNCLOS high seas provisions are examined in [6.2.3.3], [7.2.5.3] and [7.3.3.4]. [6.4.3.2] examines the UNCLOS provisions addressing the protection of submarine cables.

⁷² UNCLOS Article 37 defines these as ‘straits which are used for international navigation between one part of the high seas or an exclusive economic zone and another part of the high seas or an exclusive economic zone’

⁷³ UNCLOS Article 38

⁷⁴ The provisions of UNCLOS Articles 39, 40, 42 and 44 apply *mutatis mutandis* to archipelagic sea lanes passage

⁷⁵ Whilst UNCLOS was finalised in 1982, and entered into force internationally in 1994, several States which either have coastal State jurisdiction over navigational chokepoints, or are otherwise have a significant influence on maritime affairs are not as at 1 October 2013 parties to UNCLOS. These states include the United States (but US generally accepts UNCLOS as reflecting the customary international law of the sea); North Korea; Iran; Syria; Libya; Cambodia; United Arab Emirates; Turkey; and Ethiopia

⁷⁶ Shirley Scott ‘The LOS Convention as an International Regime: A Political Science Perspective’ in Alex Oude Elferink (ed) *Stability and Change in the Law of the Sea Convention* (Martinus Nijhoff, 2005), 23; Rothwell and Klein, above n 56, 26

⁷⁷ Triggs above n 58, 5

given the interdependence of the international community, the elements of practical necessity, reputational costs, reciprocity, mutual gains and some belief in the common good go a long way to explain why States find it strategically beneficial to seek to comply with international law, and why they have more to lose from non-compliance than from compliance.⁷⁸

As a result of having to carefully balance the interests of more than 150 states with divergent interests (including land-locked States, coastal and archipelagic States interested in protecting their marine environments, and major shipping States interested in maintaining maximum freedom of navigation), the final text of UNCLOS was a delicate compromise, with many of its provisions being worded in a highly generalised and ambiguous manner.⁷⁹ At the conclusion of the negotiations for UNCLOS in 1983, Singapore's Ambassador Tommy Koh, as President of the Third UN Conference on the Law of the Sea explained the nature of UNCLOS as a "package deal" of rights and obligations:

‘Although [UNCLOS] consists of a series of compromises, they form an integral whole. This is why [UNCLOS] does not provide for reservations. It is therefore not possible for States to pick what they want and disregard what they do not like. In international law, rights and duties go hand in hand. It is therefore impermissible to claim rights under [UNCLOS] without being willing to assume the correlative duties’.⁸⁰

As Scott explains, although UNCLOS made use of vagueness, ambiguity and silence at certain points in respect of certain controversial matters (examples of which are discussed in this Chapter and in Chapter 7), the key achievement of UNCLOS is to provide a framework for oceans governance rather than dealing with all substantive matters.⁸¹ Grunawalt has aptly characterised the ambiguities within UNCLOS as "constructive" through allowing more than 150 States with divergent interests to find common ground through agreeing on a common set of principles to govern the world's oceans.⁸²

⁷⁸ Islam, above n 54, 29

⁷⁹ Sam Bateman *UNCLOS and its Limitations as the Foundation for a Regional Maritime Security Regime* Institute of Defence and Strategic Studies Working Paper No 111 April 2006), 2

⁸⁰ *The Law of the Sea: Official Text of UNCLOS*, UN Publication, 1983, p. xxxiv. Cited in Gillian Triggs *International Law: Contemporary Principles and Practices* 2nd Edition (LexisNexis Butterworths, 2011), 347

⁸¹ Scott, above n 76, 24

⁸² Richard Grunawalt 'Freedom of Navigation in the Post-Cold War Era' in Donald Rothwell and Sam Bateman (eds) *Navigational Rights and Freedoms and the New Law of the Sea* (Martinus Nijhoff, 2000), 16

Because of the inherent ambiguity throughout UNCLOS, as this Chapter and Chapter 7 explain, the question of whether interdictions of suspected terrorist vessels will be regarded as legal within the various UNCLOS maritime zones will depend on whether a restrictive or liberal view of the relevant UNCLOS provisions is adopted. As [1.6.2] noted, because there have not as yet been any instances of interdictions of suspected terrorist vessels being challenged in ITLOS or the ICJ, there is no relevant jurisprudence to analyse. As a result, the analysis of the legality of interdicting suspected terrorist vessels in this chapter and in Chapter 7 is a hypothetical one based on analyses of scholarly arguments.

[6.2.3.2] Interdictions of suspected terrorist vessels within territorial seas

[6.2.1] indicated that the small number of previous instances of terrorists utilising vessels to perpetrate dangerous acts have mostly occurred in close proximity to land - although the precise locations of most of these interdictions could not be ascertained. If terrorists sought to utilise vessels as weapons or bombs against land targets, interdicting such vessels would not present any jurisdictional challenges for a coastal State as such acts would occur within the coastal State's internal waters – in which as [6.2.3.1] noted, the jurisdiction of coastal States is absolute. UNCLOS specifies that ships of all States enjoy the right of innocent passage through the territorial sea,⁸³ with Article 19(1) providing that such passage will be innocent as long as it is not 'prejudicial to the peace, good order or security of the coastal state'. UNCLOS Article 19(2) further provides, *inter alia*, that:

Passage of a foreign ship shall be considered to be prejudicial to the peace, good order or security of the coastal State if in the territorial sea it engages in ... (*inter alia*)⁸⁴:

(a) 'any threat or use of force against the sovereignty, territorial integrity or political independence of the coastal State, or in any other manner in violation of the principles of international law embodied in the UN Charter';

(b) 'any exercise or practice with weapons of any kind';

...

⁸³ Subject to the other provisions of UNCLOS: UNCLOS Article 17

⁸⁴ Other provisions of UNCLOS Article 19(2) that are relevant to the powers of coastal states in relation to the innocent passage are more relevant to the activities of "State-controlled" military vessels – including (b) any exercise or practice with weapons of any kind; (f) the launching, landing or taking on board of any military device;.

- (k) 'any act aimed at interfering with any ... facilities or installations of the coastal state'.
- (l) 'any other activity not having a direct bearing on passage'; and

The activities listed above would encompass terrorists utilising vessels as weapons or floating bombs against vessels, land targets, and as platforms from which to launch short-range weapons against aircraft. Chapter 7 considers the application of Article 19(2)(a) in less straightforward situations involving the interdiction of foreign vessels laterally transiting the territorial sea that are suspected of transporting weaponry or terrorist-connected persons to enable the perpetration of subsequent terrorist attacks on land.⁸⁵

Whilst UNCLOS Article 21 also allows coastal states to *adopt* laws and regulations relating to the innocent passage of foreign vessels through the territorial sea,⁸⁶ it is silent on the ability of coastal states to *enforce* such laws and regulations. However UNCLOS Article 25 enables coastal states to take the 'necessary steps' to 'prevent' (non-innocent) passage, but stops short of providing guidance on what may (and may not) be involved in the taking of such 'necessary steps'. This broadly-drafted term creates scope for a potentially wide range of actions by the coastal state.⁸⁷ The three leading international legal cases on the use of force by states in the maritime law enforcement context hold that uses of force by "enforcing" States should be minimised, and warnings to offending vessels maximised - and that any uses of force must be reasonable and necessary in the circumstances.⁸⁸ However these three cases (which are overviewed below)⁸⁹ arose out of the use of force by States against "less threatening"

⁸⁵ Vessels could be utilised to enable subsequent terrorist attacks through transporting WMD materiel, conventional weaponry, terrorist-connected persons or as a means of terrorist fundraising

⁸⁶ These include laws and regulations may address (inter alia) 'the safety of navigation and the regulation of maritime traffic' in Article 21(1)(a); 'the protection of navigational aids and facilities and other facilities or installations' in Article 21(1)(b); 'the protection of submarine cables and pipelines in Article 21(1)(c); and "the preservation of the environment of the coastal State and the prevention, reduction and control of pollution thereof" in Article 21(f). Furthermore, UNCLOS Article 21(4) specifies that foreign ships undertaking innocent passage 'shall comply' with laws and regulations made by coastal states in accordance with UNCLOS Article 21(1) - as well as 'all generally accepted international regulations relating to the prevention of collisions at sea'

⁸⁷ Rothwell and Stephens, above n 53, 218

⁸⁸ On this point see Douglas Guilfoyle *Shipping Interdiction and the Law of the Sea* (Cambridge University Press, 2009), p. 271 (who opines that these principles provide decision-makers with little practical guidance); Michael Byers 'Policing the High Seas: The Proliferation Security Initiative' (2004) 98 *American Journal of International Law*, 530 – 531 and 538 – 540; Samuel Logan 'The Proliferation Security Initiative: Navigating the Legal Challenges' (2005) 14 *Journal of Transnational Law and Policy*, 257, referring to Robin Churchill and Vaughan Lowe *The Law of the Sea* (Manchester University Press, 3rd ed, 1999), 307 - 308

⁸⁹ These summaries are derived from Stuart Kaye 'Interdiction and Boarding of Vessels at Sea: New Developments and Old Problems' in Rupert Herbert-Burns, Sam Bateman and Peter Lehr (eds) *Lloyd's MIU Handbook of Maritime Security* (CRC Press, 2009), 210 – 211, and Patricia Kwast 'Maritime Law Enforcement and the Use of Force at Sea: Reflections on the Categorisation of Forcible Action at Sea in the Light of the Guyana/Suriname Award' (2008) 13 *Journal of Conflict and Security Law*, 56 – 57

delinquent vessels that were suspected of depriving the “enforcing” states of revenue, fisheries resources, and illegally smuggling alcohol, compared to the potentially deadly acts that might be perpetrated by terrorist-controlled vessels as discussed in [6.2.1].

The *I’m Alone* case involved the deliberate sinking by the US Coastguard of an “escaping” Canadian vessel suspected of illegally importing alcohol into the United States of America. The Joint Commission established to adjudicate the dispute between the US and Canada held that ‘reasonable force’ might be used to board, search, seize and bring a delinquent vessel into port for inspection – and if such a vessel were to sink in the course of such an arrest, that consequence might be acceptable – providing the sinking was incidental to the ‘necessary and reasonable’ action by the “enforcing” State. However the deliberate sinking of the unarmed Canadian vessel which posed no threat to the US coastguard vessel was found to be an excessive use of force contrary to international law.⁹⁰ In the *Red Crusader* case, the International Commission of Inquiry held that the firing upon the fleeing (and unarmed) Scottish fishing trawler *Neils Ebsen* by a Danish fisheries patrol vessel directly into the trawler’s mast, radar scanner, lights and stern, without warning and in a manner endangering human life to also constituted an excessive use of force contrary to international law.⁹¹ In the *MV Saiga (No. 2)* case, the International Tribunal for the Law of the Sea held that excessive force was used by a Guinean patrol vessel against the St Vincent and the Grenadines-registered tanker *MV Saiga* which was engaged in illegal “bunkering” off its coast through firing without warning at the *Saiga*.⁹² At paragraph 156, the Tribunal outlined the constraints that should be adhered to by law enforcement vessels, explaining that:

‘The normal practice used to stop a ship at sea is first to give an auditory or visual signal to stop, using internationally recognized signals. Where this does not succeed, a variety of actions may be taken, including the firing of shots across the bows of the ship. It is only after the appropriate actions fail that the pursuing vessel may, as a last resort, use force. Even then, appropriate warning must be issued to the ship and all efforts should be made to ensure that life is not endangered.’

⁹⁰ *I’m Alone (Canada v. USA)* (1935) 3 UN Reports of International Arbitral Awards 1609

⁹¹ *The Red Crusader (Commission of Enquiry Denmark v United Kingdom)* (1962) 35 ILR 485 at 497 - 499

⁹² *M/V “Saiga” (No 2) (Saint Vincent and the Grenadines v Guinea)* ITLOS Case No 2; (1999) 38 ILM 1323

More recently, in 2008 an Arbitral Tribunal established to adjudicate a maritime boundary dispute between Guyana and Suriname also considered the legality of what Guyana alleged to be a threat of force by Suriname against the American-owned and operated *C.E. Thornton* oil drilling rig operating under licence from Guyana in disputed waters in June 2000.⁹³ Two Suriname Naval patrol boats had approached the *C.E. Thornton* and directed it to immediately vacate the area. The Suriname naval commander reportedly warned the *C.E. Thornton* that if she failed to comply with this direction, that ‘the consequences will be yours’. In compliance with this direction, the *C.E. Thornton* departed the area.⁹⁴ In relation to this incident, the Arbitral Tribunal acknowledged whilst the *I’m Alone*, *Red Crusader* and *M/V Saiga (No. 2)* cases had confirmed that force could be used in law enforcement activities on the proviso that such force is unavoidable, reasonable and necessary, it characterised the actions of Suriname navy as ‘more akin to a threat of military action rather than a mere law enforcement activity’ - thereby constituting a threat of the use of force in contravention of UNCLOS, the UN Charter and general international law.⁹⁵

International legal scholars have recognised that attacks by contemporary terrorist groups such as those discussed in [6.2.1] could very well have significantly more profound consequences to States than those resulting from the contraventions in the *I’m Alone*, *Red Crusader* and *MV Saiga (No. 2)* cases noted above.⁹⁶ It is conceivable that the only measures likely to prevent terrorists from utilising hijacked vessels in a manner similar to the 9/11 attacks could involve the use of potentially lethal force.⁹⁷ Within Australia, this unpalatable post-9/11 maritime terrorism possibility has been recognised through the 2006 reforms to the *Defence Act 1903* (Cth). A new Part IIIAAA⁹⁸ has provided broad powers to the Australian Defence Force to take a range of measures against terrorist-controlled vessels or aircraft under s 51SE⁹⁹ including the use of force up to and including destroying vessels or aircraft.¹⁰⁰

⁹³ *Guyana v Suriname* (Award of the Arbitral Tribunal) (2008) 47 ILM 164

⁹⁴ Kwast, above n 106, 49 - 50

⁹⁵ *Guyana v Suriname* (Award of the Arbitral Tribunal) (2008) 47 ILM 164 at para [445] Cited in Kwast, above n 106 50 - 51

⁹⁶ Kaye, above n 106, 210 – 211; Klein, above n 25, 116 - 117

⁹⁷ See for example Dale Stephens and Simon Bronitt ‘Flying Under the Radar - The Use of Lethal Force Against Hijacked Aircraft: Recent Australian Developments’ (2008) 7 *Oxford University Commonwealth Law Journal* 265

⁹⁸ ‘Utilisation of Defence Force to Protect Commonwealth Interests and States and Self-Governing Territories’

⁹⁹ ‘Special powers of members of the Defence Force’

¹⁰⁰ Cited in Stuart Kaye ‘Security and Defence in Australia’s Marine Domain’ in Warwick Gullet, Clive Schofield and Joanna Vince (eds) *Marine Resources Management* (LexisNexis Butterworths, 2011), 136 – 138 See also Cameron Moore ‘Turning King Canute into Lord Neptune: Australia’s New Offshore Protection Measures’ (2006) 3(1) *University of New England Law Journal* 57

[6.2.3.3] Interdictions of suspected terrorist vessels on the high seas

As noted in the introduction to [6.2.1], most of the reports of terrorists successfully utilising (and attempting to utilise) vessels to perpetrate dangerous acts against other vessels¹⁰¹ have described the location of such incidents in generalised terms (for example, ‘off the coast of xxx’). However as discussed in [5.2.1] the MV *Limburg* was attacked by an explosives-laden dinghy on the high seas off the coast of Yemen, so it is relevant to examine the extent to which UNCLOS might enable States to interdict vessels suspected of being about to perpetrate dangerous acts against other vessels on the high seas.

Outside the territorial sea, UNCLOS provides limited guidance on the capacity of states to interdict vessels suspected of being about to be used in a dangerous manner by terrorists, where high seas navigational freedoms apply.¹⁰² Whilst UNCLOS Article 88 provides that ‘the high seas shall be reserved for peaceful purposes’, and does not elaborate on what the term ‘peaceful purposes’ entails, it has been confirmed this does not mean the complete de-militarisation of the high seas.¹⁰³ The relevant provisions of UNCLOS relating to collisions and navigational incidents on the high seas, Articles 94(7)¹⁰⁴ and 97(3),¹⁰⁵ are expressed as applying *after* such incidents *have occurred* – rather than enabling States to intervene to *prevent the occurrence* of such incidents. As [6.4.3.1] below explains, UNCLOS Article 221 (covering coastal State powers in relation to pollution from maritime casualties) has a similar ex-post-facto focus.

It might be argued that UNCLOS Article 56(1)(b)(iii), which allows coastal states to ‘preserve and protect’ the marine environments of their EEZs could enable a coastal State to interdict vessels suspected of being about to perpetrate dangerous acts against other vessels through preventing vessel-based pollution that could follow from such an attack. However in the *M/V*

¹⁰¹ As [6.2.1] explained, if terrorists sought to utilise vessels to perpetrate dangerous acts against land targets, such vessels would need to traverse the 12 nautical mile territorial sea – where [6.2.3.2] explained the UNCLOS innocent passage provisions would clearly enable coastal States to interdict such vessels

¹⁰² UNCLOS Article 87(1)(a)

¹⁰³ Report of the Secretary-General’s Panel of Inquiry on the 31 May 2010 Flotilla Incident, September 2011, Appendix 1 ‘Applicable Legal Principles’ paragraph 13

¹⁰⁴ Article 94 (1) requires flag states to ‘effectively exercise jurisdiction and control’ over ships flying their flags; which includes (under Article 97(3)) ‘causing inquiries’ to be held in relation to marine casualties or other navigational incidents on the high seas causing loss of life, serious injury to persons or serious damage to ships or installations of another State, or to the marine environment.

¹⁰⁵ UNCLOS Article 97 (‘Penal jurisdiction in matters of collision or any other incident of navigation’), and most relevantly Article 97(3) re-affirms the exclusive jurisdiction of flag states over vessels flying their flag – providing that no arrest or detention of the ship, even as a measure of investigation, shall be ordered by any authorities other than those of the vessel’s flag State in relation to maritime casualties or other navigational incidents.

Saiga (No. 2) (1999) case, the ITLOS held that the UNCLOS EEZ provisions do not contain any express provisions dealing with the boarding and arrest of foreign ships for violations of coastal state laws.¹⁰⁶ In Australia, Part IIIAAA of the *Defence Act* 1903 (Cth) (discussed in [6.2.3.2] above) allows for the proclamation of an ‘offshore general security area’ within Australia’s EEZ – however a leading international legal scholar has described the consistency of such measures with international freedoms of navigation as ‘questionable’.¹⁰⁷ As [6.4.3.2] notes, similar questions have also been raised about whether Australia’s post-9/11 legislation allowing for ‘protection zones’ around submarine cables located outside of its territorial sea is consistent with UNCLOS.

[6.2.3.4] Interdictions of suspected terrorist vessels within international straits

Although none of the previous instances of terrorists utilising vessels in a dangerous manner reviewed in [6.2.1] involved international straits, [5.2.1] noted reports of Al Qaeda’s intent to target merchant and naval vessels transiting the Straits of Gibraltar around 2002. Within international straits¹⁰⁸ all ships enjoy the right of transit passage – meaning the ‘continuous and expeditious’ transit of the strait between two parts of the high seas and/or EEZ.¹⁰⁹ UNCLOS alludes to, but is not entirely clear on, the ability of “bordering states”¹¹⁰ to interdict vessels suspected of being about to perpetrate dangerous acts within international straits. UNCLOS imposes several obligations on ships exercising the right of transit passage - including proceeding without delay;¹¹¹ refraining from any threat or use of force against the sovereignty, territorial integrity or political independence of “bordering states”, or in any other manner in violation of the principles of international law embodied in the UN Charter;¹¹² and refraining from any activities other than those incident to their normal modes of continuous and expeditious transit, unless rendered necessary by force majeure or by distress.¹¹³ Furthermore, whilst UNCLOS provides that ships undertaking transit passage ‘shall comply’ with generally-

¹⁰⁶ Noted in Mikhail Kashubsky *Offshore Petroleum Security: Analysis of Offshore Security Threats, Target Attractiveness, and the International Legal Framework for the Protection and Security of Offshore Petroleum Installations* (PhD thesis, University of Wollongong, 2011), 231

¹⁰⁷ Kaye, above n 117, 137 - 138

¹⁰⁸ UNCLOS uses the term “straits used for international navigation”. The term ‘international straits’ is used here for brevity

¹⁰⁹ UNCLOS Article 38(2)

¹¹⁰ This term is used for the sake of brevity instead of ‘states surrounding international straits’ as used in UNCLOS Article 37

¹¹¹ UNCLOS Article 39(a)

¹¹² UNCLOS Article 39(b)

¹¹³ UNCLOS Article 39(c)

accepted international rules¹¹⁴ for the prevention of collisions, and the prevention, reduction and control of pollution,¹¹⁵ it is silent on the measures that “bordering states” may take to enforce compliance with such rules.

Whilst UNCLOS provides that activities which are not an exercise of the right of transit passage remain subject to the other applicable provisions of UNCLOS,¹¹⁶ it is silent on what these ‘other applicable provisions’ include. UNCLOS Article 42(a)¹¹⁷ authorises “bordering states” to *adopt*¹¹⁸ non-discriminatory¹¹⁹ laws and regulations pertaining to (*inter alia*) the safety of navigation and the regulation of maritime traffic. UNCLOS further provides that foreign ships exercising the right of transit passage ‘shall comply’ with such laws and regulations¹²⁰ – but is silent on the measures “bordering states” may take in response to non-compliance. Similar provisions apply in relation to foreign ships exercising the right of archipelagic sea lanes passage¹²¹ – meaning that archipelagic states *could* also interdict suspected terrorist vessels transiting archipelagic sea lanes¹²² – notwithstanding the uncertainties noted above.

[6.2.3.5] Summary: Prospects for UNCLOS to enable the interdiction of suspected terrorist vessels

The above sections explained that whilst UNCLOS would clearly enable coastal States to interdict vessels suspected of being about to perpetrate dangerous acts *within* the territorial sea, it is far less clear on coastal State powers *outside of* the territorial sea. It also noted some examples of how Australia has sought to overcome these limitations following 9/11, although the consistency of such measures under UNCLOS has been questioned. This highlights the importance of having in place specific international rules regarding vessel interdictions. The

¹¹⁴ UNCLOS Article 39(2) uses the terms “regulations, procedures and practices”

¹¹⁵ UNCLOS Article 39(2)

¹¹⁶ UNCLOS Article 38(3)

¹¹⁷ Laws and regulations of States bordering straits relating to transit passage

¹¹⁸ And give due publicity to such laws: UNCLOS Article 42(3)

¹¹⁹ UNCLOS Article 42(2)

¹²⁰ UNCLOS Article 42(4)

¹²¹ UNCLOS Article 53 (Right of archipelagic sea lanes passage) provides that all ships enjoy the right of archipelagic sea lanes passage (ASLP) within archipelagic sea lanes. UNCLOS Article 53(3) provides that ASLP means the exercise (in accordance with UNCLOS) of the rights of navigation in the vessel's normal mode *solely for the purpose* of continuous, expeditious and unobstructed transit between two parts of the High Seas and/or EEZ. UNCLOS Article 54 provides that (*inter alia*) UNCLOS Article's 39 (duties of ships and aircraft during transit passage), 42 (laws and regulations of States bordering straits relating to transit passage) and 44 (duties of States bordering straits) apply *mutatis mutandis* to ASLP

¹²² However [6.2.1] did not identify any instances of terrorists committing, attempting or planning dangerous acts within archipelagic waters

above sections also noted that UNCLOS is silent on the use of force, and that the small number of international legal cases on this point originated from markedly more benign security threats than those which might be involved with terrorists in control of vessels. The following sections examine the extent to which the 1988 and 2005 SUA treaties overcome the inadequacies of UNCLOS noted above.

[6.2.4] 1988 SUA Convention

The 1988 SUA Convention was developed in response to the *Achille Lauro* 1985 hijacking, which was overviewed in [3.3.1]. The *Achille Lauro* incident highlighted the limitations of the UNCLOS piracy provisions in situations involving violence aboard ships that had the potential to prejudice the safety of maritime navigation which were not committed for ‘private ends’ and which did not involve two ships.¹²³ In the immediate aftermath of the 9/11, but before the development of the 2005 SUA Convention¹²⁴ several studies, noting the limitations of the 1988 SUA Convention in allowing States to interdict suspected terrorist vessels before an incident occurred, considered whether the UNCLOS piracy provisions might enable the prevention of such incidents.¹²⁵ However since the development of the 2005 SUA Convention such inquiries have not been undertaken, and hence are not examined in this Study.

The 1988 SUA Convention is one of the sixteen ‘sectoral’ counter-terrorism conventions noted in [2.2.1]. As [2.2.1] explained, while these conventions do not directly mention the prevention or suppression of ‘terrorism’, they enable State Parties to arrest, prosecute or extradite persons who have committed specific acts of terrorism, thereby overcoming problems arising from the absence of directly applicable extradition treaties.¹²⁶ The 1988 SUA Convention addresses terrorist acts which have been committed in the maritime domain. It applies to ships navigating

¹²³ UNCLOS Article 101(a). On the limitations of the UNCLOS piracy provisions against acts of maritime terrorism, see Klein, above n 25, 151 – 154; and Jose Luis Jesus ‘Protection of Foreign Ships Against Piracy and Terrorism at Sea: Legal Aspects’ (2003) 18(3) *International Journal of Marine and Coastal Law*, 373 - 381

For a comprehensive overview of the negotiating processes involved in the 1988 SUA Convention, see Natalino Ronzitti *Maritime Terrorism and International Law* (Martinus Nijhoff, 1990)

¹²⁴ Which is examined in [6.2.5] below

¹²⁵ See for example Leticia Diaz and Barry Hart Dubner ‘On the Problem of Utilizing Unilateral Action to Prevent Acts of Sea Piracy and Terrorism: A Proactive Approach to the Evolution of International Law’ (2004) 32 *Syracuse Journal of International Law and Commerce* 1 and Justin Mellor ‘Missing the Boat: The Legal and Practical Problems of the Prevention of Maritime Terrorism’ (2002) 18 *American University International Law Review* 341

¹²⁶ Ted McDorman ‘Maritime Terrorism and the International Law of Boarding of Vessels at Sea: Assessing the New Developments’ in David Caron and Harry Scheiber (eds) *Oceans in the Nuclear Age: Legacies and Risks* (Martinus Nijhoff, 2010), 240 - 241

or scheduled to navigate into, through or from, waters beyond the outer limit of the territorial sea of a single State, or the lateral limits of its territorial sea with adjacent States.¹²⁷ It will also apply when an actual or alleged offender is found within the territory of a State party, and requires State Parties to exercise arrest and prosecute persons who have committed, or who have been involved in committing, an offence that has had the effect of endangering the safety of maritime navigation; or extradite them to the custody of another State Party.¹²⁸

Article 3(1) of the 1988 SUA Convention provides that that it is a SUA offence to unlawfully or intentionally seize or exercise control over a ship by force or threat thereof, or by any other form of intimidation;¹²⁹ perform an act of violence against a person on board a ship if that act is likely to endanger the safe navigation of that ship;¹³⁰ destroy a ship or cause damage to a ship or its cargo which is likely to endanger the safe navigation of that ship;¹³¹ place or cause 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;¹³² destroy or seriously damage maritime navigational facilities or seriously interfere with their operation, if such act is likely to endanger the safe navigation of a ship;¹³³ or communicate information known to be false, thereby endangering the safe navigation of a ship.¹³⁴ Article 3(2) also makes it a SUA offence to attempt to commit any of these offences;¹³⁵ to abet or abet their commission;¹³⁶ or to threaten a person to do or refrain from doing any act.¹³⁷

The 1988 SUA Convention requires state parties to establish their jurisdiction over the Article 3 offences when the offence is committed against or on board a ship flying the flag of the state at the time the offence is committed;¹³⁸ within the territory of that state, including its territorial sea;¹³⁹ or by a national of that State.¹⁴⁰ It also enables state parties to arrest, prosecute or

¹²⁷ 1988 SUA Convention Article 4(1)

¹²⁸ 1988 SUA Convention Articles 4(2) and 7

¹²⁹ 1988 SUA Convention Article 3(1)(a)

¹³⁰ 1988 SUA Convention Article 3(1)(b)

¹³¹ 1988 SUA Convention Article 3(1)(c)

¹³² 1988 SUA Convention Article 3(1)(d)

¹³³ 1988 SUA Convention Article 3(1)(e)

¹³⁴ 1988 SUA Convention Article 3(1)(f)

¹³⁵ 1988 SUA Convention Article 3(2)(a)

¹³⁶ 1988 SUA Convention Article 3(2)(b)

¹³⁷ 1988 SUA Convention Article 3(2)(c)

¹³⁸ 1988 SUA Convention Article 6(1)(a)

¹³⁹ 1988 SUA Convention Article 6(1)(b)

¹⁴⁰ 1988 SUA Convention Article 6(1)(c)

extradite SUA offences committed by stateless persons whose habitual residence is in that state;¹⁴¹ where a national of that State is seized, threatened, injured or killed;¹⁴² where the SUA offence is committed in an attempt to compel that State to do or abstain from doing any act.¹⁴³

Although Article 3(1)(c)¹⁴⁴ might enable state parties to arrest, prosecute and/or extradite persons who *have been* involved in dangerous acts such as those outlined in [6.2.1], due to its ex-post-facto application, it does not enable state parties to interdict foreign vessels suspected of being about to perpetrate such acts. This has been noted as a significant limitation of the 1988 SUA Convention, particularly in light of the propensity of contemporary terrorist groups to perpetrate significant casualty attacks involving the suicide of the perpetrators who might well not survive such attacks for States to arrest, prosecute and/or extradite.¹⁴⁵ Relevantly, [2.5] and [3.3] showed how mass-casualty and suicide attacks have come to be characteristic of the worst forms of contemporary terrorism; and [2.5.2] showed that “negotiable” aerial hijackings (analogous to the *Achille Lauro* hijacking),¹⁴⁶ whilst prevalent during the 1970s and 1980s, declined significantly from the 1990s onwards.

¹⁴¹ 1988 SUA Convention Article 6(2)(a)

¹⁴² 1988 SUA Convention Article 6(2)(b)

¹⁴³ 1988 SUA Convention Article 6(2)(c)

¹⁴⁴ Which makes it a SUA offence to ‘... destroy a ship or cause damage to a ship or its cargo which is likely to endanger the safe navigation of that ship’

¹⁴⁵ Klein, above n 25, 152 – 154. Jesus, above n 140 at 395 - 396 argued that: ‘One cannot protect lives unless states are allowed to intervene before human tragedy happens. That is when it makes sense to recognise to any state the right to board, search, seize and arrest ships and offenders in the context of maritime terrorism in all maritime space with the exception of internal, maritime and inland waters. This is more so in the case of suicidal terrorist attacks for which the current [ie, 1988] SUA regulations strategy of prosecuting or extraditing offenders is totally inoperative and inefficient. This [SUA] Convention, as is well known, was adopted in the aftermath of the 1985 *Achille Lauro* incident in response to terrorist attacks against shipping. It approaches this matter, therefore, from the point of view of punishment of offenders, an ex-post-facto repression measure that only makes sense if the perpetrator survives the attack. This approach does not totally respond to contemporary needs to the extent that it does not contemplate a special breed of terrorist acts, potentially the most dangerous ones, against ships or from ships that may be carried out by persons who themselves are supposed to die in the attack, as witnessed recently in the 11 September 2001 New York City attack. The only to address this situation with respect to shipping, from the standpoint of legal protection, is by taking a preventative approach, allowing any state party to assert police jurisdiction, including in territorial waters, to board, inspect, and seize the ship and equipment and arrest persons on board. In other words, in order to effectively prevent acts of sea terrorism from happening and address in legal terms this *kamikaze-style terrorist attack against ships and other targets*, states should be able to enjoy not only a judicial jurisdiction over offenders by claiming after fait accompli, that they be prosecuted or by prosecuting them themselves, but also a police jurisdiction that will allow them to prevent and stop terrorist ships from making terrorist attacks against other ships or against other targets such as port or pipeline facilities, platform structures, or that may be directed at blocking straits used for international navigation or causing major environmental damage’. [Emphasis added]

¹⁴⁶ [2.5.2] explained how a many such hijackings involved demands being made by the hijackers (for example the release of political prisoners) and the movements across State borders – which are therefore analogous to the *Achille Lauro* hijacking. Appendix E includes a complete summary of the 323 recorded aerial hijackings.

Writing before the finalisation of the 2005 SUA Convention, Jesus noted several ‘maritime terrorism scenarios’ not addressed by the 1988 SUA Convention. These included the utilisation of ships as weapons to perpetrate terrorist attacks; acts of deliberate pollution; the spreading or dumping of hazardous or nuclear material or waste; and the smuggling of potential offenders, equipment or material to other States to perpetrate terrorist attacks.¹⁴⁷ The 1988 SUA Convention would therefore not enable the interdiction of vessels such as the *Aegus Dimitrius* noted in [6.2.1].

Whilst as Appendix H shows, as at 1 October 2013, the 1988 SUA Convention has been ratified by 161 of the 196 SOLAS contracting governments (82 per cent) representing 94.51 per cent of world tonnage,¹⁴⁸ it has not been ratified by several significant maritime States including North Korea, Indonesia, Malaysia, Somalia and Thailand. This could potentially mean that persons who have committed offences under the 1988 SUA Convention within these territories may not be subject to the possibility of apprehension.

[6.2.5] 2005 SUA Convention

Following the 9/11 attacks, in addition to developing the new SOLAS Chapter XI-2 and ISPS Code which [4.2.1] overviewed, the IMO resolved in November 2001 to update the 1988 SUA Convention, with three years of negotiations commencing following IMO Assembly Resolution 924(22) on 22 January 2002. These negotiations, which have been comprehensively reviewed by other studies,¹⁴⁹ resulted in the formalisation of the 2005 SUA Convention. As explained below, the 2005 SUA Convention expanded the range of offences from those in the 1988 SUA Convention, and introduced provisions to facilitate the boarding of vessels by state parties where grounds exist for suspecting that an offence under the 2005 SUA Convention is about to be committed.

¹⁴⁷ Jesus, above n 140, 394

¹⁴⁸ IMO ‘Summary Status of Conventions’ as at 31 July 2013:

<http://www.imo.org/About/Conventions/StatusOfConventions/Pages/Default.aspx>; Accessed 1 October 2013

¹⁴⁹ Christopher Young ‘Balancing Maritime Security and Freedom of the High Seas: A Study of the Multilateral Negotiation Process in Action’ (2005) 24 *University of Queensland Law Journal* 355 at 356. Young provides an extremely thorough overview of the negotiating processes involved in the development of the 2005 amendments to the 1988 SUA Convention and Platforms Protocol, noting the concerns expressed by various State parties over certain aspects of the various proposals during the IMO’s negotiation process. Useful overviews have also been provided by Kaye, above n 106, 206 – 208; and Klein, above n 25, 170 - 184

Article 3bis(1)(a) of the 2005 SUA Convention makes it an offence for a person to unlawfully and intentionally, undertake (or threaten to undertake) three broadly-drafted offensive acts with or from a ship.¹⁵⁰ First, using against or on a ship, or discharging from a ship any explosive, radioactive material or [Biological, Chemical or Nuclear (BCN)] Weapon¹⁵¹ in a manner that causes or is likely to cause death, serious injury or damage;¹⁵² with Chapter 7 examining the definition of BCN weapon under the 2005 SUA Convention in more detail. Second, ‘discharging from a ship oil, liquefied natural gas or other hazardous or noxious substance, in such quantity or concentration that causes or is likely to cause death or serious injury or damage’,¹⁵³ (which is examined in [6.4.3.1]);¹⁵⁴ and third, ‘using a ship in a manner that causes death or serious injury or damage’.¹⁵⁵ Chapter 7¹⁵⁶ examines other offences under the 2005 SUA Convention including the utilisation of ships to transport explosives, BCN weapons and related materials for “terrorist-like” purposes;¹⁵⁷ to transport persons broadly connected with terrorist acts;¹⁵⁸ and being broadly involved in the perpetration of maritime and other terrorist acts.¹⁵⁹

The broadly-expressed SUA offence of ‘using a ship in a manner that causes death or serious injury or damage’ would “capture” all the dangerous uses of vessels examined in [6.2.1] – including the planned offensive utilisations of the hijacked Greek freighter *Agaeus Dimitrius*. Although no specific information could be found regarding the location at which the *Agaeus Dimitrius* was hijacked, if it was engaged on an international voyage (for example from Greece

¹⁵⁰ Although following the approach of the sectoral counter-terrorism conventions through not mentioning ‘terrorism’, Article 3bis(1)(a) includes the conditional phrase ‘when the purpose of the act, by its nature or context is to intimidate a population, or to compel a government or international organisation to do, or abstain from doing any act’

¹⁵¹ The definition of what materials will, and will not constitute, ‘BCN weapons’, and the offences of trafficking such BCN weapons (with the 2005 SUA Convention using this abbreviated term), are examined in [7.2.8], which examines how the 2005 SUA Convention might enable States to interdict vessels suspected of transporting WMD for terrorist purposes

¹⁵² 2005 SUA Convention Article 3bis (a)(i)

¹⁵³ 2005 SUA Convention Article 3bis(a)(ii)

¹⁵⁴ ‘Deliberate pollution of the marine environment’

¹⁵⁵ 2005 SUA Convention Article 3bis(a)(iii)

¹⁵⁶ Chapter 7 examines the utilisation of vessels to enable subsequent terrorist attacks (on land) through the transportation of weaponry, operatives or financing – as opposed to this Chapter which examines the offensive utilisation of vessels by terrorists to perpetrate dangerous or disruptive acts within the maritime domain

¹⁵⁷ Whilst the preamble to the 2005 SUA Convention makes several mentions of ‘terrorism’, the substantive text does not. Following the approach of the ‘sectoral’ counter-terrorism treaties as noted in [2.2.1] which do not address ‘terrorism’ per se, but rather illegalise specific acts of terrorism, Article 3bis(1)(b) makes it an offence to transport such materials ‘for the purpose of intimidating a population, or compelling a government or an international organization to do or to abstain from doing any act’

¹⁵⁸ 2005 SUA Convention Article 3ter

¹⁵⁹ 2005 SUA Convention Article 3quater

to Egypt), if such an incident occurred today, if Greece and Israel were both parties to the 2005 SUA Convention, the Convention might (today) be applicable to such scenarios. Furthermore, the offence of discharging substances from ships in Article 3bis(a)(ii) would “capture” terrorist acts of deliberate pollution from vessels - which are examined in [6.4.3.1].

The 2005 SUA Convention also requires state parties to ensure that legal entities (such as companies) subject to their jurisdiction may be held liable where the persons responsible for the management or control of the legal entity have, in that capacity, committed an offence under the 2005 SUA Convention.¹⁶⁰

A significant innovation of the 2005 SUA Convention is its incorporation of provisions enabling the “anticipatory” boardings of suspect ships. Article 8bis sets out detailed procedures for state parties seeking to board ships flagged to other state parties where there are grounds for suspected an offence under Articles 3, 3bis, 3ter or 3quater is, has been, or is about to be committed.¹⁶¹ Articles 3ter (transporting terrorist-connected persons) and 3quater (being broadly involved in terrorist acts) are examined in [7.3.5].

The 2005 SUA Convention provides that in situations where the law enforcement or other authorised officials of a state party encounter a ship that is either flying the flag, or displaying the markings of another state party that is located seaward of any state’s territorial sea, and have reasonable grounds to suspect that the ship, or a person on-board the ship is, has been or is about to be involved in the commission of an offence under Articles 3, 3bis or 3quater, the state party may firstly request confirmation of the nationality of the ship and/or person; and if such nationality is confirmed, request authorisation to take ‘appropriate measures’ with regard to that ship.¹⁶² Such ‘appropriate measures’ may include stopping, boarding and searching the ship, its cargo and persons on board, and questioning persons on board in order to determine if an offence under Articles 3, 3bis or 3quater has been, or is about to be committed.¹⁶³ In response to such requests, the state party to which the ship is flagged may authorise the requesting party to board the suspect ship, conduct the boarding and search of the vessel with its own law enforcement officials, or deny the request to board.¹⁶⁴ State parties may also grant permission

¹⁶⁰ 2005 SUA Convention Article 5bis

¹⁶¹ 2005 SUA Convention Article 8bis(2)

¹⁶² 2005 SUA Convention Article 8bis(3)(a)

¹⁶³ 2005 SUA Convention Article 8bis(3)(b)

¹⁶⁴ 2005 SUA Convention Article 8bis(3)(c)

for such boardings to be undertaken in situations where there is no response from the State Party that is the vessel's flag State within four hours.¹⁶⁵

Article 8bis also specifies that such boardings may only be undertaken with the consent of the ship's flag state,¹⁶⁶ and requires the use of force employed in such boardings to be minimised.¹⁶⁷ It also imposes obligations on officials carrying out such boardings, including not endangering the safety of life at sea; treating all persons on a boarded vessel with dignity and respecting human rights; conducting boarding and searches in accordance with international law; taking due account of the safety and security of the ship and its cargo; taking due account of the need not to prejudice the commercial or legal interests of the flag state; ensuring that all measures undertaken in relation to the ship and its cargo are environmentally sound; and taking reasonable efforts to avoid a ship being detained or delayed.¹⁶⁸ Article 11bis maintains the extradition provisions from the 1988 SUA Convention, but by virtue of the expanded range of SUA offences, also includes several safeguards, specifying that a state party's extradition obligation need not apply if the request for extradition is believed to have been made for the purposes of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin, political opinion or gender, or that compliance with the request would cause prejudice to that person's position for any of these reasons.¹⁶⁹

Although it entered into force on 28 July 2010, the 2005 SUA Convention currently has a low level of international acceptance. As Appendix H notes, as at 1 October 2013, only 24 out of the 196 SOLAS contracting governments (12 per cent) have ratified the 2005 SUA Convention. Current state parties include Algeria, Austria, Bulgaria, Cote d'Ivoire, Cook Islands,¹⁷⁰ Dominican Republic, Estonia, Fiji, Latvia, Lichtenstein, the Marshall Islands, Nauru, Netherlands, Palau, Panama, Saint Lucia, St Vincent and the Grenadines, Saudi Arabia, Serbia, St Kitts & Nevis,¹⁷¹ Spain, Switzerland, Turkey¹⁷² and Vanuatu. Whilst even these ratifications (which represent 30.74 per cent of world tonnage)¹⁷³ are encouraging, from this number of 24

¹⁶⁵ 2005 SUA Convention Article 8bis(3)(e)

¹⁶⁶ 2005 SUA Convention Article 8bis(5)

¹⁶⁷ 2005 SUA Convention Article 8bis(7)

¹⁶⁸ 2005 SUA Convention Article 8bis(8)

¹⁶⁹ 2005 SUA Convention Article 11bis

¹⁷⁰ But not the 2005 SUA Platforms Protocol

¹⁷¹ But not the 2005 SUA Platforms Protocol

¹⁷² But not the 2005 SUA Platforms Protocol

¹⁷³ IMO 'Summary Status of Conventions' as at 31 July 2013:

<http://www.imo.org/About/Conventions/StatusOfConventions/Pages/Default.aspx>; Accessed 1 October 2013

states, Algeria, Bulgaria, Panama, Saudi Arabia, Spain and Turkey are the only States that border key navigational chokepoints that might present attractive locations for terrorist attacks against or with vessels, and the Marshall Islands and Panama are the only ‘key registry’ States with significant numbers of ships flagged to them. This could well mean that the 2005 SUA Convention may only be applicable in a limited range of circumstances - for example the interdiction of a Panamanian-flagged vessel suspected of being about to be utilised in an offensive manner within proximity to the Gibraltar Straits (where Spain and Algeria would have coastal State jurisdiction). The current low acceptance of the 2005 SUA Convention thereby detracts from its overall prospects to successfully enable the prevention of dangerous acts by terrorists in control of vessels.

[6.2.6] Conclusion: Interdictions of suspected terrorist vessels

Overall, [6.2] has reasoned that whilst adequately enabling coastal States to interdict vessels suspected of being about to perpetrate dangerous acts within the territorial sea, UNCLOS is less than clear regarding the powers of States to do so outside the territorial sea. Whilst the 2005 SUA Convention has significantly improved upon the limitations of the 1988 SUA Convention, its current low level of ratifications may mean that States seeking to interdict vessels suspected of being about to perpetrate dangerous acts outside the territorial sea may need to look to their ‘inherent’ self-defence rights under Article 51 of the UN Charter, or the doctrine of Necessity, which are examined in Chapter 8.

[6.3] COUNTERING TERRORIST ATTACKS ON OFFSHORE PLATFORMS

The 9/11 attacks raised concerns about the vulnerabilities of offshore platforms to terrorist attacks. This section examines the prospects for the international agreements to prevent terrorist attacks against offshore platforms. It discusses the potential consequences of the inconsistent application of the ISPS Code to offshore platforms (which [4.2.4] examined), and highlights the inadequacies of the 500 metre ‘safety zones’ allowed under UNCLOS Article 60 for offshore platforms located outside of the territorial sea.

[6.3.1] **Threat context: Previous occurrences**

Whilst attacks by non-state actors against offshore platforms have largely been confined to the Niger Delta region, and have perpetrated by insurgent groups such as the Movement for the Emancipation of the Niger Delta (MEND), Africa Marine Commando, and the Niger Delta Liberation Force, this section still examines those attacks to illustrate the vulnerabilities of offshore platforms to attacks by terrorists.

[6.3.1.1] **The vessel as a weapon against offshore platforms**

	Successful	Attempted	Planned	Postulated
	25	1	0	1

Terrorists could conceivably utilise vessels as “weapons” against offshore platforms through ramming them into offshore platforms; utilising vessels as platforms from which to launch rockets and/or missiles against offshore platforms; or to transport operatives to undertake terrorist acts aboard offshore platforms such as bombings, kidnappings or hostage-takings. As Appendix G shows, since around 2006, at least 25 vessel-based attacks on offshore platforms have been successfully perpetrated by MEND and other insurgent groups against offshore platforms around the Niger Delta – commonly involving the firing of rockets or machine guns at the platforms from speedboats. Several of these attacks have occurred against offshore platforms up to 65 nautical miles from shore. Most of these vessel-based attacks have involved few or no fatalities, and several have involved the abduction of platform workers, most of whom have been released upon the payment of ransoms. Exceptions to these typical attack patterns were seen in two vessel-based attacks by MEND against the Forcados offshore oil loading terminal in late June 2009 which resulted in 20 and 25 fatalities respectively, and an earlier attack against the Shell Beniside Flow Station in January 2006 causing 16 fatalities.¹⁷⁴ Whilst in early 2002, Saudi Arabian authorities disrupted an attempt by Al Qaeda to attack the Ras Tanura offshore oil export terminal in the Persian Gulf (the largest offshore platform in the world),¹⁷⁵ aside from the two instances of terrorist-controlled vessels being detonated alongside offshore platforms discussed in [6.3.1.2] below, vessel-based attacks against offshore

¹⁷⁴ Kashubsky, above n 12, 139

¹⁷⁵ Kashubsky, above n 123, 41

platforms by non-state actors have thus far been confined to the Niger Delta region. Finally while attacks on offshore platforms have not featured prominently amongst the scenarios postulated by maritime security specialists, it is worth noting for completeness that Greenberg et al envisaged a scenario of terrorists using ‘ ... small, high-speed boats to attack ... offshore energy platforms to affect international petroleum prices or cause major pollution’.¹⁷⁶

[6.3.1.2] The vessel as a bomb against offshore platforms

	Successful	Attempted	Planned	Postulated
	2	0	1	0

Terrorists could also detonate vessels within proximity to offshore platforms. On 24 April 2004, members of the Al Qaeda-linked Zarqawi network perpetrated two near-simultaneous suicide attacks against offshore platforms off the Iraqi coast utilising explosives-laden dhows, fishing boats and speed boats. The first attack was against the Al Basrah Oil Terminal, and the second attack about 20 minutes later was against the Khawr Al Amaya Oil Terminal, killing three US Navy sailors.¹⁷⁷ An Al Qaeda statement signed by Al Zarqawi and published on Muntada al-Ansar Islamist website released shortly afterwards evidences the extremist ideology of Al Qaeda, and its willingness to perpetrate significantly disruptive attacks that were noted in [2.3.4] and [3.3]:

‘We give you good tidings... your brothers with their boats targeted oil tankers in Mina al-Amiq and Mina al-Bakr. As what your brothers, the al Qaeda lions, did to the destroyer Cole in Aden port, they have repeated this attack in a new garb and with stubborn determination by striking vital economic links of the infidel and atheist states which came to raise the Christian banner in Muslim countries ... We tell you enemies of God, robbers of oil and riches and drug traders... O snakes of evil, we will exterminate and debilitate you by land, sea and air until God makes us victorious or until we die’.¹⁷⁸

¹⁷⁶ Greenberg, Chalk and Willis, above n 11, 27 (Scenario 6)

¹⁷⁷ Nincic, above n 27, 630; Peter Lehr ‘Maritime Terrorism: Locations, Actors and Capabilities’ in Rupert Herbert-Burns, Sam Bateman and Peter Lehr (eds) *Lloyd’s MIU Handbook of Maritime Security* (CRC Press, 2008), 60 - 61

¹⁷⁸ Kashubsky, above n 12, 139; ‘Al Qaeda Statement Claims Iraq Boat Attack’ *Reuters News* 27 April 2004

Similar plans to detonate explosives-laden vessels alongside offshore petroleum installations off the coast of India were reportedly discovered by the Indian Intelligence Bureau in June 2011.¹⁷⁹

[6.3.1.3] Offshore platforms as bombs against the marine environment

	Successful	Attempted	Planned	Postulated
	0	0	0	0

As explained in this Chapter's introduction, for the sake of completeness, the Threat Matrix has been modified slightly to incorporate attacks that terrorists might perpetrate *from within* offshore platforms – either by the detonation of explosives, or through causing a fire aboard the offshore platform. The 2010 Deepwater Horizon incident in the Gulf of Mexico, caused by an on-board explosion, produced the largest oil spill in the history of the offshore petroleum industry, and had devastating consequences for the surrounding marine environment. It is conceivable that profound damage could result from a deliberate terrorist explosion from on-board offshore platforms. Although on 21 June 2009, members of MEND attached a bomb to the Afremo oil platform in the Niger Delta, destroying the platform but not causing any fatalities, this incident is still counted in the “Vessel as weapon” category because a vessel was utilised to perpetrate the attack. Whilst the present author's research has not identified any reported instances of terrorists bombing offshore platforms from within, nor of harming persons on-board, this does not rule out such actions as having been planned by terrorists.

[6.3.2] Best case / worst case scenario analysis of SOLAS Chapter XI-2 (ISPS Code) and AIS preventing terrorist attacks on offshore platforms

This section analyses the prospects for the preventative security measures mandated and recommended by the ISPS Code to lessen the scope for terrorists to attack offshore platforms (both from vessels, and by causing explosions on board platforms) through considering the relevant “best case / worst case” scenario factors articulated in [4.2.7] in light of the observations in [6.3.1] about how such forms of attack have previously been successfully perpetrated, attempted, planned and postulated by maritime security specialists.

¹⁷⁹ Kashubsky, above n 123, 41

[1] **Larger or smaller vessels?** All of the recorded attacks on offshore platforms noted in [6.3.1] have involved small speedboats, all of which would be outside the scope of the ISPS Code. However if terrorists sought to utilise large vessels as kinetic ramming weapons, whilst as [6.2.2] reasoned rigorously-implemented security measures might lessen the scope for the hijacking of such vessels, offshore platforms are not equipped with AIS systems that would enable personnel on board platforms to be warned of the approach of such vessels.

[2] **Terrorist-controlled in first instance?** All of the smaller vessels noted in [6.3.1.1] and [6.3.1.2] to have perpetrated attacks against offshore platforms were terrorist-controlled in the first instance.

[3] **Rigor of implementation of ISPS Code or other applicable preventative security arrangements:** [4.2.4] noted the ISPS Code only applies to Mobile Offshore Drilling Units (MODUs) engaged in international voyages, and not to fixed platforms nor to vessels servicing offshore platforms, unless additional security requirements are imposed by coastal states. [4.2.4] also noted that in comparison to the comprehensive guidance it has developed for ship and port facility security, the IMO has developed little guidance in relation to offshore platform security. Even if an offshore platform was not subject to the ISPS Code, basic preventative security measures involving the screening of workers and visitors for weapons and explosives - firstly at the port of embarkation towards such platforms, and secondly upon arrival aboard such offshore platforms – could well prevent weapons and/or other explosive materials being introduced onto offshore platforms by terrorists in the first instance; notwithstanding that [6.3.1.3] did not identify any instances of terrorists having attempted or planned such actions. However it is questionable whether ISPS Code or other preventative security measures on board offshore platforms could prevent, or minimise the impact of, targeting by terrorist-controlled vessels. [6.3.1.1] noted at least 23 recorded instances of MEND and other insurgent groups attacking offshore platforms around the Gulf of Guinea from small speedboats – which in at least five cases resulted in disruption to production. Such attacks, and also the ramming of offshore platforms by large terrorist-controlled vessels, could prove impossible to prevent from within the offshore platform.¹⁸⁰ Therefore, preventing terrorist attacks on offshore

¹⁸⁰ Mikhail Kashubsky 'Offshore Energy Force Majeure: Nigeria's Local Problem with Global Consequences' (2008) 160 *Maritime Studies* 20, 24; Kashubsky, above n 123, 297

platforms may well depend on States having the ability to control vessel movements in the vicinity of offshore platforms – which is considered in [6.3.3] below.

[4] Did the maritime terrorism incident involve a security-regulated entity?¹⁸¹ As noted in [4.2.4], the ISPS Code is applicable to MODUs engaged on international voyages, but not to fixed platforms. However, in light of the reasoning in [3] above, the contribution of the ISPS Code to the protection of offshore platforms from attack has been questioned.

In light of the above reasoning about the limited contribution of preventative security measures in protecting offshore platforms from attack, the following sections examine the prospects for UNCLOS and the SUA treaties to succeed in enabling States to protect offshore platforms from vessel-based terrorist attacks through interdicting suspected vessels within proximity to offshore platforms - highlighting the jurisdictional gaps under UNCLOS.

[6.3.3] UNCLOS protection powers: Offshore platforms

For offshore platforms located within a coastal State's territorial sea, UNCLOS Article 19(2)(k) would allow the coastal state to interdict vessels deemed to constitute security threats to such platforms. UNCLOS does not limit the permissible breadth of safety zones around offshore platforms within territorial seas.¹⁸² Outside the territorial sea, but within their EEZ, coastal States have exclusive jurisdiction over offshore platforms¹⁸³ - including the ability to make laws and regulations pertaining to 'safety matters'.¹⁸⁴ This jurisdiction includes the power to establish and give due notice of 'reasonable safety zones' around offshore platforms – within which the coastal state may take 'appropriate measures' to ensure the safety of navigation and offshore platforms.¹⁸⁵ UNCLOS specifies that the breadth of such safety 'shall not exceed a distance of 500 metres' around offshore platforms '... except as authorized by generally

¹⁸¹ The title of this heading has been modified from referring to 'security regulated ports' to 'entities' to enable the non-application of the ISPS Code to offshore platforms to be discussed. Furthermore, in light of the reasoning in [3] above, the final two factors noted in [4.2.7], specifically [5] whether the form of the maritime terrorist attack was manageable, and the [6] the effectiveness of government oversight arrangements (monitoring of SSAS, promulgation of changes to security levels, and control over vessel movements) are not examined in this section

¹⁸² Kashubsky, above n 123, 210. For a comprehensive overview of the development of the UNCLOS regime relating to the protection of offshore platforms, see Stuart Kaye 'International Measures to Protect Oil Platforms, Pipelines, and Submarine Cables from Attack' (2007) 31 *Tulane Maritime Law Journal* 379 - 389

¹⁸³ Whilst UNCLOS uses the terms 'artificial islands, installations and structures', the term 'offshore platform' is used here for the sake of brevity

¹⁸⁴ UNCLOS Article 60(2)

¹⁸⁵ UNCLOS Article 60(4)

accepted international standards or as recommended by the competent international organization' (discussed below).¹⁸⁶ UNCLOS requires all ships to respect such safety zones, and to comply with 'generally accepted international standards' pertaining to navigation in the vicinity of offshore platforms.¹⁸⁷ However UNCLOS is silent on the 'appropriate measures' coastal States may take to ensure the safety of navigation and offshore platforms – and does not specifically preclude the installation of protective security devices around offshore platforms.¹⁸⁸

It has been noted that fishing vessels frequently infringe 500 metre safety zones surrounding offshore platforms located outside territorial seas.¹⁸⁹ Additionally, [6.3.1.1] noted several instances of vessel-based attacks on offshore platforms by MEND and other insurgent groups since around 2006 in the Niger Delta at ranges up to 65 nautical miles from shore. It has been noted that the 500 metre safety zones allowable under UNCLOS Article 60(5) may very well not be sufficient to protect offshore platforms from deliberate attacks;¹⁹⁰ and furthermore that protecting offshore platforms from terrorist attacks may prove extremely challenging. As Kaye explains, '... were terrorists intending to ram an installation with a large vessel, it is doubtful that any action on the platform, including firing at or into the vessel could prevent a collision, to say nothing of the legality of opening fire on the vessel before the intention to ram was clear and unequivocal'.¹⁹¹

The specification of 500 metres as the generally permissible breadth of safety zones around offshore platforms outside the territorial sea under UNCLOS Article 60(5) was reportedly driven more by considerations of facilitating navigational safety (that is, lessening the scope for accidental collisions from large vessels, without unduly restricting their freedom of movement), than by security considerations (that is, protecting offshore platforms from vessel-based attacks).¹⁹² In early 2008 Brazil and the United States submitted a proposal to the IMO

¹⁸⁶ UNCLOS Article 60(3) The 'Competent International Organisation' for such matters would be the IMO

¹⁸⁷ UNCLOS Article 60(6)

¹⁸⁸ Kashubsky, above n 123, 228 - 229

¹⁸⁹ Council for Security Cooperation in the Asia Pacific 'Safety and Security of Offshore Oil and Gas Installations' (Memorandum 16, Council for Security Cooperation in the Asia Pacific, January 2011), 2. Cited in Kashubsky, above n 123, 226 – 227; Lee Cordner 'Offshore Oil and Gas Industry Security Risk Assessment: An Australian Case Study' in Rupert Herbert-Burns, Sam Bateman and Peter Lehr (eds) *Lloyds MIU Handbook of Maritime Security* (CRC Press, 2009), 176

¹⁹⁰ Kashubsky, above n 123, 226

¹⁹¹ Kaye, above n 199, 405 – 406

¹⁹² Kashubsky, above n 123, 226 - 227

for the development of guidelines for assessing requests to extend safety zones around offshore platforms greater than 500 metres – albeit on safety rather than security grounds.¹⁹³ This proposal was actively considered by the IMO's sub-committee on Safety of Navigation at its 55th session in July 2009.¹⁹⁴ However the subsequent 56th session of the sub-committee Safety of Navigation in August 2010 concluded that any extensions to the 500 metre breadth of safety zones could actually compromise navigational safety. Whilst the sub-committee determined there was no demonstrated need to establish safety zones greater than 500 metres, it acknowledged the possibility of re-visiting the issue should the need arise.¹⁹⁵

Kashubsky explains that some States have already declared safety zones of greater than 500 metres around offshore platforms. Examples include a 4.3 mile 'restricted area' around an offshore platform off the coast of Equatorial Guinea,¹⁹⁶ and 3,000 metre 'security warning zones' and 2,000 metre 'exclusion zones' established around the Iraqi Khawr Al Amaya and Al Basrah oil terminals in the Persian Gulf.¹⁹⁷ [6.3.1.2] noted the latter two platforms in the Persian Gulf were both attacked in closely coordinated suicide bombings by explosives-laden vessels in 2004. In light of post-9/11 security threats, and acknowledging the IMO's current rejection of calls for safety zones around offshore platforms to be extended beyond 500 metres, at least two recent commentators have called for States to be permitted to establish 'security warning zones' of up to 3,000 metres where deemed appropriate.¹⁹⁸ In June 2012, a review of the security arrangements for Australia's offshore oil and gas facilities flagged the option of 'exclusion zones' of 1 to 2.5nm around facilities – within which the movements of vessels not connected with the operation of the facility would be prohibited without the approval of the facility operator.¹⁹⁹ However the legality of such proposed 'exclusion zones' under Article 60(5) of UNCLOS, without direct authorisation from the IMO, has been questioned.²⁰⁰ In light

¹⁹³ IMO, *Development of Guidelines for Consideration of Requests for Safety Zones Larger than 500 metres Around Artificial Islands, Installations and Structures in the Exclusive Economic Zone: Submitted by the United States and Brazil*, IMO MSC, 84th session, Agenda Item 22, IMO Doc MSC 84/22/4 (4 February 2008). Cited in Kashubsky, above n 123, 316

¹⁹⁴ IMO Report to the Maritime Safety Committee, IMO NAV, 55th session, Agenda Item 20, IMO Doc NAV 55/20 (27 - 31 July 2009)

¹⁹⁵ IMO Report to the Maritime Safety Committee, IMO NAV, 56th session, Agenda Item 20, IMO Doc NAV 56/20 (31 August 2010), 16 Cited in Kashubsky, above n 123, 227 – 228; 316 - 317

¹⁹⁶ Kashubsky, above n 123, 228

¹⁹⁷ Kashubsky, above n 123, 211

¹⁹⁸ Kaye, above n 199, 421 – 422 and Kashubsky, above n 123, 331 – 332

¹⁹⁹ Office of the Inspector of Transport Security *Offshore Oil and Gas Resources Sector Inquiry* (Department of Infrastructure and Transport, Canberra, June 2012), 89

²⁰⁰ Mikhail Kashubsky and Anthony Morrison 'Security of offshore oil and gas facilities: Exclusion zones and ships' routing' (2013) 5(1) *Australian Journal of Maritime and Ocean Affairs*, 3 - 4

of these concerns, Chapter 9 outlines some suggestions for how the IMO might work to facilitate improved arrangements for protecting offshore platforms from terrorist interference, including through developing guidance ‘security warning zones’ as proposed above.

[6.3.4] 1988 SUA Protocol

The 1988 SUA Platforms Protocol was developed in parallel to the 1988 SUA Convention to enable state parties to arrest, prosecute or extradite persons within their territories who have been involved in the perpetration of unlawful acts committed on or against fixed ‘fixed platforms’ – defined as meaning artificial islands, installations or structures permanently attached to the sea-bed for the purpose of exploration or exploitation of resources or for other economic purposes.²⁰¹ It sets out a range of offences including unlawfully and intentionally being involved in seizing or exercising control over a fixed platform by use or threat of force or intimidation;²⁰² acts of violence against persons on board a fixed platform likely to endanger its safety;²⁰³ destroying or damaging fixed platforms;²⁰⁴ placing explosives on fixed platforms;²⁰⁵ and/or injuring or killing any person in connection with such acts or attempts.²⁰⁶ It also includes offences of attempting to commit, threatening, abetting or being an accomplice to any such acts.²⁰⁷ As at 1 October 2013, the 1988 SUA Platforms Protocol has been ratified by 149 of the 192 SOLAS contracting governments (76 per cent), representing 88.51 per cent of world tonnage.²⁰⁸

However similarly to the 1988 SUA Convention, the 1988 SUA Platforms Protocol is limited to having an ex-post-facto application, and focuses on the perpetration of attacks from aboard offshore platforms, rather than attacks involving the offensive utilisation of vessels within proximity to offshore platforms. This means that the only form of maritime terrorism noted in the Threat Matrix likely to be “captured” by the 1988 SUA Platforms Protocol would be the targeting of offshore platforms from within – but only once such acts had been committed. This

²⁰¹ 1988 SUA Platforms Protocol Article 1

²⁰² 1988 SUA Platforms Protocol Article 2(1)(a)

²⁰³ 1988 SUA Platforms Protocol Article 2(1)(b)

²⁰⁴ 1988 SUA Platforms Protocol Article 2(1)(c)

²⁰⁵ 1988 SUA Platforms Protocol Article 2(1)(d)

²⁰⁶ 1988 SUA Platforms Protocol Article 2(1)(e)

²⁰⁷ 1988 SUA Platforms Protocol Article 2(2)

²⁰⁸ IMO ‘Summary Status of Conventions’ as at 31 July 2013:

<http://www.imo.org/About/Conventions/StatusOfConventions/Pages/Default.aspx>; Accessed 1 October 2013

reinforces importance of preventative security measures before embarkation of persons onto offshore platforms, as reasoned in [6.3.2] above.

[6.3.5] 2005 SUA Platforms Protocol

The 2005 SUA Platforms Protocol was developed in parallel to the 2005 SUA Convention, and expanded the offences included in the 1988 SUA Platforms Protocol. Similarly to the 2005 SUA Convention, the 2005 SUA Platforms Protocol proscribes illegal actions committed with a “terrorist-like” intent.²⁰⁹ These offences include using any explosive, radioactive material or BCN weapon on or against a fixed platform; and also discharging oil, liquefied natural gas, or other hazardous or noxious substance from a fixed platforms in a manner causing (or being likely to cause) death or serious injury or damage’.²¹⁰ It is also an offence to attempt to commit, participate as an accomplice, or organise and direct others to commit such offence unlawfully and intentionally injure or kill persons in connection with the commission of any of the offences.²¹¹

Whilst these expanded offences have extended the range of illegal actions over which state parties might arrest, prosecute and/or extradite offenders, the 2005 SUA Platforms Protocol does not expand the rights of states to interdict suspicious vessels in the vicinity of offshore platforms.²¹² As at 1 October 2013, the 2005 SUA Platforms Protocol has only been ratified by 20 of the 196 SOLAS contracting governments (10 per cent), representing 20 per cent of world tonnage.²¹³ Current state parties include Algeria, Austria, Bulgaria, Cote d’Ivoire, Dominican Republic, Estonia, Fiji, Latvia, Lichtenstein, the Marshall Islands, Nauru, Netherlands, Palau, Panama, Saint Lucia, St Vincent and the Grenadines, Saudi Arabia, Serbia, Spain, Switzerland, and Vanuatu. Of these parties, only Algeria, Cote d’Ivoire, Saudi Arabia and Spain have offshore platforms within proximity to their coasts. Similarly to the 2005 SUA Convention, this means that the 2005 SUA Platforms Protocol would most likely only be applicable in a small number of cases.

²⁰⁹ Similarly to the 2005 SUA Convention (see Note 139 above), Article 2bis of the 2005 SUA Platforms Protocol includes the conditional phrase ‘when the purpose of the act, by its nature or context is to intimidate a population, or to compel a government or international organisation to do, or abstain from doing any act’

²¹⁰ 2005 SUA Platforms Protocol Article 2bis(a) and (b)

²¹¹ 2005 SUA Platforms Protocol Article 2ter

²¹² Kaye, above n 199, 408 – 410; Kashubsky, above n 123, 305

²¹³ IMO ‘Summary Status of Conventions’ as at 31 July 2013:

<http://www.imo.org/About/Conventions/StatusOfConventions/Pages/Default.aspx>; Accessed 1 October 2013

[6.3.6] Conclusion

Although this section has shown that attacks on offshore platforms have thus far been limited to the 2004 attacks on two Iraqi platforms by Al Qaeda-linked groups, and to attacks by MEND and other insurgent groups around the Gulf of Guinea, given the innovativeness of contemporary terrorist groups outlined in the preceding chapters, future attacks on offshore platforms cannot be entirely ruled out. Whilst the section reasoned that UNCLOS would adequately enable coastal States to protect platforms located within the 12 nautical mile limits of their territorial seas, the 500 metre safety zones under UNCLOS Article 60(5) would be less than adequate in enabling states to safeguard offshore platforms located outside of the territorial sea from potential terrorist attacks.

[4.2.4] and [6.3.2] noted concerns about the lack of IMO guidance on preventative security measures for offshore platforms, and the current low levels of acceptance of the 2005 SUA treaties. Chapter 9 outlines suggestions for addressing these concerns – including increased ratification of the 2005 SUA treaties, further IMO guidance on offshore platform security and the declaration of ‘security warning zones’.

It is for these reasons that coastal States seeking to protect offshore platforms outside the territorial sea, may need to look to their inherent self-defence rights under Article 51 of the UN Charter, or alternatively the doctrine of Necessity in seeking to interdict suspicious vessels in the vicinity of such platforms.²¹⁴ Both of these exceptional “last resort” grounds are considered in Chapter 8.

[6.4] COUNTERING DISRUPTIVE TERRORIST UTILISATIONS OF VESSELS

[6.4.1] Threat contexts: Previous occurrences

In addition to utilising vessels to perpetrate dangerous acts as discussed in [6.2] and [6.3], terrorists could also utilise vessels to perpetrate disruptive acts which might not result in fatalities until a later time (for example laying sea mines); cause significant delays to the free

²¹⁴ Kaye, above n 199, 413 – 414

flow of shipping (for example disabling large vessels in heavily-trafficked routes); cause damage to the marine environment (through deliberate pollution); or through damaging submarine cables. Such disruptive actions might also follow from one or more of the forms of attacks discussed in [6.2] and [6.3]. Although as at 1 October 2013 such disruptions have mostly only been postulated amongst maritime security specialists, this section highlights several jurisdictional gaps under UNCLOS enabling States to interdict vessels suspected of being about to perpetrate such disruptive actions.

[6.4.1.1] The vessel as a disruption tool: Disabling near chokepoints

	Successful	Attempted	Planned	Postulated
	1	0	0	6

Terrorists could conceivably disable large vessels through exploding, crashing or sinking them within proximity to navigational chokepoints such as harbour or channel entrances, or significant navigational straits. Whilst several maritime security specialists have concluded such actions would be unlikely to completely block such chokepoints,²¹⁵ such actions could nevertheless cause significantly disruption to the efficient flow of maritime traffic.

The only recorded successful attack of this kind was perpetrated on 13 November 1981 by the Mozambique National Resistance Movement, which attacked and damaged harbour entrance buoys at the Port of Beira in Mozambique.²¹⁶ However the disabling of large vessels by terrorists in proximity to chokepoints has been postulated at least six times by maritime security specialists – with Richardson pointing out that ‘... Oil and chemical tankers could be sunk or set ablaze in a busy strait, waterway or port to disrupt shipping’;²¹⁷ Bateman and Bergin postulating the ‘the sinking of a vessel in a channel or in a berth’;²¹⁸ both Zara-Raymond and Bateman discussing the scenario of ‘a ship sunk to block the Straits of Malacca and Singapore’, but with Bateman describing this as a ‘less credible’ scenario;²¹⁹ and Greenberg et al

²¹⁵ Sam Bateman ‘Maritime Terrorism: Issues for the Asia-Pacific Region’ (October 2006) 2(3) Kokoda Foundation *Security Challenges* 85

²¹⁶ National Consortium for the Study of Terrorism and Responses to Terrorism Global Terrorism Database <http://www.start.umd.edu/gtd/>

²¹⁷ Richardson, above n 10, 8

²¹⁸ Bateman and Bergin, above n 17, 35 (Scenario 2)

²¹⁹ Bateman, above n 232, 85; Zara-Raymond, above n 23, 1

postulating the ‘scuttling of a ship in a narrow SLOC in order to block or disrupt maritime traffic’.²²⁰

[6.4.1.2] The vessel as a disruption tool: Laying sea mines

	Successful	Attempted	Planned	Postulated
	0	0	0	3

Terrorists could conceivably utilise vessels to facilitate the laying of sea mines, which have been utilised against both military and commercial vessels since the American Civil War. They were used extensively during the Second World War, the Korean War, the Iran-Iraq War of the 1980s, the Gulf War of 1990, and were also laid by the CIA around Nicaraguan waters during the early 1980s. Because their effective functioning is limited to water depths around 200 metres, the only UNCLOS maritime zones in which they could be successfully deployed would be internal waters, territorial seas and/or international straits. Sea mines can vary in their sizes – the smallest being around one cubic metre in diameter, and in their sophistication – ranging from simple contact mines that detonate upon contact with any vessel passing over it on the water’s surface, to more sophisticated mines which will only be activated by the signatures of specific vessels. It has been reported that simple sea mines are as cheap as US\$1,000 to assemble.²²¹

Thus far such terrorist actions have only been postulated by maritime security specialists. Both Bateman and Zara-Raymond discussed scenarios of navigational choke points within Southeast Asia being blocked by sea mines, with Bateman classifying this as a ‘more credible scenario’ and noting that the Western Pacific Naval Symposium had previously planned exercises around such scenarios;²²² and Bateman and Bergin postulating the scenario of ‘mining or the threat of mining to close an entrance channel to an Australian port’.²²³ Whilst the vessel types and sizes were not specifically noted in these scenarios, as [6.4.2] below reasons, it is only conceivable

²²⁰ Greenberg, Chalk and Willis, above n 11, 27 (Scenario 4)

²²¹ For an overview of the historical uses of sea mines, see Norman Youngblood *The Development of Mine Warfare: A Most Murderous and Barbarous Conduct* (Greenwood: 2006) and Gregory Hartmann and Scott Truver *Weapons That Wait: Mine Warfare in the U.S. Navy* (Naval Institute Press, 1991)

²²² Bateman, above n 232, 86 - 87; Zara-Raymond, above n 23, 3

²²³ Bateman and Bergin, above n 17, 35 (Scenario 9)

that smaller, more manoeuvrable (and less noticeable) vessels could be utilised by terrorists to lay sea mines.

[6.4.1.3] The vessel as a disruption tool: Deliberate pollution

	Successful	Attempted	Planned	Postulated
	0	0	0	5

Terrorists might conceivably cause damage to the marine environment through deliberate pollution, or through dumping substances from vessels which could have the end effect of causing pollution. Over the last fifty years there have been several significant marine pollution incidents – notable examples including the 1967 *Torey Canyon* disaster, the 1989 *Exxon Valdez* oil spill, and the deliberate discharge of oil by Iraqi forces during the 1990 – 1991 Gulf War oil from Kuwait’s oil fields (albeit not from vessels) by Iraqi forces which caused considerable marine pollution.²²⁴

Thus far such terrorist actions have only been postulated by maritime security specialists – all of which have involved large vessels. For example, terrorism expert Clive Williams opined that ‘... terrorists could feasibly take over a large cargo ship ... [and] ... a seized ship could be used to cause large scale pollution’;²²⁵ Bateman discussed the deliberate discharge polluting substances from terrorist-controlled vessels as a ‘more credible’ scenario;²²⁶ Richardson postulated that ‘... oil and chemical tankers could be sunk or set ablaze in a busy strait, waterway or port to cause pollution and disrupt shipping’;²²⁷ similarly Zara-Raymond envisaged terrorists attacking large tankers to create a burning oil slick;²²⁸ and Greenberg et al discussed the scenario of terrorists ‘... using small, high-speed boats to attack an oil tanker or offshore energy platform to ... cause major pollution’.²²⁹

[6.4.1.4] The vessel as a disruption tool: Against submarine cables

²²⁴ Klein, above n 25, 94

²²⁵ Zara-Raymond, above n 16, 26

²²⁶ Bateman, above n 232, 85

²²⁷ Richardson, above n 10, 8

²²⁸ Zara-Raymond, above n 23, 2

²²⁹ Greenberg, Chalk and Willis, above n 11, 27 (Scenario 6)

	Successful	Attempted	Planned	Postulated
	0	0	0	2

Terrorists could conceivably utilise large vessels to damage submarine cables. Submarine cables facilitate a very significant proportion of the world's international communications. On 30 January 2008, the South East Asia–Middle East–Western Europe 4 (SEA-ME-WE 4) and FLAG Europe-Asia submarine telecommunications cables were damaged by a vessel dragging its anchor off the coast of Egypt – causing disruption to internet services in India, Egypt, Dubai, the United Arab Emirates, Kuwait, and Saudi Arabia.²³⁰ Shortly after this incident, Flag Telecom advised on 1 February 2008 that its Falcon submarine cable had been cut at a point approximately 56 kilometres offshore between Muscat, Oman and Dubai in the United Arab Emirates, apparently by an abandoned ship's anchor weighing around 5 – 6 tonnes.²³¹ On 3 February 2008, Qatar Telecom reported that its DOHA-HALOUL submarine cable connecting Qatar and the United Arab Emirates had also been damaged – but that this incident was understood to result from a fault with the power system rather than damage from a ship's anchor.²³² Whether the earlier three submarine cable disruptions might have contributed towards this power system fault is unclear. Later that year on 19 December 2008, France Telecom advised that damage to its SEA-ME-WE3, SEA-ME-WE4 and FLAG submarine cables had been caused either by a ship's anchor or by bad weather, which resulted in disruption to internet services from Zambia to India and Taiwan, and reducing Egypt's internet capacity by around eighty per cent.²³³ Whilst this pattern of disruptions to submarine cables, several of

²³⁰ 'Work Begins to Repair Severed Net' BBC News, 5 February 2008 www.news.bbc.co.uk/2/hi/technology/7228315.stm Cited in Tara Davenport 'Submarine Communications Cables and the Law of the Sea: Problems in Law and Practice' (2012) 43(3) *Ocean Development and International Law* 201 at 205; 'Repairs begin on Middle East Web cable' *The Associated Press* 5 February 2008 <http://web.archive.org/web/20080209142307/http://edition.cnn.com/2008/WORLD/africa/02/05/egypt.internet.a.p/index.html>

²³¹ Flag Telecom '07-Feb-08 - Update on Submarine Cable Cut Repairs - Daily Bulletin' 7 February 2008 <http://web.archive.org/web/20080208124925/http://www.flagtelecom.com/index.cfm?channel=4328&NewsID=27493>

²³² Dylan Bowman and AAP 'Internet Problems Continue with Fourth Cable Break' ArabianBusiness.com, 3 February 2008 <http://www.arabianbusiness.com/510132-internet-problems-continue-with-fourth-cable-break?ln=en>; '4th Undersea Cable Break Between Qatar and UAE' Mathaba News, 4 February 2008 <http://mathaba.net/news/?x=580660>

²³³ James Regan 'UDPATE 3-Undersea cable breaks cut Internet in Mideast, Asia' *Reuters* 20 December 2008 <http://www.reuters.com/article/2008/12/20/us-internet-idUSTRE4BJ0FV20081220>; Malcolm Fried and Lars Klemming 'Severed Cables in Mediterranean Disrupt Communication (Update 4)' *Bloomberg*, 19 December 2008 http://www.bloomberg.com/apps/news?pid=newsarchive&sid=ayPbWf_7117w&refer=europe

which occurred in close proximity to the others, raised suspicions about acts of deliberate sabotage,²³⁴ this has not been conclusively established.

Thus far terrorist interference with submarine cables has only been postulated in generalised terms by international lawyers discussing the limitations of coastal state protection powers under UNCLOS - rather than maritime security specialists discussing maritime terrorism scenarios – so whether this means submarine cables have not been “within the sights” of terrorists remains to be seen. First, Kaye explained that submarine cables and pipelines are particularly vulnerable to terrorist interference because their locations are clearly marked on commercially-available navigation charts, and noted how attacks by insurgent groups in Iraq and Nigeria against pipelines on land have caused significant increases in oil prices, and postulated that attacks against submarine pipelines would have the added difficulties of causing widespread environmental harm to the marine environments of a number of states, and would be very expensive and difficult to repair. He further explained that fibre optic submarine cables carry the bulk of the world's telephonic data, and that their disruption could have a significant disruptive effect on international communications.²³⁵ Beckman has also acknowledged the possibility of terrorists deliberately interfering with submarine cables.²³⁶

[6.4.2] Best case / worst case scenario analysis of SOLAS Chapter XI (ISPS Code) and AIS preventing disruptive terrorist utilisations of vessels

This section analyses the prospects for the preventative security measures mandated and recommended by the ISPS Code to lessen the scope for terrorists to utilise vessels to perpetrate disruptive acts, through considering the six “best case / worst case” scenario factors articulated in [4.2.7] in light of the observations in [6.4.1] about how such disruptive acts have postulated by maritime security specialists. This “best case / worst case scenario” analysis is shorter than [6.2.1] because thus far such disruptive actions have remained as hypotheticals – with most

²³⁴ ‘Saboteurs May Have Cut Mideast Telecom Cables: UN Agency’ *Sydney Morning Herald*, 19 February 2008 <http://news.smh.com.au/technology/saboteurs-may-have-cut-mideast-telecom-cables-un-agency-20080219-1sv3.html>

²³⁵ Stuart Kaye ‘Threats from the Global Commons: Problems of Jurisdiction and Enforcement’ (2007) 18(1) *Melbourne University Law Review*, 191

²³⁶ Robert Beckman ‘Submarine Cables – A Critically Important but Neglected Area of the Law of the Sea’ Paper presented to the Indian Society of International Law 7th International Conference on Legal Regimes of Sea, Air, Space and Antarctica Law of the Sea Session 15-17 January 2010, New Delhi, 11

scenarios envisaging such vessels being terrorist-controlled in the first instance. Additionally, several of the observations from [6.2.1] and [5.2.3]²³⁷ can be applied to the present analysis.

[1] Larger or smaller vessels? Disruptive acts such as disabling a vessel around a navigational choke points and deliberate pollution could only be perpetrated by large vessels – which the scenarios noted in [6.4.1] reflect. Similarly, interference with submarine cables through deliberately dropping a ship’s anchor would most conceivably involve large vessels due to the sizes and weights of their anchors. Such larger vessels would be more likely to be subject to the ISPS Code or other security requirements imposed by national governments. If rigorously applied, such preventative security measures could lessen the prospects of such vessels either being attacked, or taken over to cause deliberate pollution, as three of the scenarios noted in [6.4.1.3] envisage (a “best case” scenario).

However the laying of sea mines by terrorists would more likely involve smaller vessels, due to their greater manoeuvrability within shallow waters where sea mines could function. Furthermore smaller vessels would have a lower public profile than large vessels, and an attempt to covertly smuggle a sea mine onto a larger vessel within a port could be extremely challenging to achieve without attracting attention. Larger vessels subject to the ISPS Code are usually the focus of attention as they transit within proximity to navigational chokepoints – where they are frequently assisted by tug and pilot boats. Smaller vessels would be far less likely to be subject to the preventative security requirements of the ISPS Code or those imposed by national governments.

[2] Terrorist-controlled in first instance? Most of the postulations of terrorists utilizing vessels to perpetrate disruptive actions noted in [6.4.1] have envisaged the vessels being terrorist-controlled in the first instance (a “worst case scenario”), apart from the three scenarios noted in [6.4.1.3] of tankers or large cargo ships being attacked, or taken over to cause deliberate pollution. In such cases, the observations from [6.2.1], and also [5.2.3]²³⁸ about rigorously-applied preventative security measures lessening the scope for such terrorist attacks to occur may be directly applied here.

²³⁷ ‘Best case / worst case analysis of SOLAS Chapter XI-2 / ISPS Code in preventing vessel-based maritime terrorist attacks on vessels’

²³⁸ ‘Best case / worst case critical analysis of SOLAS Chapter XI / ISPS Code in preventing vessel-based maritime terrorist attacks on vessels’

[3] Did the maritime terrorism incident involve a security-regulated entity?²³⁹

Although concerns have been expressed about the lack of preventative security measures applicable to submarine cables and pipelines,²⁴⁰ it must be queried what preventative security measures could actually be implemented apart from monitoring movements of vessels within proximity to submarine cables and pipelines. As [6.4.2.2] below explains, outside of the territorial sea, the provisions of UNCLOS relating to coastal state jurisdiction over submarine cables are considered to be less than adequate. Furthermore, vessels frequently navigate through waters with submarine cables and pipelines beneath; and they might also have legitimate reasons for slowing or stopping around such locations (such as engine failures), making the continual surveillance of vessel movements within proximity to submarine cables or pipelines very challenging.

[4] Government oversight arrangements: SSAS, Changes to security levels; Vessel movement restrictions: Similarly to the conclusion in [6.2.2], government oversight arrangements and the monitoring of small vessel activity within proximity to navigational chokepoints could lessen the scope for terrorists to utilise vessels to lay sea mines; as could controls over the supply and transfer of sea mines in the first instance.

[6.4.3] State protection powers under UNCLOS and the 2005 SUA Convention

With respect to the powers of coastal States to interdict vessels suspected of laying sea mines, the analysis of UNCLOS from [6.2.3] may be applied to such maritime terrorist threats. Similarly, the points from [6.2.3] would be applicable to the disabling of large vessels within proximity to a navigational “chokepoints”. Such actions would be “captured” by several of the offences under the 1988 and 2005 SUA Convention examined in [6.2.4] and [6.2.5] above. However different UNCLOS provisions would apply to acts of deliberate pollution and interference with submarine cables. These UNCLOS provisions are discussed below together with the relevant provisions of the 2005 SUA Convention.

[6.4.3.1] Deliberate pollution of the marine environment

²³⁹ The title of this heading has been modified from referring to ‘security regulated ports’ to ‘entities’ to enable the non-application of the ISPS Code to submarine cables to be discussed

²⁴⁰ Kaye, above n 252, 195

If terrorists sought to perpetrate an act of deliberate pollution from a vessel within the territorial sea - perhaps by taking control of it as several of the scenarios in [6.4.1.3] envisaged - UNCLOS would enable coastal states to take the ‘necessary steps’ under Article 25 to prevent such actions, because Article 19(2)(h) would render ‘any act of wilful and serious pollution contrary to [UNCLOS]’ as non-innocent.

Outside the territorial Sea, UNCLOS could also enable the interdiction of such terrorist-controlled vessels suspected of being about to deliberately cause pollution under the UNCLOS Part V EEZ provisions. Within the 200 nautical mile EEZ,²⁴¹ UNCLOS enables coastal states to protect and preserve their marine environment,²⁴² subject to having ‘due regard’ to the rights (and duties) of other states²⁴³ including the high seas freedoms of navigation²⁴⁴ - insofar as the exercise of these navigational freedoms are not incompatible with UNCLOS Part V.²⁴⁵ Section 6 of Part XII of UNCLOS provides for the enforcement of the provisions of UNCLOS in relation to the protection and preservation of the marine environment. Regarding pollution through dumping,²⁴⁶ UNCLOS Article 216 provides that laws and regulations for the prevention, reduction and control of pollution of the marine environment by dumping shall be enforced by coastal states in relation to dumping within their territorial seas, EEZs, or onto its continental shelf; by flag states in relation to vessels flying its flag; and lastly by any state with regard to acts of loading of wastes or other matter occurring within its territory or at its off-shore terminals. The reference to the ‘prevention’ of dumping might arguably enable States to interdict vessels suspected of being about to perpetrate such acts – rather than only responding after dumping has occurred.²⁴⁷

Section 6 of Part XII of UNCLOS also enables flag, port and coastal states to take a range of measures to control vessel-sourced pollution. UNCLOS Article 217 obliges flag states to ‘ensure compliance’ by their flagged vessels with applicable international rules²⁴⁸ for the

²⁴¹ UNCLOS Article 57

²⁴² UNCLOS Article 56(1)

²⁴³ UNCLOS Article 56(2)

²⁴⁴ Set out in UNCLOS Article 88 to 115 – See [6.2.3.3] above

²⁴⁵ UNCLOS Article 58(2)

²⁴⁶ UNCLOS Article 1(5)(a) defines ‘dumping’ as meaning any deliberate disposal of wastes or other matter from vessels, aircraft, platforms or other man-made structures at sea, and vessels, aircraft, platforms or other man-made structures at sea

²⁴⁷ Kaye, above n 106, 204

²⁴⁸ UNCLOS Article 217 also refers to “standards, laws and regulations”. The term “rules” is used here for brevity

prevention, reduction and control of pollution of the marine environment from vessels; to ‘take other measures necessary for their implementation’; and to ‘provide for’ the ‘effective enforcement’ of such rules, ‘irrespective of where a violation occurs’. If a vessel commits a violation of anti-pollution rules, UNCLOS provides that flag states, ‘shall provide for’ the immediate investigation of the alleged violation, irrespective of where the violation occurred or where the pollution caused by such violation has occurred or has been spotted – and to commence investigations when requested by another State.²⁴⁹ Through the introductory words ‘if a vessel commits’, UNCLOS may well restrict the abilities of states to only interdict polluting vessels *after* the polluting incident *has occurred*. Other provisions of Section 6 of Part XII of UNCLOS show a similar indication towards enforcement measures being contemplated as applying *after* act of pollution (in a responsive sense), rather than before an act of pollution (in a preventative sense); however UNCLOS is not entirely clear on this point. First, UNCLOS Article 218 enables port states to undertake investigations in relation to any discharges by vessels within its ports that occurred in the port state’s EEZ – arguably limiting this power to having an ex-post-facto application. Second, UNCLOS Article 220 enables coastal states to ‘undertake physical inspections’ of vessels navigating in the territorial sea where there are ‘clear grounds’ for believing that the vessel *has, during its passage* through the territorial sea violated the coastal state’s laws or applicable international rules, in relation to the prevention, reduction and control of pollution from vessels – and to detain such vessels for further investigations and/or proceedings. Third, UNCLOS Article 220(3) authorises coastal states to require foreign vessels to provide specified information where pollution has occurred within its EEZ,²⁵⁰ and UNCLOS Article 220(4) requires flag states to ensure cooperation with such requests for information. Finally, UNCLOS Article 220(5) authorises coastal states to undertake inspections of vessels that have refused to provide information - or which have provided false information; and UNCLOS Article 220(6) provides that where there is ‘clear objective evidence’ that a foreign vessel navigating in a coastal state’s EEZ *has, whilst in the EEZ, committed* a violation resulting in a discharge causing major damage or threat of major damage to the coastline or related interests of the coastal state, or to any resources of its territorial sea or EEZ, that state may ‘inspect and detain’ that vessel. Through being expressed in the past tense, the reference to ‘has committed’ in UNCLOS Article 220(6) appears to contemplate actions by coastal states after acts of pollution have occurred – rather than enabling

²⁴⁹ UNLOS Art 217(4) and (6)

²⁵⁰ This information includes the ship’s identity, port of registry, last and its next port of call and other relevant information requested

coastal states to interdict vessels suspected of *being about to perpetrate* acts of deliberate pollution. Similarly, UNCLOS Article 221 – which addresses measures to avoid pollution arising from maritime casualties²⁵¹ on the high seas, is expressed to apply *after* a vessel collision or other navigational incident causing or threatening pollution *has occurred*.²⁵²

Within international straits, UNCLOS alludes to, but is not entirely clear on, the ability of “bordering” states to interdict vessels suspected of being about to cause deliberate pollution within international straits. First, UNCLOS Article 42(b)²⁵³ authorises “bordering” states to ‘adopt’²⁵⁴ non-discriminatory²⁵⁵ laws and regulations pertaining to the ‘prevention, reduction and control of pollution’ – but is silent on the ability of such bordering states to enforce such laws and regulations. Second, UNCLOS Article 43(b)²⁵⁶ provides that user states and bordering states ‘should by agreement’ cooperate for the prevention, reduction and control of pollution from ships – but here again is silent on the measures that bordering states may take if such cooperation does not occur.

[6.4.3.2] Protection of submarine cables

UNCLOS would allow coastal States to protect submarine cables located within their territorial seas from acts of deliberate interference by terrorists. Because UNCLOS Article 19(2)(k) renders ‘any act aimed at interfering with any systems of communication or any other facilities or installations of the coastal State’ by a foreign-flagged vessel as non-innocent, coastal States could take the ‘necessary steps’ under Article 25 to ‘prevent’ such passage. Additionally, UNCLOS Article 21(1)(c) enables coastal States to adopt laws and regulations relating to the protection of cables and pipelines located within the territorial sea.²⁵⁷

²⁵¹ UNCLOS Article 221(2) defines the term ‘maritime casualty’ as meaning ‘a collision of vessels, stranding or other incident of navigation, or other occurrence on board a vessel or external to it resulting in material damage or imminent threat of material damage to a vessel or cargo’

²⁵² UNCLOS Article 221 provides that ‘Nothing in this Part shall prejudice the right of states, pursuant to international law, both customary and conventional, to take and enforce measures beyond the territorial sea proportionate to the *actual or threatened damage* to protect their coastline or related interests ... from pollution or the threat of pollution *following upon* a maritime casualty or acts relating to such a casualty, which may reasonably be expected to result in major harmful consequences.’ [Emphasis added] Kaye, above n 106, 204 – 205 also notes this point

²⁵³ Laws and regulations of States bordering straits relating to transit passage

²⁵⁴ And give due publicity to such laws: UNCLOS Article 42(3)

²⁵⁵ UNCLOS Article 42(2)

²⁵⁶ Navigational and safety aids and other improvements and the prevention, reduction and control of pollution

²⁵⁷ But as [6.2.3.2] noted, it is silent regarding the abilities of coastal states to enforce such laws

However outside the territorial sea, UNCLOS is less clear on the powers of coastal (or other authorised) states to interdict vessels suspected of being about to damage submarine cables and pipelines. Whilst UNCLOS Article 113²⁵⁸ obliges all states to adopt laws and regulations making the ‘breaking or injury’ of submarine cables²⁵⁹ or pipelines ‘wilfully or through culpable negligence’ by ships controlled by persons subject to their jurisdiction a punishable offence, it is unclear whether such ‘breaking or injury’ must have *already occurred* before a coastal state could interdict offending vessels.²⁶⁰ Additionally, whilst UNCLOS Article 79 enables coastal states to ‘establish conditions’ for the establishment and operation of submarine cables, it does not grant coastal states complete jurisdiction over such submarine cables or pipelines.²⁶¹ Although UNCLOS Article 56(1)(b)(iii), which enables coastal States to ‘preserve and protect’ the marine environment of their EEZ, might possibly be relied upon by a coastal State to interdict vessels suspected of being about to interfere with submarine cables, the application of this provision to the protection of submarine cables is unclear.²⁶² Davenport notes that domestic legislation allowing for the establishment of ‘cable protection zones’ outside territorial seas exists in Australia²⁶³ and New Zealand²⁶⁴ - in which activities such as fishing and anchoring may be prohibited. However she characterizes the international legal basis for the establishment of such zones as questionable.²⁶⁵ Relevantly, similar observations were noted in [6.2.3.3] about Australian legislation providing for the declaration of ‘offshore general security areas’ within its EEZ – which indicates that in the post-9/11 context, some States may take a broader, more flexible view of the maritime security measures that might be undertaken under UNCLOS.

Whilst as [6.2.4] explained the 1988 SUA Convention includes offences of being involved in ‘the destroying or seriously damaging maritime navigational facilities or seriously interfering

²⁵⁸ Breaking or injury of a submarine cable or pipeline

²⁵⁹ That causes interruption or obstruction to telegraphic or telephonic communications, or high-voltage power cable

²⁶⁰ Kaye, above n 199, 419

²⁶¹ Kaye, above n 199, 420; Klein, above n 25, 100

²⁶² Davenport, above n 247, 209 - 210

²⁶³ In Australia, Schedule 3A of the *Telecommunications Act* 1997 (Cth) enables the Australian Communications and Media Authority (ACMA) to declare protection zones in relation to submarine cables located within ‘Australian waters’ – which includes the waters of Australia’s EEZ. Davenport notes that the ACMA has established protection zones over the Southern Cross Cable and Australia-Japan Cable - which are within protection zones up to 15.7 kilometres wide and extending up to 75 kilometres from shore (see www.acma.gov.au/webwr/assets/main/lib310064/sydneysubmarine_cable_pz.pdf); and the SEA-ME-WE3 cable, which is 3.7 kilometres wide and extends up to 94.5 kilometres from shore (see www.acma.gov.au/webwr/assets/main/lib100668/perthsubmarine_pz%20.pdf): Davenport, above n 247, 219

²⁶⁴ *Submarine Cables and Pipelines Protection Act* 1996 (NZ) ss 12 and 15

²⁶⁵ Noted in Davenport, above n 247, 219

with their operation, if such act is likely to endanger the safe navigation of a ship’,²⁶⁶ submarine cables and pipelines might not ordinarily constitute ‘maritime navigational facilities’ under Article 3(1)(e) – unless the interference with these submarine cables and/or pipelines had the effect of prejudicing the safety of maritime navigation. As [6.2.5] explained, whilst the 2005 SUA Convention makes it an offence to use a ship in a manner that causes death or serious injury or damage’,²⁶⁷ it is unclear whether it could enable the interdiction of ships suspected of being about to interfere with submarine cables. As Chapter 9 notes, various options have been proposed to address the limitations of UNCLOS in enabling States to protect submarine cables located outside the territorial sea from acts of deliberate interference. These include establishing a new international convention modelled on the SUA treaties and the other sectoral counter-terrorism conventions noted in [2.2] enabling States to establish jurisdiction over acts of interference with submarine cables;²⁶⁸ prohibiting ships from loitering and anchoring within the vicinity of submarine cables, and expanding coastal State powers to protect submarine cables from acts of deliberate interference.²⁶⁹ However due to the jurisdictional gaps under UNCLOS, it has also been suggested that States seeking to protect submarine cables outside the territorial sea might have no other jurisdictional basis for interdicting vessels other than its inherent rights of self-defence recognised under Article 51 of the UN Charter,²⁷⁰ or on the basis of Necessity.²⁷¹ Both of these exceptional “last resort” grounds are examined in Chapter 8.

[6.5] CONCLUSION

This Chapter has further illustrated the practical application of the Threat Matrix for analysing the threat contexts of how terrorists might utilise vessels to perpetrate dangerous or disruptive acts. It showed that aside from the 23 recorded utilisations of small speedboats by MEND and other insurgent groups as “weapons-launching platforms” against offshore platforms, the majority of the small number of cases where terrorists have utilised vessels to perpetrate dangerous acts have involved contemporary terrorist groups, and the use of suicide tactics. Furthermore, many of the maritime terrorism incidents examined in this Chapter have thus far

²⁶⁶ 1988 SUA Convention Article 3(1)(e)

²⁶⁷ 2005 SUA Convention Article 3bis(a)(iii)

²⁶⁸ Robert Beckman ‘Submarine Cables – A Critically Important but Neglected Area of the Law of the Sea’ Paper presented to the Indian Society Of International Law 7th International Conference on Legal Regimes of Sea, Air, Space and Antarctica 15-17 January 2010, New Delhi, 14 - 15; Davenport, above n 247 , 221

²⁶⁹ Kaye, above n 199 , 421 – 422

²⁷⁰ Kaye, above n 252, 196

²⁷¹ Kaye, above n 199, 416 – 418

remained in the “planned” and “postulated” categories, as opposed to having been successfully perpetrated or attempted by terrorists.²⁷²

Whilst this chapter showed that most of the previous successful, attempted, planned and postulated instances of vessels being utilised offensively have involved vessels being terrorist-controlled in the first instance (as opposed to being forcibly taken over), it still reasoned the prospects for the “preventative” SOLAS maritime security and vessel identification / tracking provisions to succeed in preventing such forms of maritime terrorism will depend on the “best case / worst case” factors articulated in [4.2.7]. Regarding the interdiction of suspected terrorist vessels, it highlighted several jurisdictional gaps under UNCLOS relating to the protection of submarine cables and offshore platforms, and dangerous navigational activities outside territorial seas. It also explained that whilst the 2005 SUA treaties have improved the abilities of state parties to interdict suspected terrorist vessels before terrorist attacks have been perpetrated, the present low levels of their international acceptance detracts from the overall prospects of these instruments to prevent maritime terrorism incidents. Given these jurisdictional gaps, Chapter 8 considers the extent to which a “threatened” state might in exceptional circumstances, interdict suspected terrorist vessels on the basis of its ‘inherent’ rights of self-defence recognised under Article 51 of the UN Charter; or on the basis of Necessity.

Chapter 7²⁷³ analyses the prospects for the SOLAS maritime security and vessel identification and tracking provisions, and UNCLOS and the 2005 SUA Convention (regarding vessel interdictions) to succeed in preventing vessels from being utilised to enable subsequent terrorist attacks through transporting WMD materiel, conventional weaponry, terrorist-connected persons and financing terrorist activities. It shows how the WMD interdiction measures alluded to in the US-led Proliferation Security Initiative Statement of Interdiction Principles (whilst not a formal international agreement) have prompted critical re-thinks about the powers of States under UNCLOS to interdict laterally-transiting vessels, and the influence that post-9/11

²⁷² However as [1.5] explained, this Study does not seek to rank the relative likelihood of certain maritime terrorism incidents from occurring – rather its purpose was to examine all conceivable maritime terrorism incidents

²⁷³ As these activities would be the “least imminent” and involve the longest “lead warning time” after vessel targeting (examined in Chapter 5) and the offensive utilisation of vessels to perpetrate dangerous or disruptive acts (examined in Chapter 6), these activities are examined last in Chapter 7

counter-terrorism Security Council resolutions should have on interpretations of these UNCLOS provisions.

CHAPTER 7

COUNTERING UTILISATIONS OF VESSELS TO ENABLE SUBSEQUENT TERRORIST ATTACKS

[7.1] INTRODUCTION

This chapter analyses the prospects for the international agreements to prevent terrorists from utilising vessels to enable subsequent attacks on land through transporting WMD materiel, conventional weaponry, terrorist-connected persons and financing terrorist activities.¹ It explains how the WMD interdiction measures alluded to in the PSI Statement of Interdiction Principles have prompted considerable debate about the legality under UNCLOS of interdicting laterally transiting vessels suspected of transporting WMD materiel.² From analysing this scholarly debate, it is the first study to articulate “restrictive” and “liberal” views of the legality of the interdiction of laterally transiting vessels under UNCLOS. It shows these two views diverge regarding the influence that post-9/11 counter-terrorism Security Council resolutions have on the interdiction powers of States under UNCLOS. Whilst it reasons the liberal view better enables States to (unilaterally) interdict suspected WMD shipments, it argues for the further development of more specific agreements between States to facilitate such interdictions and reduce scope for conflict. It argues in first preference for increased ratification of the 2005 SUA Convention;³ in second preference for further formalisation of bilateral ship-boarding agreements similar to those formalised between the US and key registry states under the PSI; and in third preference for increased institutionalisation of the PSI.⁴ The chapter reasons there is also scope for restrictive and liberal views of States’ interdiction powers under UNCLOS in

¹ As [1.4] explained, the use of vessels to enable subsequent terrorist attacks on land would involve a longer “lead warning time” than terrorist attacks on vessels (examined in Chapter 5) and offensive utilisations of vessels (examined in Chapter 6). It also explained that subsequent terrorist attacks on land enabled through the provision of weaponry, operatives or funding on land possibly occurring months or even years after being transported to a land location by the vessel (that is, the least imminent of all the forms of maritime terrorism) – hence why this form of maritime terrorism is examined after those in Chapters 5 and 6. This Chapter addresses the fourth sub-question posed in [1.2.2], namely ‘(4) Considering how maritime terrorism incidents have previously occurred, and might occur in the future, how might the international agreements apply in practice in preventing maritime terrorism incidents?’

² The chapter also explores the identified uncertainties about the PSI - including how the PSI interdiction measures might be applied against vessels of non-consenting states; how many states “support” the PSI; and what “support” for the PSI actually entails

³ This chapter explains how the 2005 SUA Convention objectively defines key terms, and details interdiction procedures

⁴ As [7.2.8] explains, this has been called for by several international legal scholars and by President Obama

relation to vessels suspected of being utilised for “other than WMD transporting” purposes⁵ - which have not received as much scholarly analysis as the legality of WMD interdictions. The chapter also shows the importance of ISPS Code and other security measures being rigorously and continuously applied (both at the ship/port interface and across broader supply chains) to reduce the scope for vessels to be utilised to enable subsequent terrorist attacks.

[7.2] COUNTERING THE UTILISATION OF VESSELS FOR TRANSPORTING WMD MATERIEL

The illicit maritime transportation of WMD materiel is one of the most challenging of all the 21 forms of maritime terrorism conceptualised by the Threat Matrix for States to prevent. Such activities are operationally challenging to counter because detecting very small amounts of “WMD materiel” (possibly concealed within shipping containers) may be likened to “finding a needle in a haystack”. As this Chapter explains, such activities are also legally challenging for States to prevent because many materials that might be regarded as “WMD materiel” commonly have legitimate, peaceful dual uses; and because UNCLOS has traditionally been understood as safeguarding against coastal State interferences with freedoms of navigation - including vessels carrying nuclear weapons.

[7.2.1] Threat context: Previous utilisations of vessels to transporting WMD materiel for terrorist purposes

	Successful	Attempted	Planned	Postulated
	1 – but see below	6	Many reports	Numerous - 6

[2.5.3] noted the widely expressed concerns following the end of the Cold War, and particularly following 9/11, about terrorists acquiring WMD materiel and utilising vessels to enable such acquisitions. These concerns took on increased urgency following the 2002 *So San* interdiction incident (reviewed below), which provided the impetus for the development of the PSI (which is discussed in [7.2.3] below). Although as at 1 October 2013 there have only been five publicly-reported interdictions of suspected illicit shipments of WMD materiel, in practice the

⁵ That is, for transporting conventional weaponry or terrorist operatives to a land location to perpetrate an attack, or utilising vessels to finance terrorist activities

number of un-reported attempts, and also terrorist plans, to transport WMD materiel aboard vessels might conceivably be higher – given that as [7.2.6] explains, information about WMD interdictions undertaken by States is likely to remain classified on national security grounds.⁶

The only “**successful**” instance of a vessel being utilised to transport WMD materiel was not done for terrorist purposes, but by ABC News – which in early 2003 borrowed 15 pounds of clearly marked depleted uranium from an environmental group, packed it into a shipping container and shipped it undetected from Turkey to New York. This incident highlighted the scope for terrorists to illicitly ship WMD materiel aboard vessels.⁷

As outlined below, as at 1 October 2013, four out of the five publicly reported interdictions of the suspected **attempts** to illicitly transport WMD materiel aboard vessels have been undertaken with the consent of the flag state and crews of the suspect vessels – with only the *So San* having been forcibly interdicted on the high seas. First, on 21 December 2001, British naval forces intercepted and boarded the Indian-owned bulk carrier *MV Nisha* in the English Channel following an intelligence tip-off that the vessel was carrying “terrorist material”. The *Nisha* had sailed from Mauritius but had stopped in Djibouti - which raised suspicions it may have taken on “terrorist material”. However after three days of searching with the cooperation of *Nisha*’s crew, no suspicious “terrorist material” was found, and the *Nisha* was allowed to dock and unload its cargo at its intended destination – a sugar refinery on the River Thames near London’s Canary Wharf financial district.⁸ Second on 10 December 2002, a Spanish warship stopped and boarded the Cambodian-registered *So San* cargo ship 600 miles off the coast of Yemen. The *So San*, which was purportedly transporting cement from North Korea to Yemen, flew no flag and took evasive measures to avoid inspection. When Spanish and US naval forces boarded the *So San* on the basis of it being a stateless vessel, their searches discovered fifteen Scud missiles concealed beneath 40,000 sacks of cement. However the *So San* was later released and allowed to continue sailing on to Yemen because, according to the United States, there was no provision under international law prohibiting Yemen from accepting delivery of the missiles from North Korea. Yemen was not party to a treaty requiring

⁶ Craig Allen *Maritime Counter-proliferation Operations and the Rule of Law* (Praeger Security International, 2007), 56 - 57

⁷ Catherine Zara Raymond *Maritime Terrorism in Southeast Asia: A Risk Assessment* Institute of Defence and Strategic Studies Paper No. 74, March 2005, 25

⁸ Michael Richardson *A Time Bomb for Global Trade: Maritime Terrorism in an Age of Weapons of Mass Destruction* (Institute of Southeast Asian Studies, 2004), 13-14

it to refuse the shipment, nor was it at war with Spain or the United States – meaning she could not be lawfully detained nor her cargo seized.⁹ The fact that the *So San* was released due to the lack of an international legal basis for detaining the vessel is an example of how international law influences the behaviour of States through constraining actions they might otherwise be inclined to take. As discussed under [7.2.3] below, these international legal gaps led the United States to announce the formation of the PSI on 31 May 2003.

Third, on 12 April 2003 German and French authorities directed the French cargo ship *Ville de Virgo* towards the Egyptian port of Alexandria after having tracked it from Hamburg where it had taken on a cargo of aluminium pipes which were supposedly bound for China. However after German police arrested the owner of the export company, it was discovered these pipes were destined for North Korea, allegedly as part of the making of centrifuges for making highly-enriched uranium. These aluminium pipes were removed from the *Ville de Virgo* and shipped back to Hamburg.¹⁰ Fourth, in early October 2003 the German-owned, Antigua and Barbuda-flagged cargo ship *BBC China* was transporting thousands of aluminium gas centrifuge components capable of being used for uranium enrichment from Dubai to Libya. After learning of this suspected shipment in late September, American and British authorities contacted the German government, which in turn requested that the ship's owner, a German charter company, divert the vessel to the Italian port of Taranto for inspection. This inspection found the *BBC China*'s container number to have been fabricated, and the aluminium tubes were confiscated. Shortly after this operation, on 19 December 2003 Libya renounced its nuclear development program.¹¹ Fifth, on 4 October 2003 the Greek-owned cargo ship *Athena* was searched for WMD materiel in the port of Lyttleton in Christchurch, New Zealand following a tip-off from US intelligence; however no WMD materiel was found. It was again checked on arrival in the South Korean port of Kunsan, again with no WMD materiel being found.¹² Sixth, in May 2011 the US Navy tracked the Belize-flagged (but North Korean-crewed) cargo ship *MV Light* off China – which was suspected of transporting missile technology from North Korea to Myanmar. However as there were no indications of terrorist linkages in this shipment, this incident is discussed in [7.2.7], which examines the prospects

⁹ Samuel Logan 'The Proliferation Security Initiative: Navigating the Legal Challenges' (Spring 2005) 14(2) *Journal of Transnational Law and Policy*, 253

¹⁰ Richardson, above n 8, 102

¹¹ Richardson, above n 8, 103 - 104; Yann-Huei Song 'The US-led Proliferation Security Initiative and UNCLOS: Legality, Implementation, and an Assessment' (2007) 38 *Ocean Development and International Law* 101 at 121

¹² Richardson, above n 8, 13

for the PSI ship boarding agreements to succeed in preventing vessels from being utilised to illicitly transport WMD materiel.

There have been numerous reports of terrorists **planning** to acquire WMD materiel. For instance the alleged mastermind of the 9/11 attacks Khalid Sheikh Mohammed is reported to have offered \$200,000 to invest in an export firm in exchange for access to the firm's containers, which were used to ship garments to the port of Newark, New Jersey; and documents seized from Al Qaeda operatives revealed plans to use containers 'packed with sesame seeds to smuggle radioactive material into the United States'.¹³ Whilst one study cited reports of as many as 175 plans by terrorists to acquire or smuggle radioactive material, most of those reports tend to be generalised, with no evidence of such plans succeeding.¹⁴

Lastly the utilisation of vessels to transport WMD materiel has been widely **postulated** amongst maritime security specialists since 9/11 – including by Richardson,¹⁵ Bateman and Bergin,¹⁶ and Greenberg et al – who discussed the 'use of a commercial container ship to smuggle chemical, biological or radiological materials for an unconventional attack carried out on land or at a major commercial port such as Rotterdam, Hong Kong, Dubai, New York or Los Angeles'.¹⁷

[7.2.2] Best case / worst case scenario analysis of SOLAS Chapter XI-2 (ISPS Code) and LRIT preventing utilisations of vessels for transporting WMD materiel

This section analyses the prospects for the preventative security measures mandated and recommended by the ISPS Code to lessen the scope for vessels to be utilised to illicitly transport WMD materiel for terrorist purposes. It considers the relevant "best case / worst case" scenario factors articulated in [4.2.7] in light of the observations in [7.2.1] about how vessels have

¹³ Donna Nincic 'The Challenge of Maritime Terrorism: Threat Identification, WMD and Regime Response' (August 2005) 28(4) *Journal of Strategic Studies*, 625; Richardson, above n 8, 13

¹⁴ Nincic, above n 13, 626

¹⁵ Richardson, above n 8, 8 - who postulated that '... vessels, big and small, or the cargo containers they carry can be used in a number of ways by terrorists to further their aims ... to deliver bombs or other means of destruction to their destination, such as a container set to explode near a port city or other target'.

¹⁶ Sam Bateman and Anthony Bergin *Future Unknown: The Terrorist Threat to Australian Maritime Security* (Australian Strategic Policy Institute, 2005), 35 - with their scenario 10 postulated the 'smuggling of weapons or equipment, perhaps including WMD, into an Australian port'

¹⁷ Michael Greenberg, Peter Chalk and Henry Willis *Maritime Terrorism: Risk and Liability* (RAND Corporation, 2006), 27

previously been suspected of being utilised for such purposes. It also considers the prospects for the LRIT requirements under SOLAS Chapter V to lessen the scope for vessels to be utilised for such purposes.

[1] Larger or smaller vessels?¹⁸ All the six recorded interdictions of vessels suspected of being utilised to illicitly transport WMD materiel reviewed in [7.2.1] involved large vessels engaged on international voyages, which from 2004 would most likely be subject to the ISPS Code. In addition to the ISPS Code's requirements to restrict the scope for weaponry to be introduced onto SOLAS ships (which were discussed in [4.2.1] and [5.3.5]), a significant contribution of would be the ship identification requirements mandated under SOLAS Chapter XI-2 and the ISPS Code,¹⁹ which when combined with other intelligence about such vessels, could enable States to identify vessels suspected of being utilised for illicit purposes. If such vessels sought to enter port, as [4.2.1] noted the ISPS Code authorises contracting governments to undertake 'control measures' in relation to SOLAS ships²⁰ proposing to enter their port facilities – which might include denying permission, or requesting further information prior to authorising such entry) in situations where there are security-related concerns.²¹

[2] Terrorist-controlled in first instance? The reports of the six recorded interdictions of suspected illicit WMD materiel shipments in [7.2.1] did not specifically note these vessels as

¹⁸ The fifth factor regarding the likely success of the ISPS Code from [4.2.7] (the effectiveness of government oversight arrangements) has been incorporated into this point

¹⁹ Such identification requirements include non-erase-able Ship Identification Numbers: SOLAS Chapter XI Regulation 3, and to maintain Continuous Synopsis Records of their ownership and registration: SOLAS Chapter XI Regulation 5 – including information about the ship's flag state; date of registration; identification number; port of registration; registered owner of the ship; and details regarding the ship's International Ship Security Certificate. Furthermore, the ISPS Code enables port states to require ships subject to the ISPS Code to provide certain security and safety-related information as a condition of their entry into a designated port facility subject to the ISPS Code – including but not limited to information from the ship's Continuous Synopsis Record; the location of the ship at the time of reporting; the ship's expected time of arrival into port; the ship's crew list; details of the ship's cargo; and the ship's passenger list: ISPS Code Part B section 4.39

²⁰ And possibly other ships if the Contracting Government extended the application of the ISPS Code to ships below SOLAS Convention size: ISPS Code Part A, Section 3.2; ISPS Code Part B Section 4.46

²¹ These "security related concerns" might arise from one or more of the following: (i) the validity of the ship's ISSC; (ii) the effectiveness of the ship's preventative security measures; (iii) concerns regarding the effectiveness of security measures at the ship's previous ports of call – or with other ships with which it may have interfaced with; (iv) concerns regarding the cargo or passengers embarked on the ship; (v) concerns regarding the accuracy of the information contained in the ship's Continuous Synopsis Record; and/or (vi) concerns regarding those responsible for the ship and its security. Additionally, Relevantly, ISPS Code Part B section 4.34 notes that '... [SOLAS] regulation XI-2/9 does not prejudice the Contracting Government from taking measures having a basis in, and consistent with, international law to ensure the safety or security of persons, ships, port facilities and other property in cases where the ship, although in compliance with Chapter XI-2 and part A of [the ISPS] Code, is still considered to present a security risk'.

being terrorist-controlled in the first instance. However aside from the *MV Light* (which as [7.2.7] explains, evaded the US Navy's attempts to board it, and returned back to North Korea), all of the inspections of these vessels occurred consensually, with the vessels diverting to nearby ports for inspection.

[3] Rigor of application of ISPS Code? and [4] Did the maritime terrorism incident involve a security-regulated port? The reports of the six interdictions of vessels suspected of illicitly transporting WMD materiel in [7.2.1] did not specify whether the suspected WMD materiel was introduced onto the vessels within a port facility subject to the ISPS Code, or further up the supply chain (for example being packed into a shipping container). However it may be inferred from the size and types of vessels noted in [7.2.1] being cargo ships engaged on international voyages, that the suspected WMD materiel would have passed through a port facility that from 31 July 2004 would most likely be subject to the ISPS Code. This reinforces the importance of the IMO continuing to provide input into the ship/port interface aspects of supply chain security in cooperation with the WCO as noted in [4.2.2].

It is most likely that all six of the vessels noted in [7.2.1] would be subject to the LRIT requirements by virtue of their size and engagement in international voyages. [4.3.2] noted that since early 2011, the international LRIT system has been shown to be functioning as required. It also showed that naval force commanders around Gulf of Aden have reportedly found LRIT information to be “invaluable” in developing a more accurate picture of commercial vessels transiting the Somali High Risk Area – with unexpected delays or diversions possibly indicating commercial vessels being targeted by Somali pirates. However as [5.2.2.6] reasoned, counter-piracy operations around the Gulf of Aden involve protecting commercial vessels from pirate attacks within a defined geographical area; whereas terrorist attacks on shipping, or the utilisations of vessels to enable subsequent terrorist attacks, could occur at a wider range of maritime locations. As [4.3.2] noted, LRIT information²² is limited in the details it includes, and as [4.3.2] noted, whilst it has been concluded the receiving of LRIT information would be consistent with UNCLOS, it is less clear what actions “receiving” states might take based on LRIT information. Relevantly, whilst the US Navy was reported to have tracked the *MV Light* from North Korea in May 2011 with the use of satellite information,

²² Being the ship's identity, its latitudinal and longitudinal location, and the date and time of the position reported SOLAS Chapter V Regulation 19-1/5

it is unclear if LRIT information played a part in this, or whether the MV *Light* was tracked through US military satellites.

In summary, this section has reasoned that if rigorously applied at all levels, the preventative SOLAS vessel security, identification and tracking measures might lessen the scope for terrorists to illicitly transport WMD materiel aboard vessels. However given the challenges of screening 100 per cent of shipping containers before being loaded onto vessels, States might well need to consider interdicting vessels suspected of illicitly transporting WMD materiel.

The following sections examine the prospects for UNCLOS and the 2005 SUA Convention to enable States to interdict vessels suspected of illicitly transporting WMD materiel, and thereby prevent terrorists from receiving such materials. They explain how the WMD interdiction measures outlined in the PSI have prompted considerable debate about the legality under UNCLOS of interdicting “laterally transiting” vessels suspected of illicitly transporting WMD materiel.

[7.2.3] The Proliferation Security Initiative

The *So San* incident noted in [7.2.1] above raised significant concerns within the US and other Western governments about the lack of an international legal basis for interdicting and confiscating suspected of illicit shipments of WMD materiel. Shortly after this incident, the US government, in co-operation with fourteen other “participant” governments,²³ announced the formation of the Proliferation Security Initiative (PSI) on 31 May 2003 as a cooperative effort to facilitate interdictions of shipments of WMD, their delivery systems, and related materials – (which as [2.5.3] noted, are termed ‘WMD materiel’ in this Study) flowing to and from ‘states and non-state actors of proliferation concern’.

The objectives of, and activities envisaged under, the PSI are expressed in the ‘PSI Statement of Interdiction Principles’,²⁴ which is not a formally binding international agreement, but a political statement of intention by participant governments, expressing how they plan to

²³ The governments initially expressing their support for the PSI included Australia, Canada, France, Germany, Italy, Japan, The Netherlands, Norway, Poland, Portugal, Russia, Singapore, Spain and the United Kingdom

²⁴ United States State Department ‘Proliferation Security Initiative: Statement of Interdiction Principles’, 4 September 2003 <http://www.state.gov/t/isn/c27726.htm> Accessed 1 October 2013

cooperate and consider exercising their jurisdictional rights under UNCLOS²⁵ to interdict vessels suspected of carrying WMD or related equipment to non-state actors.²⁶ Whilst the PSI Interdiction Principles (hereafter ‘Interdiction Principles’) cover information exchange amongst participants²⁷, and strengthening existing national laws,²⁸ the aspects pertaining to the interdiction of vessels at sea are outlined in paragraph 4, under which PSI participants commit [in principle] to:

‘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.

²⁵ Although the Interdiction Principles do not refer specifically to UNCLOS, they make mention of UNCLOS maritime jurisdictional zones and concepts – such as flag state jurisdiction

²⁶ Stuart Kaye and Lowell Bautista ‘The Naval Protection of Shipping in the 21st Century: An Australian Perspective’ (2011) 34 *Papers in Australian Maritime Affairs*, 42

²⁷ Under Paragraph 2 of the Interdiction Principles, participants commit in principle to ‘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’.

²⁸ Under Paragraph 3 of the Interdiction Principles, participants commit in principle to ‘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’

- 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 trans-shipment 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’.

[7.2.3.1] Ambiguous aspects of the PSI Interdiction Principles

In addition to questions of the legality under UNCLOS of the measures alluded to in the Interdiction Principles (which is the focus of the bulk of this section’s analysis in [7.2.5]), and despite the US State Department’s publication of ‘Proliferation Security Initiative Frequently Asked Questions’ (PSI FAQs),²⁹ several key terms in the Interdiction Principles have been identified as ambiguous.

First, Paragraph 1 of the Interdiction Principles explains that ‘[the term] ‘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

²⁹ Fact Sheet, U.S. Department of State, Bureau of Non-proliferation, Proliferation Security Initiative Frequently Asked Questions 24 May 2004, revised 22 May 2008 www.state.gov/t/isn/rls/fs/105213.htm Accessed 2 January 2010

nuclear weapons and associated delivery systems; or (2) transfers (either selling, receiving, or facilitating) of WMD, their delivery systems, or related materials.’ Although the term ‘States of proliferation concern’ is widely presumed to refer to those States described by the former Bush administration as constituting the “Axis of Evil”,³⁰ the term has been criticised for its subjectivity, with the PSI possibly exceeding the ambit of Security Council Resolution 1540 (examined below in [7.2.4] – which is restricted to ‘non-State actors’) - notwithstanding that several so-called ‘States of proliferation concern’ have previously been the subjects of specific Security Council Resolutions regarding WMD proliferation.³¹

Second, the vagueness of the terms ‘WMD’, ‘their delivery systems’ and ‘related materials’ within the Interdiction Principles has been criticised as subjective, as has the lack of clear exceptions for “dual-use” materials from being subject to interdiction. It has been estimated that around 95 per cent of what the Interdiction Principles might class as ‘WMD-related materials’ could also have legitimate peaceful uses - for instance uranium that could be used in the manufacture of nuclear weapons has a range of medical uses, and chemicals that could be used in the manufacture of chemical and biological weapons are also commonly used in the manufacture of plastics and to process foodstuffs.³² Relevantly, the three multilateral non-proliferation treaties specifically recognise the rights of States to utilise for peaceful purposes

³⁰ Former US President George W. Bush coined the ‘Axis of evil’ term in his State of the Union Address on 29 January 2002 referring to Iran, Iraq and North Korea as sponsors of terrorism trafficking WMD – and subsequently used this term throughout his presidency. Secondly, 6 May 2002, then-Undersecretary of State John R. Bolton in a speech titled ‘Beyond the Axis of Evil’ referred to Libya, Syria, and Cuba as ‘state sponsors of terrorism that are pursuing or who have the potential to pursue WMD or have the capability to do so in violation of their treaty obligations’. Thirdly in January 2005 the then US Secretary of State Condoleezza Rice made a speech regarding the newly termed *outposts of tyranny*, a list of six countries deemed most repressive - included the two remaining *Axis* members, as well as Cuba, Belarus, Zimbabwe and Myanmar

³¹ See for example, UNSC Res 1696 (31 July 2006) UN Doc S/RES/1696 in relation to Iran, and UNSC Res 1718 (14 October 2006) UN Doc S/RES/1718 in relation to North Korea: Douglas Guilfoyle ‘Maritime Interdiction of Weapons of Mass Destruction’ (2007) 12 *Journal of Conflict and Security Law*, 14

³² Song, above n 11, 115

nuclear energy,³³ biological agents and toxins³⁴ and toxic chemicals.³⁵ On this point, the PSI FAQs explain that ‘... the intent of the PSI is to only take action based on solid information regarding shipments that are believed to be destined for states or non-state actors of proliferation concern’; and that ‘legitimate dual-use commerce will very rarely be affected by PSI activities’.³⁶ Guilfoyle points out that in the absence of specific treaty obligations, there are no international legal prohibitions on *possessing* WMD; and also notes while the multilateral non-proliferation treaties oblige parties to reduce or destroy weapon stockpiles, they do not *criminalise* trade in WMD materiel.³⁷

Third, and following on from the second point, the reference to ‘good cause’ for interdictions has been criticised for its vagueness and subjectivity.³⁸ The PSI FAQs provide minimal further insight on this point, merely explaining that ‘... in responding to such [interdiction] requests, each state will, of necessity, decide for itself whether the information provided by the requesting state warrants acceding to the request’.³⁹

³³ Article IV of the *Treaty on the Non-proliferation of Nuclear Weapons*, open for signature 1 July 1968 729 UNTS 161 (entered into force 5 March 1970) provides that (1) ‘Nothing in this Treaty shall be interpreted as affecting the inalienable right of all the Parties to the Treaty to develop research, production and use of nuclear energy for peaceful purposes without discrimination and in conformity with Articles I and II of this Treaty’ and furthermore that (inter alia) (2) ‘All the Parties to the Treaty undertake to facilitate, and have the right to participate in, the fullest possible exchange of equipment, materials and scientific and technological information for the peaceful uses of nuclear energy’.

³⁴ Article X of the *Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction*, open for signature 10 April 1972 1015 UNTS 163 (entered into force 26 March 1975) provides that (1) ‘The States Parties to this Convention undertake to facilitate, and have the right to participate in, the fullest possible exchange of equipment, materials and scientific and technological information for the use of bacteriological (biological) agents and toxins for peaceful purposes. Parties to the Convention in a position to do so shall also cooperate in contributing individually or together with other States or international organizations to the further development and application of scientific discoveries in the field of bacteriology (biology) for prevention of disease, or for other peaceful purposes’.

³⁵ Article VI of the *Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction*, opened for signature 3 September 1992, 1974 UNTS 45 (entry into force 29 April 1997) provides (inter alia) that (1) ‘Each State Party has the right, subject to the provisions of this Convention, to develop, produce, otherwise acquire, retain, transfer and use toxic chemicals and their precursors for purposes not prohibited under this Convention’.

³⁶ Fact Sheet, U.S. Department of State, Bureau of Non-proliferation, Proliferation Security Initiative Frequently Asked Questions 24 May 2004, revised 22 May 2008 www.state.gov/t/isn/rls/fs/105213.htm Accessed 2 January 2010

³⁷ Guilfoyle, above n 31, 17; See also Allen, above n 6, 27 - 45

³⁸ See for example Jack Garvey ‘The International Institutional Imperative for Countering the Spread of Weapons of Mass Destruction: Assessing the Proliferation Security Initiative’ (2005) 10 *Journal of Conflict & Security Law*, 137; Michael Becker ‘The Shifting Public Order of the Oceans: Freedom of Navigation and the Interdiction of Ships at Sea’ (2005) 46 *Harvard Journal of International Law*, 162

³⁹ Fact Sheet, U.S. Department of State, Bureau of Non-proliferation, Proliferation Security Initiative Frequently Asked Questions 24 May 2004, revised 22 May 2008 www.state.gov/t/isn/rls/fs/105213.htm Accessed 2 January 2010

Fourth, the reference within paragraph 4(d) to the taking of ‘appropriate actions’ for stopping and searching vessels has also been criticised both for its ambiguity and subjectivity. On this point, the PSI FAQs explain that ‘... PSI participants define “interdiction” broadly as any action, based on sufficient information and consistent with national authorities and international legal frameworks, that results in the denial, delay or disruption of a shipment of proliferation concern’;⁴⁰ and further note that ‘PSI participants [will] seek to interdict shipments of proliferation concern at the moment of maximum legal authority and will employ *any appropriate lever of national power* – possibly including diplomatic requests, customs inspections in port, law enforcement measures, or (in rare cases) military measures such as naval boardings on the high seas’.⁴¹ [Emphasis added] The vague reference to ‘military measures’ might indicate PSI participants envisaging the interdiction of suspected WMD shipments on the basis of their self-defence rights under Article 51 of the UN Charter if there were no other available international legal grounds, which Chapter 8 examines.

Fifth, the legality of seizures of materials from interdicted vessels has been questioned. Becker explains that ‘... even if the PSI has helped to expand *interception* capacities it is less clear whether the PSI has enhanced the options for *seizure of cargo* after a boarding has taken place. The lawfulness of seizing cargo, not stopping and boarding the vessel, was the real issue in the *So San* incident’.⁴² However, he also critically questioned whether the decision by the US authorities to release the *So San* was actually motivated by respect for the principles of international law embodied in UNCLOS, or political desires to keep Yemen “on side” as an ally of the US in the “Global War on Terror”.⁴³

As [7.2.6] notes, since its formation in 2003, PSI participants are reported to have conducted numerous cooperative military and naval exercises, and meetings of operational experts. Additionally PSI participants have actively pursued other efforts to strengthen the international counter-proliferation legal framework – particularly the negotiations within the UN Security Council leading to the passing of Resolution 1540 on 28 April 2004. As [7.2.4] below explains,

⁴⁰ Fact Sheet, U.S. Department of State, Bureau of Non-proliferation, Proliferation Security Initiative Frequently Asked Questions 24 May 2004, revised 22 May 2008 www.state.gov/t/isn/rls/fs/105213.htm Accessed 2 January 2010

⁴¹ Fact Sheet, U.S. Department of State, Bureau of Non-proliferation, Proliferation Security Initiative Frequently Asked Questions 24 May 2004, revised 22 May 2008 www.state.gov/t/isn/rls/fs/105213.htm Accessed 2 January 2010

⁴² Becker, above n 38, 154

⁴³ Becker, above n 38, 154

whilst recognising the threat to international peace and security posed by WMD proliferation, Resolution 1540 stopped short of specifically authorising vessel interdictions. As [7.2.5] explains, this has led international legal scholars to express divergent views on the legality of WMD interdictions across the UNCLOS maritime jurisdictional zones – which this Study terms the “restrictive” and “liberal” views of UNCLOS.

[7.2.4] Security Council Resolution 1540

In comparison to the extensive obligations imposed by the post-9/11 counter-terrorism resolutions discussed in [2.7.1], efforts within the UN Security Council to achieve international support for interdictions of suspected illicit shipments of WMD materiel amongst non-state actors have not achieved the same consensus. Whilst as a starting point, Security Council Resolution 1456 recognised the ‘... serious and growing danger of terrorist access to and use of nuclear, chemical, biological and other potentially deadly materials, and [the] need to strengthen controls on these materials’,⁴⁴ Resolution 1540 has been the most significant pronouncement by the Security Council about seriousness of the threat to international peace and security posed by the proliferation of WMD materiel amongst non-state actors.

Following five months of informal negotiations,⁴⁵ the final text of Resolution 1540 affirmed that the proliferation of nuclear, chemical and biological weapons, as well as their means of delivery⁴⁶ constitutes a threat to international peace and security; and also affirmed the Security Council’s 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 [UN] Charter’. The preamble of Resolution 1540 also expressed the Security Council’s grave concerns about the threat of terrorism and the risk that non-State actors⁴⁷ ... may acquire, develop, traffic in or use nuclear, chemical and biological weapons and their means of delivery; as well as its grave concerns regarding the threat of illicit

⁴⁴ UNSC Res 1456 (20 January 2003) UN Doc S/RES/1456, Preamble

⁴⁵ Guilfoyle, above n 31, 15

⁴⁶ UNSC Res 1540 (28 April 2004) UN Doc S/RES/1540, Notes to Preamble defined ‘Means of delivery’ as ‘missiles, rockets and other unmanned systems capable of delivering nuclear, chemical, or biological weapons that are specially designed for such use’

⁴⁷ UNSC Res 1540 (28 April 2004) UN Doc S/RES/1540, Notes to Preamble defined ‘Non-State actor’ as ‘individual or entity, not acting under the lawful authority of any State in conducting activities within the scope of [Resolution 1540]’ – taken to mean those individuals and groups originally listed by Security Council Resolution 1267, and to whom Security Council Resolution 1373 applied

trafficking in nuclear, chemical, or biological weapons and their means of delivery, and related materials⁴⁸ which added a new dimension to the issue of proliferation of such weapons and also poses a threat to international peace and security. It imposed several significant positive and negative obligations upon on all States;⁴⁹ and emphasized that none of the obligations it enunciated should be interpreted so as to conflict with, nor alter, the rights of States under existing non-proliferation treaties,⁵⁰ nor alter the responsibilities of non-proliferation institutions.⁵¹ It also called upon states to increase cooperation and dialogue in relation to non-proliferation through a number of measures.⁵²

However the closest Resolution 1540 came to authorizing interdictions of suspected WMD shipments was within paragraph 10 - which *call[ed] 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’. [Emphasis added] Through merely ‘call[ing] upon’ states to ‘take cooperative action’, Resolution 1540 has been characterised as changing from “obligation-imposing” in the bulk of the its text to “invitation-making” in paragraph 10; and therefore neither conferring additional jurisdiction upon states to enforce laws against foreign

⁴⁸ UNSC Res 1540 (28 April 2004) UN Doc S/RES/1540, Notes to Preamble defined ‘Related materials’ as ‘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’.

⁴⁹ UNSC Res 1540 (28 April 2004) UN Doc S/RES/1540. These obligations include ‘refraining from providing any 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’: para 1; ‘adopting and enforcing 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 for terrorist purposes - as well as attempting to engage in any of the foregoing activities, participate in them as an accomplice, assist or finance them’: para 2; ‘taking and enforcing effective measures to establish domestic laws and controls to prevent the proliferation of nuclear, chemical, or biological weapons and their means of delivery, and related materials’: para 3; and ‘developing effective national control lists’: para 6

⁵⁰ These instruments include the Nuclear Non-Proliferation Treaty; the Chemical Weapons Convention and the Biological and Toxin Weapons Convention See [7.2.3.1] above

⁵¹ These non-proliferation institutions include the International Atomic Energy Agency or the Organization for the Prohibition of Chemical Weapons UNSC Res 1540 (28 April 2004) UN Doc S/RES/1540, para 5. See also Song, above n 11 , 115

⁵² UNSC Res 1540 (28 April 2004) UN Doc S/RES/1540. These measures included ‘promoting the universal adoption and implementation of relevant multilateral treaties’: para 8(a); ‘adopting appropriate rules and regulations in compliance with relevant multilateral treaties’: para 8(b); ‘renewing and fulfilling their commitment to working within the frameworks of multilateral cooperative institutions - including the International Atomic Energy Agency, the Organization for the Prohibition of Chemical Weapons and the Biological and Toxin Weapons Convention, and promoting international cooperation for peaceful purposes’: para 8(c); ‘working with and informing industry and the public about their obligations under such laws and regulations’: para 8(d); and ‘promoting dialogue and cooperation on nonproliferation’: para 9.

vessels,⁵³ nor creating any new rights of visit enabling interference with foreign flag vessels.⁵⁴ The absence of specific references to interdictions has been characterised as a setback for the efforts of the PSI's proponents to achieve international legal authority for interdicting suspected illicit shipments of WMD materiel.⁵⁵

During the negotiations for Resolution 1540, China is reported to have opposed the inclusion of specific references to interdictions.⁵⁶ A possible explanation for this might have been its desire to avoid antagonising North Korea, thereby causing Resolution 1540 to be far less direct in the obligations it imposes than the post-9/11 counter terrorism Security Council resolutions reviewed in [2.7.1].

Although passed unanimously, during Security Council deliberations in April 2004, the representatives of several States expressed concerns about the Security Council assuming a "law-making" role. For example, the representative of India declared that 'although resolutions such as Resolution 1373 were adopted unanimously, the limitations in their implementation underscore the need for caution on the [Security Council] being used as a route to short-circuit the process of creating an international consensus'.⁵⁷ The UK representative emphasised that Resolution 1540 did not, on its own, authorise enforcement action.⁵⁸ Along similar lines, Talmon noted that during an earlier Security Council meeting the representative of Pakistan had declared that his country '... strongly adheres to the position that the Security Council, despite its wide authority and responsibilities, is not empowered to unilaterally amend or abrogate international treaties and agreements freely entered into by sovereign States';⁵⁹ and in another Security Council meeting the representative of South Africa asserted that 'the [Security Council's] mandate leaves no room either to re-interpret or even to amend treaties that have been negotiated and agreed by the rest of the UN membership'.⁶⁰ Similar observations

⁵³ Daniel Joyner 'The Proliferation Security Initiative: Non-proliferation, Counter-Proliferation and International Law' (2005) 30 *Yale Journal of International Law*, 541

⁵⁴ Allen, above n 6, 146

⁵⁵ Guilfoyle, above n 31, 13 - 14

⁵⁶ UN Security Council, 4950th meeting, UN Doc S/PV.4950 (22 April 2004), 6 Cited in Guilfoyle, above n 31, 15

⁵⁷ UN Security Council, 4950th meeting, UN Doc S/PV.4950 (22 April 2004), 23. Cited in Stefan Talmon 'The Security Council as World Legislature' (2005) 99 *American Journal of International Law*, 191; and in Guilfoyle, above n 31, 11

⁵⁸ UN Security Council, 4950th meeting, UN Doc S/PV.4950 (22 April 2004), 12. Cited in Robert Beckman 'International Responses to Combat Maritime Terrorism' in Victor Ramraj, Michael Hor and Kent Roach (eds) *Global Anti-Terrorism: Law and Policy* (Cambridge University Press, 2005), 268

⁵⁹ UN Security Council 4772nd meeting, UN Doc. S/PV.4772 (12 June 2004), 21 Cited in Talmon, above n 57, 185; Also noted by Allen, above n 6, 146

⁶⁰ UN Security Council 4568th meeting, UN Doc. S/PV.4568 (10 July 2002), 6. Cited in Talmon, above n 57, 185

were made by Guilfoyle when discussing Resolution 1540, who opined that ‘... Security Council “legislation” cannot, of itself, create either effective law, or law enforcement [and that] ... realistically, a variety of jurisdictional bases will continue to be used to affect interdictions of [WMD materiel] for the conceivable future’.⁶¹ The next section [7.2.5] examines how since around 2004, international legal scholars have expressed divergent views on the implications of Resolution 1540 on the powers of States interdict vessels suspected of transporting WMD materiel for terrorist purposes across the various UNCLOS maritime zones.

[7.2.5] Analysis of the legality of WMD interdictions across the UNCLOS maritime jurisdictional zones

This section analyses the legality under UNCLOS of the WMD interdiction measures outlined in the Interdiction Principles, in the absence of formal agreement between the “interdicting” coastal (or other) state and the flag state of the vessel suspected of illicitly trafficking WMD materiel. States noted to “support” the PSI (and which are not parties to the PSI bilateral ship boarding agreements discussed in [7.2.7]) have not formally stated their interpretations of UNCLOS regarding WMD interdictions – but as [7.2.6] explains, have only expressed their (political) “support” for the vaguely-stated Interdiction Principles. As the publicly-reported WMD interdictions noted in [7.2.1] have all taken place with the consent of flag states and/or vessel owners, and have not (as at 1 October 2013) been challenged in international bodies such as ITLOS or the ICJ, the contending scholarly analyses reviewed below are the best available indicators of the legality of WMD interdictions under UNCLOS. As explained below, these academic analyses have expressed what this Study terms “restrictive” and “liberal” views of UNCLOS. As noted in [1.7], this Study is the first to specifically articulate these two contending views amongst international legal scholars.

[7.2.5.1] Legality of WMD interdictions in internal waters and territorial seas

Paragraph 4(d) of the Interdiction Principles discuss the taking of ‘appropriate actions’ to stop and/or search within (inter alia)⁶² their territorial seas vessels that are reasonably suspected of carrying WMD materiel to or from states or non-state actors of proliferation concern, and to

⁶¹ Guilfoyle, above n 31, 35

⁶² Paragraph 4(d) of the Interdiction Principles also mention such actions taking place within the contiguous zone – with [7.2.5.2] analysing the legality of such actions

seize such cargoes that are identified'. As [6.2.3.2] noted, UNCLOS Article 19(2) provides that: 'Passage of a foreign ship shall be considered to be prejudicial to the peace, good order or security of the coastal State *if in the territorial sea* it engages in ... (inter alia) (a) any *threat* or use of force against the sovereignty, territorial integrity or political independence of the coastal State, or in *any other manner in violation of the principles of international law* embodied in the UN Charter' [Emphasis added]. It has been noted that delineation of a specific list of "non-innocent" activities in UNCLOS Article 19(2) was intended to increase objectivity, and reduce subjectivity, for coastal state determinations about when the passage of foreign vessels within their territorial sea will be considered "non-innocent".⁶³ However since the announcement of the PSI, international legal scholars have been divided on whether the "non-innocent" activities under UNCLOS Article 19(2) should be understood as being an exhaustive "once-and-for-all" list - or a generalised description providing guidance - of activities causing a foreign vessel's passage to be "non-innocent".

Scholars favouring a restrictive view of UNCLOS hold that its text should be interpreted strictly according to the views expressed within the UNCLOS III negotiations; and characterise the UNCLOS innocent passage provisions as safeguarding freedoms of navigation from arbitrary coastal state interference – described as "hard-won" international legal certainties and norms.⁶⁴ Such scholars also point out that the United States and others have traditionally opposed the development of "prohibitive" interpretations of UNCLOS, instead preferring interpretations that maximise freedom of navigation.⁶⁵ Proceeding from this basis, Logan argues that suspected shipments of WMD materiel would not "fit" within any of the "non-innocent" activities specified in UNCLOS Article 19(2).⁶⁶

Similarly, Guilfoyle argues that coastal states could only interdict suspected WMD shipments where the presence of such WMD materiel constituted a *direct threat* to that coastal state –

⁶³ Allen, above n 6, 114 - 115

⁶⁴ In addition to the studies discussed under this section, see also Patricia Kwast 'Maritime Interdiction of Weapons of Mass Destruction in an International Legal Perspective' (2007) *Netherlands Yearbook of International Law*, 177 – 181; and Mark Valencia 'Is the PSI Really the Cornerstone of a New International Norm' (2006) 59(4) *Naval War College Review*, 122 – 130

⁶⁵ Devon Chaffee 'Freedom or Force on the High Seas? Arms Interdiction and International Law' (June 2004) 12(3) *Science for Democratic Action*, at 1–10, cited in Song, above n 11, 113

⁶⁶ Logan, above n 9, 259. Logan discusses the possibility of amending UNCLOS – specifically Articles 19 and 110 – to allow interdictions of unauthorised shipments of WMD materiel. In the interim however, he suggests the most expedient route around the PSI would be to conclude more formalised international agreements (similar to those already concluded by the US with key registry states under the PSI).

rather than another State against which such materials might be used at some point in the future – arguing that ‘... it is hard to see that a latent threat in the vessel’s hold, destined elsewhere, has any “external” manifestation capable of affecting the character of [innocent] passage’.⁶⁷ Support for this restrictive view can be found in the ICJ’s conclusion in the *Corfu Channel* case – which held that the “innocence” of the vessel’s passage turns on the nature of the passage – not the vessel’s end motive.⁶⁸ He similarly contends the presence of “delivery system components” would not render a foreign vessel’s transit non-innocent, arguing that ‘... an unassembled Scud missile without a payload is not, in itself, threatening. The “prejudice” it may represent to [another State’s] security is heavily contingent on its intended end use: a “non-State actor” could be interested in it for scrap metal or as an exhibit’.⁶⁹

Proponents of the restrictive view have distinguished the *national* focus of the references in UNCLOS Article 19(2)(a) to the ‘sovereignty, territorial integrity or political independence of the coastal State’ from Resolution 1540’s references to *international* peace and security; and therefore dismiss arguments that if the maritime trafficking of WMD threatens *international* peace and security, it must also threaten national security as unsatisfactory, relying on an “indirect threat” to meet a “direct nexus” requirement.⁷⁰ Such scholars have also pointed out that other UNCLOS provisions restrict coastal states from preventing the passage of nuclear-powered vessels. These provisions include Article 23,⁷¹ which specifically recognises the innocent passage rights of vessels, and Article 24,⁷² which prevents coastal States from hampering the innocent passage of foreign ships in a discriminatory manner.⁷³ They also regard UNCLOS Article 27(1)⁷⁴ – which provides that the criminal jurisdiction of coastal States ‘should not’ be exercised on board “laterally transiting” foreign vessels except *inter alia* (a) if the consequences of the crime extend to the coastal State; (b) if the crime is of a kind to disturb

⁶⁷ Guilfoyle, above n 31, 16 - 17 – who also points out that UNCLOS Article 19(2) provides ‘passage shall take place in accordance with UNCLOS and other rules of international law’. Similarly Garvey, above n 38, 131 argues that any “prejudice” to international peace and security by the presence of WMD materiel aboard a vessel transiting the Territorial Sea should be determined by reference its intended use at the point of its destination, not transit

⁶⁸ *Corfu Channel Case (UK v Albania)* (Merits) [1949] ICJ Rep 4; Noted in Allen, above n 6, 115 and Natalie Klein *Maritime Security and the Law of the Sea* Oxford Monographs in International Law (Oxford University Press, 2011), 263

⁶⁹ Guilfoyle, above n 31, 16

⁷⁰ Guilfoyle, above n 31, 16

⁷¹ ‘Foreign nuclear-powered ships and ships carrying nuclear or other inherently dangerous or noxious substances’

⁷² ‘Duties of the coastal State’

⁷³ See for example Valencia, above n 64, 124 – who cites this as one reason for the PSI being at odds with UNCLOS

⁷⁴ ‘Criminal jurisdiction on board a foreign ship’

the peace of the country or the good order of the territorial sea’ - as a *mandatory* prohibition on the powers of coastal states to interdict laterally transiting foreign vessels.⁷⁵ By contrast, as discussed below, those favouring a liberal view of UNCLOS regard the ‘should not’ within Article 27(1) as only a *hortatory* restriction.⁷⁶

By contrast, scholars favouring a liberal view of UNCLOS argue that because it would be politically challenging to amend,⁷⁷ UNCLOS should be interpreted flexibly and contemporaneously,⁷⁸ taking account of post-9/11 international security challenges.⁷⁹ Liberal view proponents argue that whilst Resolution 1540 did not specifically authorise interdictions, through affirming the threat to international peace and security posed by the proliferation of WMD amongst non-state actors, it nevertheless adds justification to coastal state interdictions of suspected shipments of WMD materiel under UNCLOS Article 19(2)(a). For example, Allen opines that whilst none of the travaux préparatoires from the UNCLOS III negotiations suggested that threats to *third* states were considered to be “prejudicial” to the security of the coastal state during the drafting of UNCLOS Article 19, Resolution 1540 helps address this uncertainty, by giving rise to a presumption that shipments of WMD materiel to non-state actors threatens international peace and security.⁸⁰ He further reasons that whilst the 1989 USA/USSR Joint Statement on Uniform Acceptance of Rules of International Law Governing Innocent Passage⁸¹ (frequently cited as an authoritative statement on the practical meaning of UNCLOS Article 19) did not address situations where Security Council resolutions are involved, arguments expressed by Professor Alfred Soons that ‘... it would seem beyond doubt that the coastal state would not be acting unlawfully if it took action against foreign ships violating a [Security Council embargo] while they are in innocent passage or transit passage through an international strait’⁸² help justify coastal state interdictions of laterally transiting vessels suspected of

⁷⁵ Guilfoyle, above n 31, 6

⁷⁶ Allen, above n 6, 114 - 115

⁷⁷ See for example David Freestone and Alex Oude Elferink ‘Flexibility and Innovation in the Law of the Sea – Will the LOS Amendment Procedures Ever be Used?’ in Alex Oude Elferink (ed) *Stability and Change in the Law of the Sea Convention* (Martinus Nijhoff, 2005)

⁷⁸ For instance - Klein, above n 68, 325 whilst not specifically favouring the restrictive or liberal view nevertheless argues for greater flexibility in understandings of the law of the sea

⁷⁹ See for example Logan, above n 9, 271 - 272

⁸⁰ Allen, above n 6, 163

⁸¹ Union of Soviet Socialist Republics-US: Joint Statement with Attached Uniform Interpretation of Rules of International Law Governing Innocent Passage (Union of Soviet Socialist Republics-US) (signed at Jackson Hole, Wyoming, 23 September 1989) 28 ILM 1444

⁸² Alfred Soons ‘Enforcing the Economic Embargo at Sea’ in Vera Gowlland-Debbas (ed) *United Nations Sanctions and International Law* (Kluwer Law International, 2001), 307 - 324

transporting WMD materiel to non-state actors.⁸³ Following a similar line of reasoning, Song argues the innocent passage rights of foreign-flagged vessels are “conditioned” on the peaceful uses of the cargoes carried within the vessel where there are reasonable grounds for believing such materials will be used for non-peaceful purposes.⁸⁴ Likewise, Joyner regards Article 19(2)(a) as being ‘... wide enough to include threats of force against states other than the coastal state’ and could therefore enable coastal states to interdict suspected shipments of WMD materiel laterally transiting their territorial sea en route to third states.⁸⁵ In relation to UNCLOS Article 27 (discussed above), Allen argues that the question of “innocence” does not turn on a violation of the laws of the coastal state, with such a violation being neither necessary nor sufficient to render a vessel’s passage non-innocent.⁸⁶

The legality of the interdiction measures alluded to in the Interdiction Principles has neither been challenged nor adjudicated at ITLOS or the ICJ since the announcement of the PSI in 2003.⁸⁷ However several post-9/11 UN resolutions and reports which have recognised the increasingly inter-dependent nature of international security, and the transnational nature of the threat of contemporary terrorism, lend support to the liberal view. In 2003, Resolution 1456 recognised that ‘it has become easier, *in an increasingly globalized world*, for terrorists to exploit sophisticated technology, communications and resources for their criminal objectives’ [emphasis added]; and ‘that terrorism can only be defeated ... by a sustained comprehensive approach involving the active participation and collaboration of *all* States, international and regional organizations, and by redoubled efforts at the national level’.⁸⁸ [Emphasis added] The 2004 UN *High Level Panel Report on Threats, Challenges and Changes* recognised the international and inter-dependent nature of 21st century security when noting that ‘Today’s threats recognize no national boundaries, are connected, and must be addressed at the global and regional as well as the national levels. No State, no matter how powerful, can by its own

⁸³ Allen, above n 6, 163

⁸⁴ Song, above n 11, 117

⁸⁵ Joyner, above n 53, 529, 536. Joyner cited with approval Robin Churchill and Vaughan Lowe *The Law of the Sea* (Manchester University Press, 3rd ed, 1999), 85; Allen, above n 6, 166 also makes similar conclusions

⁸⁶ Allen, above n 6, 114 - 115

⁸⁷ Donald Rothwell ‘The Proliferation Security Initiative: Amending the Convention on the Law of the Sea by Stealth?’ in David Caron and Harry Scheiber (eds) *Oceans in the Nuclear Age: Legacies and Risks* (Martinus Nijhoff, 2010), 286

⁸⁸ UNSC Res 1456 (20 January 2003) UN Doc S/RES/1456, Preamble re-affirmed (inter alia) that ‘(i) it has become easier, *in an increasingly globalized world*, for terrorists to exploit sophisticated technology, communications and resources for their criminal objectives’ [emphasis added]; and (ii) ‘that terrorism can only be defeated, in accordance with the [UN] Charter and international law, by a sustained comprehensive approach involving the active participation and collaboration of all States, international and regional organizations, and by redoubled efforts at the national level’.

efforts alone make itself invulnerable to today's threats. And it cannot be assumed that every State will always be able, or willing, to meet its responsibility to protect its own peoples and not to harm its neighbours'.⁸⁹ The UN General Assembly's 2005 *In Larger Freedom* Report, which recognised that '... catastrophic terrorism on one side of the globe, for example an attack against a major financial centre in a rich country, could affect the development prospects of millions on the other by causing a major economic downturn and plunging millions into poverty' and furthermore that '... a nuclear terrorist attack on the United States or Europe would have devastating effects on the whole world'.⁹⁰ The UNGA's recognition of the potential impact of terrorist attacks on the inter-dependent global economy stand in contrast to the strict distinctions between national and *international* favoured by proponents of the restrictive view noted above.⁹¹

If a coastal state determined the passage of a foreign vessel to be non-innocent on the basis of it being suspected of transporting WMD materiel for terrorist purposes, UNCLOS Article 25(1) would enable the coastal state to take the 'necessary steps to prevent such passage' – notwithstanding that as [6.2.3.2] explained, UNCLOS is silent on what such 'necessary steps' might entail.

[7.2.5.2] Legality of WMD interdictions within contiguous zones

As noted in [7.2.3], Paragraph 4(d) of the Interdiction Principles also mentions PSI participants taking 'appropriate actions' to interdict suspected shipments of WMD materiel within their contiguous zones. UNCLOS Article 33(1) provides that within the contiguous zone coastal states may 'exercise the necessary control' to (a) 'prevent infringement of its customs, immigration⁹² laws and regulations within its territory or territorial sea' and (b) 'punish infringements of such laws and regulations committed within its territory or territorial sea'. The powers of coastal states to interdict foreign vessels within their contiguous zones to safeguard their security interests are generally accepted to be limited, with UNCLOS Article

⁸⁹ United Nations *A More Secure World: Our Shared Responsibility* Report of the Secretary-General High-level Panel on Threats, Challenges and Change GA 59th session, Agenda Item 55 UN Doc A/59/565 (2 December 2004) at 11

⁹⁰ United Nations *In Larger Freedom: Towards Development, Security and Human Rights For All* – Report of the Secretary-General GA 59th session, Agenda Item 55 UN Doc A/59/2005 (21 March 2005), paras 16 and 80

⁹¹ Guilfoyle, above n 31, 16 - 17

⁹² Whilst UNCLOS Article 33 also covers fiscal and sanitary laws and regulations, these are not relevant for the present analysis

33(a) applying only to “inward-bound” ships,⁹³ and that powers to ‘exercise the necessary control’ are limited to inspections and warnings rather than the apprehension of such vessels. Coastal states are held to have greater interdiction powers under UNCLOS Article 33(b) over “outward-bound” ships, because an offence would have already been committed within the coastal state’s territory or territorial sea.⁹⁴ Kaye points out that ‘Whether ‘prevention’ could be stretched to permit a boarding is a moot point, but it seems clear that such a boarding could not lead to the arrest of a vessel and its crew without the ship having entered the territorial sea at some point’.⁹⁵

Scholars favouring both restrictive⁹⁶ and liberal⁹⁷ views of UNCLOS concur that UNCLOS does not enable coastal states to interdict suspected WMD materiel shipments within their contiguous zones. Nevertheless, with the broadening of concepts of security over recent years beyond primarily military threats when UNCLOS was negotiated to contemporary times where “security” is understood to also include illegal immigration, drug smuggling, serious pollution and acts of terrorism, there might be cause for the long-held views to be re-visited.⁹⁸ Similarly to the liberal view of UNCLOS Article 19(2)(a) discussed above in [7.5.2.2], a liberal view of UNCLOS Article 33 might hold Resolution 1540 to add justification to coastal state interdictions of suspected shipments of WMD materiel involving non-state actors on the basis of ‘exercising the control necessary to prevent infringements of its (inter alia) customs laws and regulations’. However it appears there would need to be a “direct nexus” between the shipment of WMD materiel and the security of the coastal state for UNCLOS Article 33 to apply – that is, a vessel being destined towards, or away from, the coastal state – as opposed to a vessel that is laterally transiting the contiguous zone in question.

⁹³ That is, ships that are heading “inward” towards the coastal state’s territory or Territorial Sea

⁹⁴ Ivan Shearer ‘Problems of Jurisdiction and Law Enforcement Against Delinquent Vessels’ (1986) 35 *International and Comparative Law Quarterly*, 330; Cited in Allen, above n 6, 116 - 117.

⁹⁵ Stuart Kaye ‘Interdiction and Boarding of Vessels at Sea: New Developments and Old problems’ in Rupert Herbert-Burns, Sam Bateman and Peter Lehr (eds) *Lloyd’s MIU Handbook of Maritime Security* (CRC Press, 2009), 204

⁹⁶ For example, Logan, above n 9, 266 – who argues that the transport of WMD materiel would not readily fall within any of the four categories of activity specified in Article 33 of UNCLOS

⁹⁷ Allen, above n 6, 116 – 117

⁹⁸ Klein, above n 68, 4 – 11 provides a comprehensive overview on how the concept of security globally, and maritime security specifically, has broadened over the last two decades following the end of the Cold War

[7.2.5.3] **Legality of WMD interdictions on the high seas**

Paragraph 4(b) of the Interdiction Principles mention participants giving consideration to boarding and searching any vessel flying their flag in ‘in areas beyond the territorial seas of any other state’. As outlined below, whilst UNCLOS does not constrain the ability of flag states to allow other States to board their vessels, scholars have also analysed the legality of WMD interdictions involving vessels flagged to “non-consenting” states which do not “support” the PSI.

As noted in [6.2.3.3], UNCLOS recognises the rights of all States to sail their ships on the high seas.⁹⁹ UNCLOS Article 88¹⁰⁰ states that the high seas shall be ‘reserved’ for ‘peaceful purposes’, but provides no guidance on what ‘peaceful purposes’ entail. UNCLOS Article 92(1) codifies the rule from the *SS Lotus* (1927) case (which was discussed in [6.2.3.1]) by providing (inter alia) that on the high seas ‘... ships shall sail under the flag of one state only and, save in exceptional cases expressly provided for in international treaties or in [UNCLOS], shall be subject to its exclusive jurisdiction on the high seas’. Finally, UNCLOS Article 110 provides that ‘... except where acts of interference derive from powers conferred by treaty’, foreign ships shall not be subject to interdiction unless the engaged in piracy, the slave trade, unauthorised broadcasting, or the vessel is stateless’. Scholarly opinion has been divided on the extent to which the vaguely-worded UNCLOS high seas provisions allow States to interdict vessels suspected of transporting WMD materiel to non-state actors.

Following a similar approach to the restrictive view of the UNCLOS innocent passage provisions noted in [7.3.2.2], scholars favouring the restrictive view regard the reference to ‘peaceful purposes’ in Article 88 as limited to prohibiting “non-peaceful” activities *on* the high seas (for example the actual detonation of a WMD), rather than the maritime shipment of WMD materiel *across* the high seas. For example, Valencia regards forcible interdictions of suspected shipments of WMD materiel on the high seas as possibly being “non-peaceful” activities offending the long-enduring freedom of navigation on the high seas.¹⁰¹ Along similar lines, Logan regards UNCLOS Article 92 as prohibiting interdictions without the express consent of the vessel’s flag state, and views Article 110 as containing an *exhaustive* list of exceptions to

⁹⁹ UNCLOS Article 90

¹⁰⁰ ‘Reservation of the High Seas for peaceful purposes’

¹⁰¹ See for example Valencia, above n 64, 126 – 127

the sole jurisdiction of the flag state.¹⁰² Although none of the studies by scholars favouring a restrictive view of UNCLOS have specifically addressed the point, the restrictive view would presumably regard the reference to ‘treaties’ in Article 110 as only meaning formalised treaties, rather than informal political agreements such as the PSI.

In contrast, proponents of the liberal view have regarded Resolution 1540 as influencing interpretations of UNCLOS Article 88. Song argues that since Resolution 1540 affirmed the proliferation of WMD materiel constitutes a threat to international peace and security, and has called upon all states to cooperate to address this threat, together with UNCLOS Articles 88, 300,¹⁰³ and 301,¹⁰⁴ Resolution 1540 ‘... can be cited as a defence of any [WMD] interdiction undertaken within the EEZ’,¹⁰⁵ on the grounds that ‘... any use of the sea for a purpose the Security Council has deemed to pose a threat to international peace and security may be deemed to be inconsistent with the reservation of the seas for peaceful purposes’.¹⁰⁶ Such scholars also characterise the four exceptions to the freedom of navigation on the high seas in Article 110 as indicative rather than exhaustive. For example, Joyner argues that through the inclusion of the phrase ‘except when acts of interference derive from powers conferred by treaty’ within Article 110, the drafters of UNCLOS intended to allow scope for states to conclude further agreements allowing for the interdiction of vessels.¹⁰⁷ Byers regards the interdiction measures alluded to in the Interdiction Principles as consistent with UNCLOS, noting that UNCLOS does not stop flag States authorising other States to board and search their vessels on the high seas,¹⁰⁸ a conclusion shared by Becker.¹⁰⁹ Similarly, Allen opines that ‘... the flag State may authorise interference or even waive primary jurisdiction over its vessels by agreement. Such agreement may take the form of standing treaties or ad hoc agreement by exchange of notes’ ... and furthermore ‘... although some sources limit the term “treaty” to written agreement between states, there is no reason to conclude that Article 110 was meant to exclude oral, ad hoc agreements between states, or Security Council Resolutions. Oral international agreements,

¹⁰² See for example Logan, above n 9, 268

¹⁰³ ‘Good faith and abuse of rights’

¹⁰⁴ ‘Peaceful uses of the seas’

¹⁰⁵ Song, above n 11, 118

¹⁰⁶ Allen, above n 6, 98

¹⁰⁷ Joyner, above n 53, 536 - 537

¹⁰⁸ Michael Byers ‘Policing the High Seas: The Proliferation Security Initiative’ (2004) 98 *American Journal of International Law*, 526

¹⁰⁹ Becker, above n 38, 211 – who somewhat cautiously concluded that in certain ‘well-defined situations’, where coastal and flag states can take advantage of their jurisdictional rights under UNCLOS, PSI interdictions would be likely to have a solid authority under international law as a means of law enforcement

while rare, can be valid and binding “treaties”.¹¹⁰ On this point, Article 311(3)¹¹¹ recognises the ability of States Parties to UNCLOS to conclude agreements that modify the operation of UNCLOS applicable to the relations between them.¹¹²

[7.2.5.4] Legality of WMD interdictions in straits used for international navigation

[6.2.3.4] overviewed the UNCLOS straits transit regime provisions and the (limited) measures that “bordering states”¹¹³ may take against foreign vessels laterally transiting international straits. Although the Interdiction Principles do not mention WMD interdictions within international straits, the legality of WMD interdictions within international straits has been subject to consideration by international legal scholars, resulting in restrictive and liberal views of UNCLOS.

Proponents of the restrictive view emphasise both the “non-discriminatory” character of the UNCLOS transit passage regime and its reference to the ‘freedom of navigation’ in Article 38(2) through international straits as prohibiting “bordering states” from interdicting suspected shipments of WMD materiel aboard vessels laterally transiting international straits.¹¹⁴ They also regard the terms ‘any threat or use of force against the sovereignty, territorial integrity or political independence of bordering states, or in any other manner in violation of the principles of international law embodied in the UN Charter’ within Article 39 as being limited to acts that have a “direct nexus” to peace and security of the bordering state – as opposed to other states that the vessel may be transiting towards.¹¹⁵

By contrast proponents of the liberal view have argued that UNCLOS enables “bordering states” to interdict suspected WMD shipments passing through international straits. For example, Song argues whilst UNCLOS specifies rights of innocent passage should not be

¹¹⁰ Allen, above n 6, 121

¹¹¹ ‘Relation to other conventions and international agreements’

¹¹² UNCLOS Article 311(3) provides that ‘Two or more States Parties may conclude agreements modifying or suspending the operation of provisions of [UNCLOS], applicable solely to the relations between them, provided that such agreements do not relate to a provision derogation from which is incompatible with the effective execution of the object and purpose of [UNCLOS], and provided further that such agreements shall not affect the application of the basic principles embodied herein, and that the provisions of such agreements do not affect the enjoyment by other States Parties of their rights or the performance of their obligations under [UNCLOS]’.

¹¹³ This term is used for the sake of brevity instead of ‘states surrounding international straits’ as used in UNCLOS Article 37

¹¹⁴ See for example Garvey, above n 38, 131 - 132; Logan, above n 9, 264

¹¹⁵ Guilfoyle, above n 31, 16

suspended¹¹⁶, nor the rights of transit passage of foreign vessels impeded¹¹⁷ through international straits, UNCLOS allows “bordering states” such as Singapore to interdict suspected WMD shipments because Article 34(1) provides that straits transit passage ‘should not’ in other respects affect the legal status of the waters forming such straits or the exercise, by the states bordering the straits, of their sovereignty or jurisdiction over such waters.¹¹⁸

[7.2.5.5] Summary: Legality of WMD interdictions under UNCLOS

In summary, the above sections have outlined how the vaguely-worded provisions of UNCLOS may be interpreted restrictively or liberally. On balance, the restrictive view could be criticised for taking a literal, “once and for all” interpretation of UNCLOS that better reflects the Cold War national and international security priorities of 1982 (where possession of WMD was strictly controlled, and the maintenance of unfettered freedom of navigation for the opposing superpowers were prime concerns) rather than those of the post-9/11 security environment where as Chapter 2 explained, transnational terrorism presents a very serious threat. The steadfast distinction between national and international security underpinning the restrictive view¹¹⁹ could also be criticised as overlooking both the transnational threat of contemporary post 9/11 terrorism to international security as outlined in [2.7], the ever-increasing interdependence of the global economy, and the potential “contagion” that could result from a significant disruption to significant “nodes” within the maritime system such as “mega-ports” and navigational chokepoints as outlined in [3.2].

Over recent years international legal scholars have called for UNCLOS to be interpreted with greater flexibility. For instance, Allen argues that ‘... it is important to bear in mind that [UNCLOS] was never intended to provide an exhaustive international code covering all aspects of [international] maritime law. Rather, it provides an overarching framework, within which other international agreements provide more detailed provisions, which can be adapted to meet new or changed problems’.¹²⁰ More recently, Klein has argued for greater flexibility in understanding the law of the sea in the post-9/11 maritime security context, noting that the

¹¹⁶ UNCLOS Article 38

¹¹⁷ UNCLOS Article 45

¹¹⁸ Song, above n 11, 116

¹¹⁹ See Guilfoyle, above n 31, 16 – 17

¹²⁰ Allen, above n 6, 193

authority of the Security Council might provide an avenue to trump existing law of the sea principles relating to the sovereign immunity of vessels.¹²¹

The liberal view of UNCLOS better enables coastal and other states to interdict vessels suspected of illicitly transporting WMD materiel. The liberal view might be further supported by Article 31 of the Vienna Convention on the Law of Treaties (VCLT),¹²² which provides (inter alia) that:

‘(1) A treaty shall be interpreted in good faith with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.

...

(3) There shall be taken into account, together with the context:

- (a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;
- (b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;
- (c) any relevant rules of international law applicable in the relations between the parties’

The references to ‘any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions’ within VCLT Article 31(3)(a), and to ‘any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation’ in VCLT Article 31 (3)(b) might be taken to include informal, ad-hoc agreements between States to allow other “PSI participants” to board and inspect their vessels as mentioned in the Interdiction Principles.¹²³ The ‘relevant rules of international law’ noted in VCLT Article 31(3)(c) could include the obligations under Resolution 1540.

Whilst the liberal view of UNCLOS better enables States to interdict suspected WMD shipments, as at 1 October 2013 none of the publicly-reported WMD interdictions discussed in

¹²¹ Klein, above n 68, 325

¹²² *Vienna Convention on the Law of Treaties*, opened for signature 23 May 1969, 1155 UNTS 331 (entered into force 27 January 1980) Article 31 ‘General rule of interpretation of treaties’

¹²³ As noted in [7.2.3], paragraph 4(c) of the Interdiction Principles mentions PSI participants indicate they will ‘... 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’.

[7.2.1] have as yet tested how the liberal or restrictive views of UNCLOS might play out in practice. Therefore, it is considered preferable have in place specific agreements between States about when, and how, WMD interdictions should occur. The following section [7.2.6] critically considers what “support” for the vaguely-worded Interdiction Principles actually entails, and explains it is very challenging to assess the extent to which the PSI has become “accepted” internationally. This highlights the importance of developing more specific agreements between States regarding the maritime interdiction of WMD materiel – with [7.2.7] examining the PSI bilateral ship boarding agreements which have been progressively formalised between the US and major shipping registry states since 2004, and [7.2.9] examining the “WMD interdiction aspects” of the 2005 SUA Convention.

[7.2.6] International “support” for the PSI Interdiction Principles

The PSI has been commonly referred to as ‘an activity, not an organization’, with its flexible, non-institutional character being emphasised by its proponents. As at 1 October 2013, the US State Department listed 49 international workshops and naval exercises, and 26 meetings of operational experts having been held at a range of locations since the commencement of the PSI in early 2003.¹²⁴ Since its inception in May 2003, the United States has progressively publicised the States that “support” or more recently, “endorse” the PSI – with Thailand became the 102nd state¹²⁵ to “endorse” the PSI on 19 November 2012.¹²⁶

¹²⁴ United States State Department Proliferation Security Initiative Calendar of Events <http://www.state.gov/t/isn/c27700.htm> Accessed 1 October 2013

¹²⁵ The US State Department lists PSI Participants as: Afghanistan, Albania, Andorra, Angola, Antigua and Barbuda, Argentina, Armenia, Australia, Austria, Azerbaijan, The Bahamas, Bahrain, Belarus, Belgium, Belize, Bosnia, Brunei Darussalam, Bulgaria, Cambodia, Canada, Chile, Colombia, Croatia, Cyprus, Czech Republic, Denmark, Djibouti, Dominican Republic, El Salvador, Estonia, Fiji, Finland, France, Georgia, Germany, Greece, Holy See, Honduras, Hungary, Iceland, Iraq, Ireland, Israel, Italy, Japan, Jordan, Kazakhstan, Korea, Republic of, Kyrgyzstan, Kuwait, Latvia, Liberia, Libya, Liechtenstein, Lithuania, Luxembourg, Macedonia, Malta, Marshall Islands, Moldova, Mongolia, Montenegro, Morocco, The Netherlands, New Zealand, Norway, Oman, Panama, Papua New Guinea, Paraguay, Philippines, Poland, Portugal, Qatar, Romania, Russia, Samoa, Saudi Arabia, San Marino, Serbia, Singapore, Slovakia, Slovenia, Spain, Sri Lanka, St. Vincent and the Grenadines, Sweden, Switzerland, Tajikistan, Thailand, Tunisia, Turkey, Turkmenistan, Ukraine, United Arab Emirates, United Kingdom, United States, Uzbekistan, Vanuatu and Yemen <http://www.state.gov/t/isn/c27732.htm> US State Department Bureau of International Security and Non-proliferation ‘Proliferation Security Initiative Participants’, 21 May 2013; Accessed 1 October 2013. This list is also included in Appendix H.

¹²⁶ US State Department Media Note ‘Thailand Endorses the Proliferation Security Initiative’ <http://www.state.gov/r/pa/prs/ps/2012/11/200849.htm> 19 November 2012 Accessed 1 October 2013

However it is difficult to ascertain what “support” for the PSI actually entails, with the ‘PSI FAQs’ addressing the question of how States might “participate” in the PSI quite vaguely.¹²⁷ “Support” for the PSI could conceivably encompass several positions or actions by States, including (in descending order of the seriousness of the commitment by “supporting” states) actively participating in interdictions; providing assistance to the conduct of interdictions; not actively opposing interdictions; or not criticising interdictions. However as “participants” only express their political support for the PSI, rather than providing their formal legal commitment to treaty obligations, it has been argued that such “support” for the PSI could ‘evaporate in a flash’.¹²⁸

Relevantly, several key maritime States are not listed as “participants” nor supporters of the PSI - including China, most Middle Eastern states, India, Indonesia and Malaysia – which have either resisted joining the PSI, or expressed hostility to its expansion.¹²⁹ China has expressed concerns about the informal nature of the PSI circumventing the UN’s multilateral processes.¹³⁰ North Korea has been particularly hostile to the formation of the PSI – with a radio broadcast on 19 June 2003 warning that ‘[t]he U.S. imperialists and their following forces should clearly bear in mind that if they provoke us, they will not be able to escape a resolute and merciless retaliation’ and that North Korea viewed the PSI as a strategy of blockading ‘with intention of isolating and crushing’ North Korea, which it viewed as ‘... a grave violation of sovereignty and a violent infringement of international law for one specific country to blabber about unreasonable pretexts and impose containment and pressure against other countries and to inspect and restrict other countries’ vessels and planes operating in accordance to procedures

¹²⁷ Fact Sheet, U.S. Department of State, Bureau of Non-proliferation, Proliferation Security Initiative Frequently Asked Questions 24 May 2004, revised 22 May 2008 www.state.gov/t/isn/rls/fs/105213.htm Accessed 2 January 2010 address the question ‘How can States participate in the PSI?’ by stating: ‘A: States can become involved in the PSI in multiple ways: Endorsing the PSI and Statement of Interdiction Principles and indicating willingness to support PSI efforts; Undertaking a review and providing information on current national legal authorities to undertake interdictions at sea, in the air, on land, and indicating willingness to strengthen authorities, where appropriate; Identifying specific national “assets” that might contribute to PSI efforts (eg military and law enforcement capabilities, technical experts, legal advisors etc); Providing points of contact for PSI assistance requests and other operational activities, and establishing appropriate internal government processes to coordinate PSI response efforts; Being willing to actively participate in PSI interdiction training exercises and actual operations as opportunities arise; and Being willing to conclude relevant agreements (eg boarding arrangements) or otherwise to establish a concrete basis for cooperation with PSI efforts. Cooperation by flag, coastal or transshipment states, and states along major air shipment corridors is particularly essential to counter-proliferation efforts involving cargoes in transit’

¹²⁸ Valencia, above n 64, 124; Garvey, above n 38, 125

¹²⁹ Becker, above n 38, 164; Song, above n 11, 110 – 113

¹³⁰ Becker, above n 38, 166

set by international law', and has also stated that any interdiction of its vessels or planes under the PSI would be regarded as an 'act of war' and that it would respond accordingly.¹³¹

Perry helpfully explores two hypothetical versions of how the interdiction measures outlined in the Interdiction Principles might be applied against the vessels of non-consenting states. The first "weak version" would only involve the vessels and/or waters of PSI participants, rather than invoking the Interdiction Principles against non-participants - which he illustrates with the following scenario:

'... a security agency [of a PSI participant] would detect that members of Al Qaeda had loaded a ship in Indonesia with re-enriched plutonium. The ship, flying a Panamanian flag, would then leave port. At this point, US officials would call Panama and either ask Panama to interdict the ship or, more likely, ask that Panama permit the United States to interdict the ship. Panama would assent, and the US Navy would interdict the ship at a place and time it deemed appropriate, regardless of the ocean zone'.¹³²

Perry's 'weak version' accurately describes how four out of the five previous WMD interdictions discussed in [7.2.1] occurred. Writing along similar lines when discussing the *BBC China* interdiction, Becker opines that this incident '... could hardly have been scripted better ... as a German-flagged vessel, the *BBC China* presented an easy legal case for intervention; Germany would have had the authority to stop and search the vessel on the high seas had the ship's owner been uncooperative'.¹³³

However, Perry went on discuss scenarios where terrorists might utilise vessels flagged to states other than PSI participants, or states which might not "support" the PSI, or even be "states of proliferation concern", leading him to conclude (albeit in 2006) that '... as a counter-proliferation drag-net, the PSI has some rather large holes'.¹³⁴ He discusses an alternative "strong version" of the PSI where PSI participants might forcibly interdict suspected WMD shipments, and argued this "strong version" more accurately reflects the political thinking of the PSI's key founders including former US Under-Secretary of State for Arms Control and

¹³¹ Song, above n 11, 111

¹³² Timothy Perry 'Blurring the Ocean Zones: The Effect of the Proliferation Security Initiative on the Customary International Law of the Sea' (2006) 37 *Ocean Development and International Law*, 38 - 39

¹³³ Becker, above n 38, 142

¹³⁴ Perry, above n 132, 39

International Security John Bolton. Perry concluded that ‘... the PSI’s resemblance to the use of ambiguity as a weapon of war suggests the strong version’.¹³⁵ Garvey (who as noted in [7.2.5] favours the restrictive view of UNCLOS), argues that forcible, non-consensual interdictions would not accord with UNCLOS or customary international law.¹³⁶

Since 9/11, numerous international legal scholars have opined that in the absence of consent from the flag states of suspected terrorist vessels or a Security Council resolution specifically authorising interdictions,¹³⁷ the only international legal basis for interdicting vessels suspected of proliferating WMD materiel amongst non-state actors might be as a self-defence measure under Article 51 of the UN Charter,¹³⁸ or alternatively on the basis of the doctrine of Necessity – which are examined in Chapter 8.

The next section [7.2.7] examines the PSI bilateral ship-boarding agreements that have been formalised between the United States and “key registry” states progressively since 2004. It shows that whilst these agreements have added greater certainty to the processes for interdicting vessels suspected of illicitly transporting WMD materiel over the generally-stated PSI Interdiction Principles, several subjective and uncertain aspects of these agreements have been identified.

[7.2.7] The PSI Bilateral Ship Boarding Agreements

In addition to reportedly gaining the political ‘support’ of participants, the counter-proliferation objectives of the PSI have been formalised through ship-boarding agreements progressively concluded since 2004 between the United States and nine States with significant numbers of ships registered in their jurisdiction. Such agreements have been formalised between the United

¹³⁵ Perry, above n 132, 39

¹³⁶ Garvey, above n 38, 136

¹³⁷ As opposed to the weaker call for states to take “cooperative action” in para 10 of Resolution 1540 (noted in [7.2.4] above): Song, above n 11, 113

¹³⁸ [8.1] notes at least ten international legal scholars that have acknowledged this possibility following 9/11

States and Liberia,¹³⁹ Panama,¹⁴⁰ the Marshall Islands,¹⁴¹ Croatia,¹⁴² Cyprus,¹⁴³ Belize,¹⁴⁴ Malta,¹⁴⁵ Mongolia¹⁴⁶ and the Bahamas.¹⁴⁷ By number of vessels registered according to the most recently available statistics, Panama ranked first with 6,413 vessels. Liberia second with 2,771, Malta fourth with 1,650, Marshall Islands seventh with 1,593, the Bahamas tenth with 1,160, Cyprus thirteenth with 838, Belize 33rd with 247, Croatia 57th with 77, and Mongolia 68th with 57 vessels.¹⁴⁸ As outlined in [7.2.7.1], these ship-boarding agreements are more

¹³⁹ Agreement Between the Government of the United States of America and the Government of the Republic of Liberia Concerning Cooperation To Suppress the Proliferation of Weapons of Mass Destruction, Their Delivery Systems, and Related Materials By Sea; Signed February 11, 2004; provisionally applied from February 11, 2004; entered into force December 9, 2004. <http://www.state.gov/t/isn/trty/32403.htm> (US-Liberia Agreement)

¹⁴⁰ Amendment to the Supplementary Arrangement Between the Government of the United States of America and the Government of the Republic of Panama to the Arrangement Between the Government of the United States of America and the Government of Panama for Support and Assistance from the United States Coast Guard for the National Maritime Service of the Ministry of Government and Justice Signed May 12, 2004; provisionally applied from May 12, 2004; entered into force December 1, 2004. <http://www.state.gov/t/isn/trty/32858.htm> (2004 US – Panama Agreement). This agreement amended a previous bilateral agreement between the United States and Panama - Supplementary Arrangement Between the Government of the United States of America and the Government of the Republic of Panama to the Arrangement Between the Government of the United States of America and the Government of Panama for Support and Assistance from the United States Coast Guard for the National Maritime Service of the Ministry of Government and Justice Signed 5 February 2002, entered into force 5 February 2002 <http://www.state.gov/t/isn/trty/32859.htm> (2002 US-Panama Agreement)

¹⁴¹ Agreement Between the Government of the United States of America and the Government of the Republic of the Marshall Islands Concerning Cooperation to Suppress the Proliferation of Weapons of Mass Destruction, Their Delivery Systems, and Related Materials by Sea Signed August 13, 2004; provisionally applied from August 13, 2004; entered into force November 24, 2004. <http://www.state.gov/t/isn/trty/35237.htm> (US – Marshall Islands Agreement)

¹⁴² Agreement between the Government of the United States of America and the Government of the Republic of Croatia concerning cooperation to suppress the proliferation of weapons of mass destruction, their delivery systems, and related materials Signed June 1, 2005; entered into force March 5, 2007. <http://www.state.gov/t/isn/trty/47086.htm> (US – Croatia Agreement)

¹⁴³ Agreement Between the Government of the United States of America and the Government of the Republic of Cyprus Concerning Cooperation to Suppress the Proliferation of Weapons of Mass Destruction, Their Delivery Systems, and Related Materials By Sea Signed July 25, 2005; entered into force January 12, 2006. <http://www.state.gov/t/isn/trty/50274.htm> (US – Cyprus Agreement)

¹⁴⁴ Agreement Between the Government of the United States of America and the Government of Belize Concerning Cooperation to Suppress the Proliferation of Weapons of Mass Destruction, Their Delivery Systems, and Related Materials By Sea Signed August 4, 2005; entered into force October 19, 2005. <http://www.state.gov/t/isn/trty/50809.htm> (US – Belize Agreement)

¹⁴⁵ Agreement Between The Government Of The United States Of America And The Government Of Malta Concerning Cooperation To Suppress The Proliferation Of Weapons Of Mass Destruction, Their Delivery Systems, And Related Materials By Sea Signed March 15, 2007; entered into force December 19, 2007. <http://www.state.gov/t/isn/trty/81883.htm> (US – Malta Agreement)

¹⁴⁶ Agreement Between The Government of the United States of America and the Government Of Mongolia Concerning Cooperation to Suppress the Proliferation of Weapons of Mass Destruction, their Delivery Systems, and Related Materials By Sea Signed October 23, 2007; entered into force February 20, 2008. <http://www.state.gov/t/isn/trty/106218.htm> (US – Mongolia Agreement)

¹⁴⁷ Agreement Between the Government of the Commonwealth of the Bahamas and the Government of the United States of America Concerning Cooperation to Suppress the Proliferation of Weapons of Mass Destruction, Their Delivery Systems, and Related Materials By Sea Signed August 11, 2008; not in force. <http://www.state.gov/t/isn/trty/108223.htm> (US – Bahamas Agreement)

¹⁴⁸ CIA World Fact book - Country Comparisons: Merchant Marine (2010) <https://www.cia.gov/library/publications/the-world-factbook/rankorder/2108rank.html?countryName=Panama&countryCode=pm®ionCode=cam&rank=1#pm>.

specific in comparison to the vaguely-expressed Interdiction Principles, through defining key terms (albeit subjectively),¹⁴⁹ specifying procedures for ship boardings,¹⁵⁰ standards to govern the use of force, and dispute resolution and claims provisions. Aside from some minor differences, the ship-boarding agreements are largely similar in their format and content, with four of the agreements also including provisions for the agreements to be enforced by ‘third States’ as agreed between the state parties.

[7.2.7.1] Provisions of the PSI Bilateral Ship-boarding Agreements

Whilst the following overview is based on the US-Liberia Agreement, significant differences between the agreements (for instance timeframes for consent to board) are noted. The term ‘suspect vessel’ is defined as a vessel ‘used for commercial or private purposes in respect of which there are reasonable grounds to suspect it is engaged in proliferation by sea’. ‘Proliferation by sea’ is defined as meaning ‘the transportation by ship of [WMD], their delivery systems, and related materials to or from States or non-state actors of proliferation concern’.¹⁵¹ ‘Weapons of mass destruction (WMD)’ are defined as meaning ‘nuclear, chemical, biological and radiological weapons’ and the PSI ship boarding agreements adopt the same (arguably subjective) definition of ‘States¹⁵² or non-state actors of proliferation concern’ that is used in the Interdiction Principles - meaning ‘those countries or entities that should be subject to interdiction activities because they are or are believed to be engaged in efforts to develop or acquire WMD or their delivery systems; or trafficking (either selling, receiving, or facilitating) of WMD, their delivery systems, or related materials’. ‘Items of proliferation concern’ are defined as meaning ‘WMD, their delivery systems, and related materials’; and ‘related materials’ are loosely defined as meaning ‘materials, equipment and technology, of whatever nature or type, that are related to and destined for use in the development, production, utilization or delivery of [WMD]’.¹⁵³ However unlike the 2005 SUA Convention (discussed in

Douglas Guilfoyle *Shipping Interdiction and the Law of the Sea* (Cambridge University Press, 2009), 247 also referred to the 2008 version of the CIA World Fact book to make similar observations

¹⁴⁹ In comparison to the more objective definitions in the 2005 SUA Convention which is examined in [7.2.9]

¹⁵⁰ Including the designation of points of contact for authorising boardings, and specifying timeframes when flag State consent will be deemed to have been provided in the event of no response from the flag state

¹⁵¹ The US-Belize Agreement and the US-Bahamas Agreement both include in Article 1.1 the additional condition of ‘illicit’ transportation

¹⁵² As noted in [7.2.3.1] above, through targeting ‘states ... of proliferation concern’, the PSI bilateral ship boarding agreements could be criticised for exceeding the authority of Security Council Resolution 1540 (which only targeted non-state actors – notwithstanding that the UNSC has previously passed non-proliferation resolutions focusing on so-called ‘states of proliferation concern’ – including North Korea and Iran

¹⁵³ Article 1 of the US-Liberia Agreement

[7.2.9]), the ship-boarding agreements do not specify exceptions for legitimate dual-use materials.¹⁵⁴

The ship-boarding agreements outline procedures for the boardings of suspect vessels claiming their nationality that are located within international waters,¹⁵⁵ with such boardings are to be carried out by the ‘Security Force Officials (SFOs)’.¹⁵⁶ They also designate specific ‘Competent Authorities’ as points of contact for responding to and approving requests for boardings of suspect vessels.¹⁵⁷ Article 4(1) of the US-Liberia Agreement¹⁵⁸ provides that if the SFOs of the ‘requesting party’¹⁵⁹ encounter a suspect vessel claiming nationality of another ‘requested party’¹⁶⁰ located seaward of any State’s territorial sea, the requesting party may request,¹⁶¹ through the Competent Authority of the requested party, that it confirm the claim of nationality of the suspect vessel. If such claims of nationality are confirmed, the requested party may authorize the boarding and search of the suspect vessel, cargo and the persons found on board by SFOs of the requesting party; and if evidence of proliferation is found, authorize the SFOs of the requesting party to detain the vessel, as well as items and persons on board, pending instructions conveyed through the Competent Authority of the requested Party as to the actions the requesting Party is permitted to take concerning such items, persons and vessels.

Article 4(3) of the US-Liberia Agreement deals with responses to requests to board and inspect suspect vessels. It provides that if the nationality of a suspect vessel’ is verified, the requested party may take one of four actions within two hours of receiving such request. These options include deciding to conduct the boarding and search with its own SFOs; authorizing the boarding and search by the SFOs of the requesting party; deciding to conduct the boarding and

¹⁵⁴ Regarding the legitimate dual uses of WMD materiel, see [7.2.3.1]

¹⁵⁵ Article 1.9 of the US-Liberia Agreement defines ‘international waters’ as ‘all parts of the sea not included in the territorial seas, internal waters and archipelagic waters of a State, consistent with international law’

¹⁵⁶ Article 1.6 of the US-Liberia Agreement defines ‘Security Force Officials’ as officials of the armed forces or law enforcement agencies of the United States or Liberia. It also defines ‘Security Force vessels’ as ‘warships and other vessels of the Parties, *or of third States as may be agreed upon by the Parties*, on which Security Force Officials of either or both Parties may be embarked, clearly marked and identifiable as being on government service and authorized to that effect, including any vessel and aircraft embarked on or supporting such vessels’

¹⁵⁷ For example, Article 1(10) of the US-Liberia Agreement specifies the ‘Competent Authorities’ as the Commandant of the United States Coast Guard or his designate, and the Agent of the Commissioner of Maritime Affairs appointed under section 13 of Title 21 (the Maritime Law) of the Laws of the Republic of Liberia.

¹⁵⁸ ‘Authority to Board Suspect Vessels’

¹⁵⁹ That is, the state party initiating the request to board and inspect the suspect vessel

¹⁶⁰ That is, the state party to which the request to board and inspect is directed

¹⁶¹ Article 4(2) of the US-Liberia Agreement specifies that requests to interdict suspect vessels should contain the name of the suspect vessel; the basis for the suspicion; the geographic position of the vessel; the vessel’s IMO number if available; the vessel’s homeport; its port of origin and destination, and any other identifying information.

search together with the requesting party; or denying permission to board and search.¹⁶² If the nationality of a Suspect Vessel is not verified within two hours, the requested party may, through its Competent Authority either nevertheless authorize the boarding and search by the SFOs of the requesting party; or refute the claim of the suspect vessel to its nationality.¹⁶³ Similar provisions are included in the other ship-boarding agreements – with two hour timeframes applying for the US-Belize Agreement,¹⁶⁴ the US-Mongolia Agreement,¹⁶⁵ the US-Bahamas Agreement,¹⁶⁶ and the 2002 US-Panama Agreement;¹⁶⁷ and four hour timeframes applying for the US-Croatia Agreement,¹⁶⁸ the US-Cyprus Agreement,¹⁶⁹ the US-Malta Agreement,¹⁷⁰ the US-Marshall Islands Agreement.¹⁷¹ With the exception of the US-Croatia Agreement, the ship-boarding agreements also provide that if there is no response from the Competent Authority of the requested party within the above specified timeframes of its acknowledgment of receipt of the request, the requesting party will be deemed to have been authorized to board and inspect the suspect vessel.¹⁷²

In addition to confirming the right of visit that all States enjoy under Article 110 of UNCLOS regarding apparently “state-less” vessels,¹⁷³ the ship-boarding agreements incorporate provisions governing the use of force during ship boarding operations. The US-Liberia Agreement provides that all uses of force shall be in strict accordance with the laws of the party conducting the boarding and ‘applicable international law’, and that uses of force should be avoided ‘except when and to the degree necessary to ensure the safety of SFOs and vessels, or where SFOs are obstructed in the course of their duties’.¹⁷⁴

¹⁶² Article 4(3)(b) of the US-Liberia Agreement

¹⁶³ Article 4(3)(c) of the US-Liberia Agreement

¹⁶⁴ Article 3(c) and (e) of the US-Belize Agreement

¹⁶⁵ Article 4(3)(b) and (c) of the US-Mongolia Agreement

¹⁶⁶ Article 4(3)(b) of the US-Bahamas Agreement

¹⁶⁷ Article X(4) and (5) of the 2002 US-Panama Agreement

¹⁶⁸ Article 4(b) of the US-Croatia Agreement

¹⁶⁹ Article 4(3)(b) and (c) of the US-Cyprus Agreement

¹⁷⁰ Article 3(b) and (c) of the US-Malta Agreement

¹⁷¹ Article 4(3)(b) and (c) of the US-Marshall Islands Agreement

¹⁷² For example, Article 4(3)(d) of the US-Liberia Agreement deems such consent to board and inspect suspect vessels if no response is received within two hours, and Article 4(3)(d) of the US-Marshall Islands Agreement allows this after four hours

¹⁷³ See for example Article 4(4) of the US-Liberia Agreement

¹⁷⁴ Article 9 of the US-Liberia Agreement

Provision for the enforcement of the ship-boarding agreements by third states is included in the Liberian,¹⁷⁵ Marshall Islands,¹⁷⁶ Mongolian,¹⁷⁷ and Panamanian¹⁷⁸ ship-boarding agreements. Under these clauses, these four States agree to extend, *mutatis mutandis*, all rights concerning suspect vessels claiming their nationality under agreements to such third states as they deem appropriate.¹⁷⁹ Guilfoyle notes that in 2005 Belize was reported to be considering formalising a ship-boarding agreement with the United Kingdom modelled on the US bilateral agreements reviewed above;¹⁸⁰ however as at 1 October 2013 no such agreement has been formalised.¹⁸¹ Overall, the nine PSI ship-boarding agreements can be seen as having contributed a degree of greater certainty, albeit subjectively defined, to WMD interdiction procedures over the vaguely-expressed Interdiction Principles.

[7.2.7.2] Case study: 2011 tracking of the *MV Light* by the US Navy

Whilst the sixth reported maritime WMD trafficking attempt noted in [7.2.1] was not done for terrorist purposes, the incident is nevertheless relevant for examining how the PSI ship boarding agreements might function in practice. On 26 May 2011, the USS *McCampbell* began tracking the Belize-flagged, but North Korean-crewed, *MV Light* in international waters south of Shanghai, which was suspected of carrying missile technology from North Korea to Myanmar.¹⁸² Whilst Belize (which as [7.2.7.1] noted concluded a bilateral ship-boarding agreement with the United States in 2005) provided consent for the US Navy to board the *MV Light*, the USS *McCampbell* requested permission from the Master of the *MV Light* to board four times – which the Master refused, claiming to be carrying industrial chemicals to Bangladesh. Singapore and Malaysia reportedly gave assurances that they would detain the *MV Light* if she entered one of their ports. However before reaching Southeast Asian waters,

¹⁷⁵ US-Liberia Agreement Article 18

¹⁷⁶ US-Marshall Islands Agreement Article 18

¹⁷⁷ US-Mongolia Agreement Article 18

¹⁷⁸ US-Panama Agreement Article II

¹⁷⁹ Fabio Spadi 'Bolstering the Proliferation Security Initiative at Sea: A Comparative Analysis of Ship-Boarding as a Bilateral and Multilateral Implementing Mechanism' (2006) 75 *Nordic Journal of International Law* 249; Douglas Guilfoyle 'Maritime Interdiction of Weapons of Mass Destruction' (2007) 12 *Journal of Conflict and Security Law*, 1

¹⁸⁰ Douglas Guilfoyle *Shipping Interdiction and the Law of the Sea* (Cambridge University Press, 2009), 247

¹⁸¹ UK Foreign and Commonwealth Office Treaties Online <http://www.fco.gov.uk/en/publications-and-documents/treaties/uk-treaties-online/>; accessed 25 February 2013

¹⁸² As discussed in Note 30 above, in 2005 Myanmar was identified by former US Secretary of State Condoleezza Rice as a 'state of proliferation concern'.

the *MV Light* stopped and retraced its course back to North Korea, tracked by US surveillance aircraft.¹⁸³

Whilst from this incident it might be concluded that the PSI through the bilateral ship-boarding agreements provides a workable basis to enable interdictions, given that the *MV Light* returned to North Korea, it is plausible that political considerations (such as the desire to avoid antagonising North Korea) may well have influenced the UN Navy's decision not to forcibly interdict the *MV Light*. However the *MV Light* incident nevertheless raises the question as to the jurisdictional basis for an interdiction if the *MV Light* had been flagged to a state other than a party to a PSI ship-boarding agreement or a PSI participant. In such a situation only the liberal view of the UNCLOS high seas provisions as outlined in [7.2.5.4], or alternatively (but less certainly), Article 51 of the UN Charter, would have enabled the US Navy to interdict the *MV Light*.

[7.2.8] Assessments of the longer-term impact of the PSI

Ten years since its formation, aside from the assessments of the legality of WMD interdictions under UNCLOS as outlined in [7.2.5], assessments of the effectiveness, impact and suitability of the PSI as a means of countering the proliferation of WMD materiel amongst non-state actors have varied considerably.

Effectiveness: On first impressions the five publicly-recorded interdictions and subsequent inspections of vessels suspected of transporting WMD materiel noted in [7.2.1] might be regarded as evidence of the effectiveness of the PSI. Through contact with flag states and vessel owners, the *Ville de Virgo* (in April 2003), *BBC China* (in October 2003)¹⁸⁴ and *Athena* (October 2003) were all voluntarily directed to nearby ports for inspections. The 2011 *MV Light* incident reviewed in [7.2.7.2] might also be seen to indicate the effectiveness of arrangements put in place through the PSI ship-boarding agreements. Additionally the 49 international workshops and naval exercises, and 26 meetings of operational experts may well have developed and refined operational linkages between the navies and other authorities of

¹⁸³ David Sanger 'US Said to Turn Back North Korea Missile Shipment' *New York Times* 12 June 2011 http://www.nytimes.com/2011/06/13/world/asia/13missile.html?_r=0; Barbara Starr 'U.S. Wanted to Board North Korean Merchant Vessel, Pentagon Says' *CNN – US* 13 June 2011 http://articles.cnn.com/2011-06-13/us/north.korea.ship_1_vessel-navy-ship-pentagon?_s=PM:US

¹⁸⁴ Allen, above n 6, 67

PSI participants. However it has been noted that the sensitive nature of PSI operations, information regarding locations, methods, intelligence sources for, and outcomes of, PSI interdictions may well remain classified for national security reasons to prevent those engaged in or planning the proliferation of WMD materiel to non-state actors from learning about the PSI's methods.¹⁸⁵ Accordingly, apart from the publicising of cooperative military exercises and operational meetings, it has been noted there may be little by which to measure the "success" of the PSI.¹⁸⁶ Most recently, the PSI Tenth Anniversary High Level Political Meeting held in Warsaw on 28 May 2013 declared that the PSI had played a 'critical role in countering the spread of WMD' – but did not mention any specific interdictions, and the summaries of this meeting were expressed in highly generalised terms.¹⁸⁷

Development of customary norms of WMD interdiction: The 2004 UN Secretary General's *High-level Panel on Threats, Challenges and Changes* encouraged all states to join the PSI,¹⁸⁸ and senior UN officials are on record as encouraging the objectives of the PSI.¹⁸⁹ Whilst its proponents have emphasised that the PSI is "an activity and not an institution",¹⁹⁰ some scholars have suggested the PSI may be challenging existing norms, and even developing new norms, of international law regarding WMD counter-proliferation generally and maritime interdiction specifically.¹⁹¹ Writing in 2006, Perry suggested the pattern of PSI interdictions might, over time, contribute to "blurring" distinctions between the UNCLOS jurisdictional zones¹⁹² and described the PSI as bearing the markings of global multilateralism'.¹⁹³ Guilfoyle

¹⁸⁵ Allen, above n 6, 56 - 57

¹⁸⁶ Song, above n 11, 128

¹⁸⁷ US State Department 'Proliferation Security Initiative 10th Anniversary High-Level Political Meeting' 28 May 2013 <http://www.state.gov/t/isn/c10390.htm> Accessed 1 October 2013

¹⁸⁸ United Nations *A More Secure World: Our Shared Responsibility* - Report of the Secretary-General High-level Panel on Threats, Challenges and Change GA 59th session, Agenda Item 55 UN Doc A/59/565 (2 December 2004), 82

¹⁸⁹ For example, when speaking to a 2003 conference on proliferation challenges, the UN Under Secretary General for Disarmament Affairs spoke positively about the PSI when declaring that '... the [PSI] may well become, as its membership grows and it gains greater international legitimacy, a foundation or framework for coordinated, multilateral action to enforce non-proliferation norms ... Indeed, it would be most appropriate for such enforcement actions to be undertaken, in accordance with the UN Charter, as a result of decisions made in the [UNSC]. The fate of this Initiative – in particular its future relationship to the [UNSC] – offers a rich subject for discussion, for it is an issue with many profound implications for the future ability of the world community to enforce its most solemn disarmament and non-proliferation norms'. Noted in Allen, above n 6, 56

¹⁹⁰ John Bolton, Under Secretary of State for Arms Control and International Security, 'The Bush Administration's Non-proliferation Policy: Successes and Future Challenge' Testimony before the House International Relations Committee, 30 March 2004 available at www.house.gov/international_relations/108/bolt033004.htm. Cited in Song, above n 11, 125

¹⁹¹ Joel Doolin 'The Proliferation Security Initiative: Cornerstone of a New International Norm' (Spring 2006) 59(2) *Naval War College Review*, 50 - 51

¹⁹² Perry, above n 132, 47

¹⁹³ Perry, above n 132, 39

opined that while the PSI is not a formal organisation, it ‘... is certainly a means of organisation ... [which] ... may well remain the best political forum for the effective coordination of [WMD] interdictions within existing legal frameworks’ and that ‘... while still not an institution, the PSI appears to be generating increasingly organised and formal legal structures’.¹⁹⁴

However other scholars have explained that whilst the political popularity of the PSI might suggest the emergence of “norms of WMD interdiction”, the development of customary international legal norms are based on the consent of “specially affected” states¹⁹⁵ and that “states of proliferation concern” such as North Korea and Iran could challenge the development of such norms through openly and consistently dissenting.¹⁹⁶ As noted in [7.2.6], North Korea expressed its objection to the PSI most vociferously. Other scholars argue that customary “norms of WMD interdiction” could only develop through Security Council resolutions specifically authorising interdictions.¹⁹⁷ However as [7.2.4] noted, the reluctance of several States to support specific references to interdictions in Resolution 1540 may well make this unlikely in the near future.

The suitability of the PSI’s current informal “cooperative activity” nature has also been questioned. The secrecy, absence of publicised interdiction procedures and standards (and indeed double standards),¹⁹⁸ and lack of transparency has been criticised, particularly by China¹⁹⁹ and argued to increase the scope for international conflict.²⁰⁰ The political nature of the PSI has been criticised as a significant limitation through being more vulnerable to change than formalised legal commitments, leading some scholars to query the long-term effectiveness of the PSI if it remains anchored only on political commitments.²⁰¹

¹⁹⁴ Guilfoyle, above n 31, 35

¹⁹⁵ North Sea Continental Shelf Cases (*Federal Republic of Germany v Denmark; Federal Republic of Germany v Netherlands*) [1969] ICJ Reports 3

¹⁹⁶ Logan, above n 9, 271; Song, above n 11, 128; Valencia, above n 64, 122

¹⁹⁷ Byers, above n 108, 540; Becker, above n 38, 219

¹⁹⁸ Valencia, above n 64, 267 – 268 is critical of the PSI’s apparent exemption for WMD shipments to and from “US-friendly” states such as India, Pakistan and Israel

¹⁹⁹ Becker, above n 38, 166

²⁰⁰ Garvey, above n 38, 137

²⁰¹ Fabio Spadi ‘Bolstering the Proliferation Security Initiative at Sea: A Comparative Analysis of Ship-Boarding as a Bilateral and Multilateral Implementing Mechanism’ (2006) 75 *Nordic Journal of International Law* 249 also examines the 2005 SUA Convention as a means of furthering the PSI principles at an international level, again noting several of its potentially problematic provisions.

Several scholars have called for the PSI to be formally institutionalised, arguing that open dialogue and awareness of its operating methods could increase the PSI's legitimacy and consequently international support.²⁰² Becker suggests six measures to increase the PSI's transparency with a longer-term view towards its institutionalisation – including clarified statements of materials considered eligible for seizure, harmonised standards for the identification of suspect vessels, harmonised standards for interdictions in internal waters and the territorial sea, re-statements of flag state rights of pre-emption and continued engagement, dispute resolution and compensation procedures, and interdiction reporting arrangements with external oversight.²⁰³ Although in a 2009 speech US President Obama spoke of in favour of 'turning efforts such as the PSI ... into durable institutions'²⁰⁴ as at 1 October 2013 there are no further indications of intentions to institutionalise the PSI.²⁰⁵

[7.2.9] 2005 SUA Convention

As explained in [6.2.5], following the 9/11 attacks the IMO facilitated amendments to the 1988 SUA Convention, resulting in the development of the 2005 SUA Convention. [6.2.5] and [6.4.3.1] explained how the 2005 SUA Convention introduced new offences relating to offensive acts from or against ships, and [6.2.5] also explained how a significant innovation of the 2005 SUA Convention was the introduction of provisions to enable the boarding of vessels under Article 8bis where grounds exist for suspecting that an offence under the 2005 SUA Convention has been, is being, or is about to be committed. Proceeding from this background, this section examines how the 2005 SUA Convention enables state parties to interdict suspected shipments of WMD materiel for "terrorist-like" purposes²⁰⁶ – which it carefully and objectively

²⁰² Garvey, above n 38, 139 - 142; Valencia, above n 64, 282 - 283

²⁰³ Becker, above n 38, 225 - 228

²⁰⁴ In a speech in Prague, Czechoslovakia on 5 April 2009, President Obama declared: 'We must also build on our efforts to break up black markets, detect and intercept materials in transit, and use financial tools to disrupt this dangerous trade. Because this threat will be lasting, we should come together to turn efforts such as the Proliferation Security Initiative and the Global Initiative to Combat Nuclear Terrorism into durable international institutions. And we should start by having a Global Summit on Nuclear Security that the United States will host within the next year': http://www.whitehouse.gov/the_press_office/Remarks-By-President-Barack-Obama-In-Prague-As-Delivered/ Accessed 1 July 2012

²⁰⁵ US State Department 'Proliferation Security Initiative 10th Anniversary High-Level Political Meeting' 28 May 2013 <http://www.state.gov/t/isn/c10390.htm> Accessed 1 October 2013 did not include any mentions of further institutionalising the PSI

²⁰⁶ As explained in [6.2.5], whilst the preamble to the 2005 SUA Convention makes several mentions of 'terrorism', the substantive text does not. Following the approach of the 'sectoral' counter-terrorism treaties as noted in [2.2.1] which do not address 'terrorism' per se, but rather illegalise specific acts of terrorism, Article 3bis(1)(b) makes it an offence to transport such materials 'for the purpose of intimidating a population, or compelling a government or an international organization to do or to abstain from doing any act'

defines as ‘BCN weapons’. From this basis, [7.3.5] examines how the 2005 SUA Convention enables state parties to interdict vessels suspected of being utilised to transport conventional weaponry, terrorist-connected persons and for financing terrorist activities.

In comparison to the subjective definition of ‘WMD’ in the PSI ship-boarding agreements examined at [7.2.7.1], Article 1(d) of the 2005 SUA Convention comprehensively and objectively defines what materials will, and will not, constitute Biological, Chemical and Nuclear (BCN) weapons. It defines ‘biological weapons’ as ‘microbial or other biological agents, or toxins whatever their origin or method of production, of types and in quantities’ with the proviso that such materials ‘have no justification for prophylactic, protective or other peaceful purposes’; and ‘weapons, equipment or means of delivery designed to use such agents or toxins for hostile purposes or in armed conflict.’²⁰⁷ It defines ‘chemical weapons’ as being ‘together or separately’ materials which fall into one or more of three categories. Firstly, toxic chemicals²⁰⁸ and their precursors²⁰⁹ - except where intended for industrial, agricultural, research, medical, pharmaceutical or other peaceful purposes; protective purposes, namely those purposes directly related to the protection against toxic chemicals and to protection against chemical weapons; military purposes not connected with the use of chemical weapons and not dependent on the use of the toxic properties of chemicals as a method of warfare; or law enforcement including domestic riot control purposes; as long as the types and quantities are consistent with such purposes.²¹⁰ Secondly, ‘munitions and devices, specifically designed to cause death or other harm through the toxic properties of those chemicals, which would be released as a result of the employment of such munitions and devices’.²¹¹ Thirdly, ‘any equipment specifically designed for use directly in connection with the employment of munitions and devices’ referred to in Article 1(d)(ii)(2).²¹² ‘Nuclear weapons’ and ‘other nuclear explosive devices’ also fall within the definition of ‘BCN weapons’.²¹³

²⁰⁷ 2005 SUA Convention Article 1(d)(i)

²⁰⁸ Article 1(e) of the 2005 SUA Convention defines ‘toxic chemical’ to mean ‘any chemical which through its chemical action on life processes can cause death, temporary incapacitation or permanent harm to humans or animals [and] includes all such chemicals, regardless of their origin or of their method of production, and regardless of whether they are produced in facilities, in munitions or elsewhere.’

²⁰⁹ Article 1(f) of the 2005 SUA Convention defines ‘precursor’ to mean ‘any chemical reactant which takes part at any stage in the production by whatever method of a toxic chemical. This includes any key component of a binary or multicomponent chemical system’.

²¹⁰ 2005 SUA Convention Article 1(d)(ii)(1)

²¹¹ 2005 SUA Convention Article 1(d)(ii)(2)

²¹² 2005 SUA Convention Article 1(d)(ii)(3)

²¹³ 2005 SUA Convention Article 1(d)(iii)

Article 3bis(1)(b) of the 2005 SUA Convention incorporates offences of knowingly transporting²¹⁴ on board a ship any explosive or radioactive material for “terrorist-like” purposes;²¹⁵ any BCN weapon;²¹⁶ any source material, special fissionable material, or equipment or material especially designed or prepared for the processing, use, or production of special fissionable material;²¹⁷ or any equipment, materials or software or related technology that significantly contributes to the design, manufacture or delivery of a BCN weapon.²¹⁸ However Article 3bis(2) provides that it will not be an offence to transport such materials in situations where the materials will be used in manner complying with the various safeguards and controls specified in the Treaty on the Non-Proliferation of Nuclear Weapons (NPT Treaty).

Whilst the 2005 SUA Convention provides a detailed and objective regime for enabling the interdiction of maritime shipments of WMD materiel, it has not been immune from criticisms. During the IMO negotiating processes for the 2005 SUA Convention, concerns about the “reach” of the BCN weapon transporting provisions were expressed by representatives of Pakistan, India and the Russian Federation, being States understood to possess nuclear capabilities, and through not being parties to the NPT treaty, are not subject to its restrictions, such as prohibitions on shipment of nuclear materials.²¹⁹ Furthermore, as [6.2.5] noted, as at 1 October 2013, the 2005 SUA Convention has only been ratified by 24 out of the 196 SOLAS contracting governments, which means it would only be applicable in a very narrow range of circumstances.

[7.2.10] CONCLUSION

This section has explained that countering the illicit maritime trafficking of WMD materiel would be one of the most challenging of all the 21 forms of maritime terrorism conceptualised

²¹⁴ Article 1(b) of the 2005 SUA Convention broadly defines ‘transport’ to mean ‘initiate, arrange or exercise effective control, including decision-making authority, over the movement of a person or item’.

²¹⁵ 2005 SUA Convention Article 3bis(1)(b)(i) – which whilst not mentioning terrorism, incorporates the mental element of ‘knowing that it is intended to be used to cause, or in a threat to cause, with or without a condition, as is provided for under national law, death or serious injury or damage for the purpose of intimidating a population, or compelling a government or an international organization to do or to abstain from doing any act’

²¹⁶ 2005 SUA Convention Article 3bis(1)(b)(ii)

²¹⁷ 2005 SUA Convention Article 3bis(1)(b)(iii) – which includes the mental element of ‘knowing that it is intended to be used in any nuclear explosive activity or in any other nuclear activity not under safeguards pursuant to a comprehensive safeguards agreement’

²¹⁸ 2005 SUA Convention Article 3bis(1)(b)(iii)

²¹⁹ Becker, above n 38, 138

by the Threat Matrix for States to prevent. It explained how the 2002 *So San* interdiction incident raised concerns that terrorists might seek to acquire WMD materiel through the use of vessels, with these concerns prompting the announcement of the PSI in April 2003. Whilst not a formal international agreement creating or extending maritime jurisdiction, the PSI as an informal political expression of how participants might consider exercising their existing jurisdictional rights under UNCLOS, when combined with Security Council Resolution 1540, has prompted critical re-thinks about the powers of States to interdict laterally-transiting vessels suspected of illicitly transporting WMD materiel. Significantly, this section has been the first to specifically articulate the “restrictive” and “liberal” views of UNCLOS. Whilst the liberal view of UNCLOS would better enable States to interdict suspected illicit shipments of WMD materiel, and thereby lessen the scope for acts of WMD terrorism to occur, a preferable approach would be to develop more specific agreement amongst States as to how WMD interdictions should occur. This section showed that whilst on initial impressions the PSI might be seen to have developed such agreement amongst States, several uncertainties remain by virtue of its informal, political status – particularly what “support” for the Interdiction Principles actually entails, and it also noted calls for the PSI to be formally institutionalised. It also noted that whilst the PSI ship-boarding agreements have contributed greater certainty to WMD interdiction efforts, their subjective wording creates scope for uncertainty. Finally, it noted that although the 2005 SUA Convention contains “model” provisions to facilitate the interdiction of suspected illicit WMD shipments, its current low ratification levels means it would only be applicable in a very limited range of circumstances. Chapter 8 considers the extent to which Article 51 of the UN Charter, and the doctrine of Necessity, might enable States to interdict suspected illicit WMD shipments in exceptional circumstances where no other jurisdictional basis existed.

[7.3] COUNTERING UTILISATIONS OF VESSELS FOR TRANSPORTING CONVENTIONAL WEAPONRY, TERRORIST OPERATIVES AND TERRORIST FINANCING

This section examines the prospects for the international agreements to prevent the utilisation of vessels to enable subsequent terrorist attacks on land through transporting conventional weaponry, terrorist operatives or financing terrorist activities – which are collectively referred to as “other than WMD transporting” terrorist utilisations of vessels. [7.3.1] shows there have been far more previous examples of vessels being utilised for these purposes than the six

reported instances of vessels suspected of being utilised to illicitly transport WMD materiel noted in [7.2.1]. [7.3.3] extends the rationales underlying the restrictive and liberal views of UNCLOS noted in [7.2.5] to enunciate restrictive and liberal views of UNCLOS pertaining to the interdiction of vessels suspected of transporting conventional weaponry, terrorist operatives or financing terrorist activities.²²⁰

[7.3.1] Threat context: Previous occurrences

[7.3.1.1] The vessel as a means: Transporting conventional weaponry

	Successful	Attempted	Planned	Postulated
	8	6	None identified	1

Allen explains that there is considerable scope for overlap between the forms of explosives that should be regarded as conventional weapons and those which should be characterised as WMD, explaining that many international legal definitions of WMD do not include extremely explosive conventional devices. He points out that the ammonium nitrate explosives used in the 1996 Oklahoma City bombing (which destroyed a US federal government building, killed 168 and injured more than 600 persons) would fall within the definition for ‘WMD’ under US federal legislation applicable at the time,²²¹ but would not be a ‘Weapon of Mass Destruction’ under common international legal definitions.²²² Whilst highly explosive devices might fall within various definitions of ‘WMD materiel’, other forms of conventional weaponry, including small arms such as rifles, pistols, grenades and rocket launchers, and potentially explosive materials like ammonium nitrate (which is commonly used for agricultural and construction purposes) would be unlikely to fall within most definitions of WMD materiel. In comparison to the six recorded interdictions of suspected illicit transfers of WMD materiel examined in [7.2.1], there have been more recorded cases of terrorists successfully transporting, and attempting to transport, conventional weaponry by vessels.²²³ A wider range

²²⁰ This is because in comparison to the interdiction of vessels suspected of transporting WMD materiel examined in [7.2], the legality of the interdiction of vessels suspected of being utilised for transporting conventional weaponry, terrorist operatives or financing terrorist activities has not been subject to the same amount of scholarly analysis

²²¹ The applicable US legislation was 18 USC s 233a ‘Use of weapons of mass destruction’: <http://www.law.cornell.edu/uscode/text/18/2332a> Cited in Allen, above n 6, 16

²²² Allen, above n 6, 15 - 16

²²³ Although in practice un-reported attempts could make this figure higher

of vessels - including large freighters, cargo ships and passenger ferries and small fishing vessels have been utilised to transport conventional weaponry over both long international distances and shorter intra-state transfers. In contrast to the WMD interdictions discussed in [7.2.1],²²⁴ several interdictions of suspected transfers of conventional weaponry for terrorist purposes have occurred confrontationally on the high seas.

There have been eight reported instances of terrorist groups **successfully** transporting conventional weaponry by vessels. Palestinian groups such as the Force 17 commando unit of Fatah reportedly utilised large mother ships to support small zodiac boats to supply weapons to raiding parties which carried out several attacks in Tel Aviv in 1975,²²⁵ and the PFLP-GC and Palestinian National Front received support from Yugoslavia to train teams of frogmen and swimmers to transport arms from Egypt into Gaza, and also to infiltrate Israeli coastal areas.²²⁶ The Provisional IRA reportedly took delivery of arms sent from Libya aboard the cargo ships *MV Claudia* in 1973, *MV Casamara* in 1985, and *MV Villa* in 1986; and also took delivery of weaponry from Boston in 1984 using the fishing trawler *Valhalla*, with these weapons being transferred to the *Marita Ann* fishing trawler off the coast of County Kerry.²²⁷ The LTTE-controlled freighter *The Swene* transported 60 tons of TNT explosives from the Ukraine, which were landed off the northeast coast of Sri Lanka and later used in an attack against the Central Bank building in Colombo in August 1994. On 23 May 1997, the LTTE hijacked and diverted the Sri Lankan government-controlled freighter *Stillus Limassul* transporting weapons between Zimbabwe and Sri Lanka into LTTE control.²²⁸ Finally it has been widely reported²²⁹ that explosives used in four of the most deadly terrorist bombings over the past fifteen years by Al Qaeda-linked groups were transported by sea - including the 1998 bombings of the US

²²⁴ As [7.1.1] noted, most publicly-reported interdictions of suspected WMD shipments have been undertaken consensually within ports rather than confrontationally at sea

²²⁵ Martin Murphy *Small Boats, Weak States and Dirty Money: Piracy and Maritime Terrorism in the Modern World* (Hurst & Company 2009), 290 (This is also an example of the vessel as a means of transporting terrorist persons – and is also counted under [7.3.1.2])

²²⁶ Murphy, above n 225, 291, 297

²²⁷ Murphy, above n 225, 345

²²⁸ Richardson, above n 8, 26

²²⁹ However the present author's research could not ascertain further information about the locations these explosives were transported from, nor the types of vessels involved

embassies in Kenya and Tanzania in 1998,²³⁰ the 2002 Bali bombing,²³¹ and the November 2002 bombing of the Paradise Hotel in Mombasa, Kenya which killed 223.²³²

Whilst there have been at least seven specifically recorded **attempts** by terrorists to transport conventional weaponry by vessel, other reports of such attempts are expressed in a more generalised manner. For example the Israeli Navy is reported to have disrupted ‘around 30 attempts’ to infiltrate personnel and weaponry into Israel between 1979 and 1984, with several of these interdictions taking place within Lebanese territorial waters.²³³ Additionally, the well-known 1985 *Achille Lauro* hijacking (discussed in [3.3.1]) was actually caused when crew members unintentionally discovered four members of the Palestinian Liberation Front cleaning their weapons in their cabins whilst transporting them aboard the vessel. Aside from the 1999 discovery by a US Customs inspector of a ‘mini bomb factory’ inside a vehicle on a ferry travelling from Victoria, British Columbia to Port Angeles, Washington a US Customs inspector (which raised concerns of terrorist connections),²³⁴ all the recorded interdictions of attempts to transport conventional weaponry aboard vessels have been destined for Palestinian and/or Islamic groups aboard large vessels, and took place on the high seas – apparently without protest as to their legality.²³⁵

First, on 6 May 2001 an Israeli naval vessel interdicted the 40 tonne *Santorini* fishing vessel ‘outside of Israeli territorial waters’ in the Mediterranean Sea en route from Tripoli, Libya to a point off the Gaza Strip – finding a large cache of weaponry including Katyushas, anti-aircraft rockets, mortars of various calibres, and large quantities of ammunition, estimated to be worth around \$10 million.²³⁶ Sinai explains that two separate versions of how these weapons were to be delivered to their intended recipients appeared in the Israeli media – firstly through dropping watertight barrels containing the weapons into the sea for collection by Palestinian personnel; and secondly through transfers involving a number of fishing vessels.²³⁷ Second, on 3 January

²³⁰ Joshua Sinai ‘Future Trends in Worldwide Maritime Terrorism’ (March 2004) 3(1) *The Quarterly Journal*, 53; Richardson, above n 8, 14 – 15. However the present author’s research was unable to ascertain the specific details about the locations from which the explosives were transported.

²³¹ Nincic, above n 13, 623

²³² Richardson, above n 8, 16 - 17

²³³ Murphy, above n 225, 293

²³⁴ Zara-Raymond, above n 7, 25

²³⁵ Klein, above n 68, 275

²³⁶ Sinai, above n 230, 54; Noam Primak ‘Weapons Found on Karine-A and ‘Santorini’ *War Online* 20 July 2002 http://www.waronline.org/en/analysis/pal_weapons.htm Accessed 24 October 2010

²³⁷ Sinai, above n 230, 54; Murphy, above n 225, 298

2002 Israeli commandos seized the 4000-tonne *Karine A* freighter in the Red Sea, 300 nautical miles off the Israeli coast, which was carrying 83 watertight containers of mainly Iranian-made weaponry – including long- and short- range Katyusha rockets, anti-tank missiles, mortars, mines, 1500 kilograms of high explosives, sniper rifles, shot guns and other equipment including inflatable Zodiac boats, cylinders and diving equipment. There were reports of plans for Palestinian terrorists disguised as fishermen to collect the weaponry.²³⁸ Third, on 5 July 2002 Indian coastguard officials intercepted the abandoned Lebanese dry bulk cargo vessel *Al Murtada* about 170 kilometres off the Maharashtra coast in the Arabian Sea (which was still full of fuel) finding a large cache of weaponry on board – including AK 47 rifles inscribed with ‘Allah’ and ‘Yusuf’.²³⁹ Fourth, on 22 May 2003 Israeli naval commandos boarded the 16 metre Egyptian-registered fishing vessel *Abu Hassan* 35 nautical miles off Haifa – which was found to be carrying weapon components including surface-to-surface rockets destined for Hezbollah groups.²⁴⁰

Fifth, on 22 June 2003, Greek authorities interdicted the Comoros-flagged tanker *Baltic Sky* en route from Tunisia to Sudan within the Greek territorial sea (specifically the Ionic Sea) and seized nearly 700 tonnes of explosives, mainly TNT, as well as 18,000 detonators and fuses from vessel. The *Baltic Sky*’s crew were detained and an investigation by Greek authorities into this suspected illegal transportation of explosives and the captain’s failure to notify Greek authorities of the carriage of dangerous cargo followed. However as authorities determined there was no evidence indicating the explosives were destined for terrorist uses, but rather for legitimate construction purposes, the *Baltic Sky* and her crew were released.²⁴¹

Most recently, on 31 May 2010 Israeli forces interdicted a flotilla of six vessels constituting the “Gaza Freedom Flotilla” travelling in a widely-publicised convoy from Turkey to Gaza to challenge Israel’s blockade of the Gaza Strip, and deliver humanitarian supplies and construction materials to Gaza. After the flotilla ignored four warnings from Israeli authorities to change course away from Gaza, Israeli forces launched a surprise raid on the flotilla under

²³⁸ Sinai, above n 230, 55; Murphy, above n 225, 299

²³⁹ Tanner Campbell and Rohan Gunaratna ‘Maritime Terrorism, Piracy and Crime’ in Rohan Gunaratna (ed) *Terrorism in the Asia-Pacific: Threat and Response* (Eastern University Press 2003), 81; “*Al Murtada* found abandoned with discarded rifles” *Lloyd’s List* 12 July 2002; Indian Coast Guard Seizes Lebanese Ship, South Asia News July 2002 <http://southasia.insnews.org/headlines/2002/july/india.lebanese.ship.htm>

²⁴⁰ Rupert Herbert-Burns ‘Terrorism in the Early 21st Century Maritime Domain’ in Catherine Zara Raymond and Joshua Ho (eds) *The Best of Times, The Worst of Times* (World Scientific, 2004), 165 - 166; Also noted in Akiva Lorenz *The Threat of Maritime Terrorism to Israel* (2007), 21; Murphy, above n 225, 299

²⁴¹ Nincic, above n 13, 628; Song above n 11, 121 – 122

the cover of darkness at 4:26am whilst it was 72 nautical miles from the Israeli coast and 64 nautical miles (approximately 5 hours' sailing time) from the Gaza blockade zone. Whilst five of the six vessels were apprehended without loss of life or serious injury, the interdiction of the *Mavi Mamara* (on which flares, rods, axes, knives, tear gas, gas masks, protective vests and night-vision goggles were located)²⁴² resulted in nine crew members being killed, and extensive injuries to both its crew and Israeli forces.²⁴³

Whilst versions of events during this interdiction (and the subsequent treatment of detainees) vary between Israeli forces and *Mavi Mamara* crew members, this interdiction resulted in extensive international criticism and lead to the establishment of a UN Panel of Inquiry into this incident (UN Panel). The UN Panel received and reviewed reports of the Turkish and Israeli national investigations into this incident, as well as further information and clarifications from points of contact appointed by each government. Whilst not acting as a Court nor apportioning legal liability relating to the incident, the UN Panel compiled recommendations to avoiding similar incidents in the future, and also summarised the Panel's account of the principles of international law applicable to this incident in order to base its recommendations on a secure legal foundation. The recommendations²⁴⁴ of relevance to the interdiction of suspected terrorist vessels generally (as opposed to the enforcement of the Israeli blockade of Gaza specifically) are discussed in [7.2.7] below.

Whilst the present author's research has not identified any specific reports of terrorists **planning** to transport conventional weaponry by vessels, this is not to say they have not previously planned to do so. Furthermore, whilst most **postulated** scenarios of terrorists transporting weaponry aboard vessels have focused on the transportation of WMD materiel rather than conventional weaponry, the UN's 2005 *In Larger Freedom* Report expressed concerns about terrorists acquiring conventional weaponry such as ballistic and shoulder-fired missiles, and urged States to ensure effective controls over such weaponry.²⁴⁵

²⁴² United Nations *Report of the Secretary-General's Panel of Inquiry on the 31 May 2010 Flotilla Incident*, September 2011, para 50
http://www.un.org/News/dh/infocus/middle_east/Gaza_Flotilla_Panel_Report.pdf

²⁴³ Klein, above n 68, 275

²⁴⁴ And also the principles of international law the Panel determined to be relevant: United Nations *Report of the Secretary-General's Panel of Inquiry on the 31 May 2010 Flotilla Incident*, September 2011, para 164

²⁴⁵ United Nations *In Larger Freedom: Towards Development, Security and Human Rights For All* – Report of the Secretary-General GA 59th session, Agenda Item Agenda Items 45 and 55 UN Doc A/59/2005 (21 March 2005) at para [101]

[7.3.1.2] The vessel as a means: Transporting terrorist-connected persons

	Successful	Attempted	Planned	Postulated
	6	12	1	2

Vessels have previously been utilised to transport terrorists into and out of ports (including through shipping containers); to covertly insert and retrieve swimmers and divers and as ‘mother-ships’ to launch speedboats carrying terrorist operatives and weaponry.

The six reported cases of terrorist operatives being **successfully** transported by vessels have included four short-range movements involving Palestinian terrorist groups during the 1970s and 1980s, and two long-range international movements by Al Qaeda-linked groups following 9/11. The Force 17 commando unit of Fatah utilised large mother ships to support small zodiac boats to launch raiding parties and weaponry to perpetrate several attacks in Tel Aviv during 1975;²⁴⁶ Abu Jihad landed operatives on a beach near Tel Aviv intending to kidnap hostages from a nearby hotel on 11 March 1978 (but landed too far from their intended location);²⁴⁷ Abu Abbas Group members landed by small boat in Nahariya, Israel on 22 April 1979, sustaining two fatalities in a fire fight with Israeli security forces;²⁴⁸ and in July 1986, four heavily armed PFLP terrorists in a Zodiac speedboat evaded an Israeli patrol craft, landed on the outskirts of Nahariya and set up a defensive position where they held off a heavy Israeli assault for 3 hours before being killed. Documents found in their possession indicated plans to attack holiday-makers on the city’s seafront.²⁴⁹

On 19 February 2002, eight Pakistani men jumped off the Nova freighter *The Twillinger* at an Italian port after having travelled from Cairo, with US officials claiming ‘... the men – who lied about being crew members and carried false identification documents and large sums of money – had been sent by Al Qaeda’.²⁵⁰ Two months later in May 2002, the US Coastguard announced that 25 Islamic extremists had entered the US aboard cargo ships into the ports of

²⁴⁶ Murphy, above n 225, 290 (This is also an example of the vessel as a means of transporting conventional weaponry – and is also counted under [7.2.2])

²⁴⁷ Murphy, above n 225, 291

²⁴⁸ Murphy, above n 225, 292

²⁴⁹ Murphy, above n 225, 294

²⁵⁰ John Mintz ‘15 Freighters Believed to be Linked to Al Qaeda’ *Washington Post* 31 December 2002, 3. Cited in Zara-Raymond, above n 7, 15

Savannah, Long Beach and Miami.²⁵¹ Additionally on 14 March 2004, two Palestinian suicide bombers emerged from behind a false wall in a shipping container in the Israeli port of Ashdod and detonated their bombs killing five people. Hamas and Fatah (Al-Aqsa Martyr Brigade) claimed responsibility for this attack.²⁵² Whilst this shipping container entered Ashdod port from the *landward* rather than *seaward* side,²⁵³ this incident nevertheless illustrates the vulnerabilities of port facilities to terrorist targeting – in fact Israeli media reports indicated these two bombers evaded port security measures stricter than those imposed by the ISPS Code.²⁵⁴

Similarly to the six successful cases reviewed above, the twelve recorded **attempts** to transport terrorist operatives aboard vessels have also involved both large and small vessels (including fishing vessels), shipping containers and the use of mother-ships. Whilst most of the maritime jurisdictional locations of these vessel interdictions have not been stated, indications are that suspected terrorist vessels have been interdicted within ports, and also on the high seas. Israeli naval forces interdicted four attempts by Fatah to transport operatives for attacks on Israeli coastal cities – including freighters *The Ginan* and *The Stephanie* on 30 September 1978 whilst transiting a regular sea lane between Cyprus and Egypt, which had attempted to launch raiding parties from ‘international waters’;²⁵⁵ two yachts in 1985 that were transporting operatives within proximity to Israeli coastal cities; and the freighters *SS Anton* in 1986 and the *Maria R* in 1987.²⁵⁶ Three similar attempts by the Palestinian Liberation Front (PLF) were also disrupted by the Israeli Navy. In April 1985 (one month before *Achille Lauro* hijacking), an attempt to transport operatives from Algeria to Israel aboard the 1,000 tonne *Attaviros* was disrupted.²⁵⁷ In 1990 PLF members launched six speedboats painted with radar-absorbent material from a mother ship, with one sinking upon launching, another returning to Port Said as a tanker, two experiencing mechanical failure, and of the remaining two craft in which all the operatives crammed into, one was interdicted 22 nautical miles off Gaash, and although the last speed boat landed at Nitzanim, it was detected by Israeli security forces with four raiders being killed

²⁵¹ Nincic, above n 13, 625

²⁵² Lorenz, above n 252, 22

²⁵³ As [1.5] noted Whilst port facilities and their supply chains are significant components of maritime trade, it only examines attacks on land targets (such as port facilities) from the maritime side (through the use of vessels), as opposed to the landward side (for example through explosives-laden vehicles), as this would involve considerations of *terrestrial*, as opposed to *maritime*, security

²⁵⁴ Murphy, above n 225, 297 – 298

²⁵⁵ Murphy, above n 225, 292

²⁵⁶ Murphy, above n 225, 294

²⁵⁷ Murphy, above n 225, 292

and seven being captured. PLF leader Abu Abbas was later reported as explaining this raid had taken nearly three years to prepare, and cost around \$3 million (estimated as equivalent to \$4.7 million in 2006).²⁵⁸ In 1992 four PLF swimmers launched by boat 2.5 nautical miles from shore attempted an armed raid on Coral Beach at Eilat, however one drowned and the remaining three were killed before they could fire on tourists.²⁵⁹ Twelve years later on 25 March 2004, three armed members of Hamas wearing diving gear and armed with an RPG rocket launcher, rifles and grenades emerged under the cover of darkness from a small vessel in the Mediterranean Sea – but were killed in a gun battle with Israeli security forces;²⁶⁰ and finally three attempts were made by a (non-specified) ‘terrorist group’ were reportedly made to infiltrate the southern Israeli settlement of Dugit between 20002 and 2004.²⁶¹

Recorded attempts by Al Qaeda-linked groups have involved movements over longer international distances. In October 2001, Italian authorities discovered an alleged Egyptian Al Qaeda operative hiding in a fully-equipped shipping container bound for Halifax, Nova Scotia²⁶² with an independent power source, lap top, satellite phone, flight manual and ‘other indicative items’²⁶³ including a Canadian passport, airport maps and airline security passes for Canada, Thailand and Egypt.²⁶⁴ However no further information regarding this man’s possible linkages and motives was determined because he disappeared after having been granted bail by Italian authorities.²⁶⁵ In August 2002 the freighter *Sara* radioed Italian authorities in reporting that fifteen Pakistani men taken aboard in Casablanca, Morocco were ‘menacing the ship’s crew’. Subsequent investigations found them to be carrying tens of thousands of dollars, false identification documents, maps of Italian cities and other evidence linking them to extremist European Islamic groups, raising concerns of a planned Al Qaeda terrorist attack.²⁶⁶ Later in April 2004 the US Department of Homeland Security confirmed that stowaways found

²⁵⁸ Murphy, above n 225, 295 – 296

²⁵⁹ Murphy, above n 225, 296

²⁶⁰ Lorenz, above n 252, 18 - 19

²⁶¹ See for example <http://www.mfa.gov.il/MFA/Terrorism-+Obstacle+to+Peace/Terrorism+and+Islamic+Fundamentalism-/Attempted+terror+attack+via+the+sea+thwarted+10-Nov-2004.htm?DisplayMode=print>. Murphy, above n 225, 297

²⁶² Sinai, above n 230, 57

²⁶³ Campbell and Gunaratna, above n 239, 77

²⁶⁴ Zara-Raymond, above n 7, 16; Also noted in Richardson, above n 8, 11 - 12

²⁶⁵ Sinai, above n 230, 57

²⁶⁶ Zara-Raymond, above n 7, 15

detained on an Algerian-registered LNG tanker coming into Boston may have had ties to Al Qaeda-linked terrorists.²⁶⁷

Whilst the present author's research has only identified one reported instance of terrorists **planning** to transport operatives aboard vessels - being the disruption by Jordanian security services in August 2002 of Hamas' plans to insert swimmers onto Coral Beach in Eilat, Israel to launch an attack²⁶⁸ - in practice it is likely many more terrorist plans may have been made. Finally the use of vessels to transport terrorist-connected persons has also been **postulated** by maritime security specialist with Richardson noting that 'vessels big and small, or the cargo containers they carry can be used in a number of ways by terrorists to further their aims ... to covertly transport operatives';²⁶⁹ and Bateman and Bergin discussing the scenario of '... infiltration of terrorists and/or their materials into Australia by sea, either by clandestine landing or the use of fraudulent seafarer documentation'.²⁷⁰

[7.3.1.3] The vessel as a means: Terrorist financing

	Successful	Attempted	Planned	Postulated
	At least 2	2	0	3

Terrorist groups could utilise vessels to finance their activities through illicit activities such as people or narcotics smuggling, or through apparently legitimate maritime trade. Such activities are challenging to statistically record because they do not involve high profile incidents, and as explained below, the small number of reports of such activities have been quite generalised in their details.

There have been two recorded instances of terrorists **successfully** utilising vessels to finance their activities. On 10 August 2003, pirates hijacked the Malaysian fuel tanker *Penrider* in the Malacca Straits, with the \$100,000 ransom monies for the crew's release being subsequently traced to the Gerakin Aceh Merdeka (GAM) Free Aceh Movement, which has been reported to be linked to Al Qaeda (however assertions of such linkages have been challenged).²⁷¹ More

²⁶⁷ Nincic, above n 13, 630

²⁶⁸ Murphy, above n 225, 297

²⁶⁹ Richardson, above n 8, 8

²⁷⁰ Bateman and Bergin, above n 16, 35 (Scenario 11)

²⁷¹ Nincic, above n 13, 629; Murphy, above n 225, 309

generally, several vessels alleged to have been successfully utilised by the LTTE for fundraising were interdicted during the late 1990s and early 2000s by authorities around Malaysia, India and Sri Lanka. For instance, in July 2003 a North Korean-flagged ship operated by a Sri Lankan company was seized off the Indian coast with 254 migrants on board; and in November 2005 the *Kosmo* was seized by authorities in Thai waters, with evidence indicating the LTTE's involvement in people smuggling to Australia.²⁷²

Two recorded **attempts** by terrorist groups to utilise vessels for fundraising purposes have been recorded. Firstly on 7 November 2001, Irish customs officers discovered 20 million smuggled cigarettes aboard the Cambodian freighter *Maria M* upon its arrival from Estonia – with investigations indicating proceeds from their sale would finance the operations of the Real IRA;²⁷³ and secondly in December 2003, US and allied naval forces interdicted several dhows in the Persian Gulf, confiscating three drug shipments – with further investigations linking these dhows and the seized drugs with Al Qaeda-linked groups.²⁷⁴

Whilst the present author's research has not identified any specific reports of terrorists **planning** to utilise vessels for fundraising, this does not mean terrorist groups have not contemplated such actions. However such actions have been widely **postulated** by maritime security specialists. A widely-cited article on page one of the *Washington Post* 31 December 2002 titled '15 freighters believed to be linked to Al Qaeda' contained reports about 'Al Qaeda's Navy' – involving Al Qaeda-linked groups transporting sesame seeds and cement for fundraising purposes.²⁷⁵ Richardson noted that '... vessels, big and small, or the cargo containers they carry can be used in a number of ways by terrorists to further their aims ... to raise money, through legal or illegal trade, to finance their activities';²⁷⁶ and Greenberg et al discussed the 'hijacking of a vessel as a fund-raising exercise to support a campaign of political violence directed toward ethnic, ideological, religious or separatist designs'.²⁷⁷

²⁷² Murphy, above n 225, 354

²⁷³ Richardson, above n 8, 93

²⁷⁴ Richardson, above n 8, 93 - 94

²⁷⁵ John Mintz '15 Freighters Believed to be Linked to Al Qaeda' *Washington Post* 31 December 2002, 1

²⁷⁶ Richardson, above n 8, 8

²⁷⁷ Greenberg, Chalk and Willis, above n 17, 27 (Scenario 3)

[7.3.2] Best case / worst case scenario analysis of SOLAS Chapter XI-2 (ISPS Code) and the 2003 SID Convention preventing “other than WMD transporting” utilisations of vessels

This section analyses the prospects for the preventative security measures mandated and recommended by the ISPS Code to lessen the scope for vessels to be utilised to illicitly transport conventional weaponry, terrorist operatives or to finance terrorist activities. It considers the relevant “best case / worst case” scenario factors articulated in [4.2.7] in light of the observations in [7.3.1.1], [7.3.1.2] and [7.3.1.3] about how vessels have previously been utilised for such purposes. It also considers the prospects for the LRIT requirements under SOLAS Chapter V to lessen the scope for vessels to be utilised for such purposes; and also considers the contribution of the 2003 SID Convention in lessening the scope for terrorist operatives to travel internationally by vessels through the use of fraudulent seafarer identity documentation.

[1] Larger or smaller vessels?²⁷⁸ [7.3.1.1], [7.3.1.2] and [7.3.1.3] showed that a wide range of vessels, including large freighters, cargo ships, passenger ferries and small fishing vessels have been utilised for “other than WMD transporting” purposes by terrorists. These sections also indicated vessels have been utilised for such “enabling” activities both over long international distances, and shorter intra-state transits. If terrorists sought to utilise larger vessels subject to the ISPS Code for these purposes, both the access control and ship identification aspects of the ISPS Code that were noted in [7.2.2] could lessen the scope for such utilisations, provided ISPS Code security measures were consistently and rigorously implemented by all relevant entities. Furthermore, larger vessels engaged on international voyages would also be likely to be subject to the LRIT tracking requirements under SOLAS Chapter V – in which case the reasoning about the “preventative contribution” of LRIT noted in [7.2.2] could also be applicable to lessening the scope for “other than WMD transporting” utilisations of vessels. However a “worst case” scenario could apply if terrorists sought to utilise smaller vessels such as fishing vessels that were outside the scope of the ISPS Code’s application were utilised for such activities.

²⁷⁸ The fifth factor articulated in [4.2.7] that would be likely to influence the prospects of the ISPS Code lessening the scope for maritime terrorism incidents (the effectiveness of government oversight arrangements) has been incorporated into this point

[2] Terrorist-controlled in first instance? If terrorists controlled vessels being utilised for “other than WMD transporting” purposes in the first instance, this could render the contribution of ISPS Code security measures almost nugatory – with [7.3.1.3] noting reports about ‘Al Qaeda’s Navy’ comprising up to 15 freighters. However [7.3.1.1], [7.3.1.2] and [7.3.1.3] noted several reported instances of terrorists hijacking vessels for the purposes of utilizing them to transport conventional weaponry, terrorist operatives or financing terrorist activities. In such cases as reasoned in [4.2.7], [5.2.3] and [6.2.3], rigorously-implemented ship security plans could reduce the prospects of terrorists accessing and gaining control over larger vessels.

[3] Rigor of implementation of SOLAS Chapter XI-2 / ISPS Code? In addition to lessening the scope for terrorists to hijack and utilise vessels to transport conventional weaponry, terrorist operatives or finance terrorist activities, the rigor of ISPS Code security measures within ports would be a significant factor in lessening the scope for terrorists to load and offload weaponry and operatives through port facilities. Indeed there are indications of rigorous port security measures detecting and disrupting terrorist attempts to transport weaponry and operatives through ports. As [7.3.1.1] noted, in 1999 US customs inspectors identified a ‘mini bomb factory’ in a passenger’s vehicle on a ferry from Victoria, British Columbia to Port Angeles, Washington, and as [7.3.1.2] noted, in 2004 US Homeland Security personnel identified and apprehended several suspected terrorist stowaways on an Algerian LNG tanker upon its entry into the port of Boston.

[4] Did the maritime terrorism incident involve a security-regulated port? A “best case” scenario of the ISPS Code could apply if terrorists sought to transfer weaponry or persons from ship through port facilities subject to the access control and screening preventative security requirements and recommendations of the ISPS Code,²⁷⁹ as opposed to introducing weaponry or persons into shipping containers further along supply chains.²⁸⁰ As explained in [3] above, rigorously-applied port security measures could lessen the scope for such activities to occur. Whilst apart from the Gaza Flotilla, where the Turkish inquiry report noted the vessels

²⁷⁹ As noted in [4.2.1.3], the ISPS Code requires operators of port facilities that interface with ships subject to the ISPS Code to have in place PFSPs – which are required to address, at least “... measures designed to prevent weapons or other dangerous substances and devices intended for use against persons, ships or ports and the carriage of which is not authorised from being introduced: ISPS Code Part A, Section 16.3

²⁸⁰ As [4.2.2.1] noted, whilst several supply chain security initiatives have developed in the years following the 9/11 attacks, because such initiatives have been voluntary rather than mandatory it is difficult to assess the extent to which such measures have become accepted internationally

had departed from a port facility subject to the ISPS Code, the reports noted in [7.3.1.1] and [7.3.1.2] did not indicate where the interdicted weaponry and persons were loaded onto the vessels. Nevertheless [7.3.1.1] noted reports of fishing vessels being utilised to transport conventional weaponry over some long international distances by the IRA during the early 1980s and by Hezbollah and other Palestinian groups in 2001 and 2003. Smaller ports that interface with fishing vessels might well not be subject to the ISPS Code. Also, [7.3.1.2] indicated that terrorists are only recorded to have attempted clandestine insertions of operatives around Israel and Gaza (including through the use of mother-ships); and that Al Qaeda-linked groups have (thus far) attempted to transport operatives over longer distances though shipping containers – which can only be loaded and offloaded within large ports – which (since 2004) would be more likely to be subject to the ISPS Code.

Finally, [7.3.1.2] noted two instances of terrorist connected-persons travelling internationally by sea in 2002 being found with false identification documentation. It also noted that outside of the Eastern Mediterranean with the on-going Arab-Israeli conflicts (where vessels have been utilised to transport operatives over short-range distances – including through clandestine insertions), most utilisations of vessels to transport terrorist operatives have had involved larger vessels (and shipping containers) which inevitably must move through large ports. As [4.4] noted, providing it is implemented thoroughly and consistently by the state parties, the 2003 SID Convention could contribute to harmonising international efforts to lessen the scope for terrorists to utilise fraudulent identification documentation to facilitate their movements internationally.

[7.3.3] Analysis of the legality of “other than WMD” interdictions across the UNCLOS maritime jurisdictional zones

[7.2] explained how the WMD interdiction measures alluded to in the Interdiction Principles have prompted debate about the legality of WMD interdictions under UNCLOS, leading to “restrictive” and “liberal” views of UNCLOS. However the legality under UNCLOS of the interdictions of vessels suspected of being utilised for “other than WMD transporting” terrorist utilisations of vessels has not received a similar level of scholarly analysis. Therefore, this section applies the reasoning outlined in [7.2.5] to formulate “restrictive” and “liberal” views of UNCLOS regarding the interdictions of vessels suspected of being utilised by terrorists for

these activities. While the studies noted in [7.2.5] analysed the implications²⁸¹ of Resolution 1540 for vessel interdictions under UNCLOS, this section considers whether other post-9/11 counter-terrorism Security Council Resolutions reviewed in [2.7] – particularly Resolution 1390 – might add further justification to interdictions of such suspected terrorist vessels. It reasons that because Resolution 1390 is “more powerful” than Resolution 1540, and because “readily assembled” conventional weaponry would be more threatening than raw WMD materiel which could have legitimate dual uses, a liberal view of UNCLOS in relation to the interdiction of such “other than WMD” transporting utilisations of vessels would be on a stronger legal footing than the liberal view of UNCLOS with respect to WMD interdictions articulated in [7.2.5].

[7.3.3.1] “Other than WMD” interdictions in internal waters and territorial seas

[7.3.1.1] and [7.3.1.2] noted several recorded instances of terrorist groups offloading weaponry and operatives within the territorial sea to enable the perpetration of subsequent attacks on land. If a foreign vessel within the territorial sea was suspected of being utilised to transport conventional weaponry, terrorist-connected persons or prohibited items such as drugs (for terrorist fundraising) directly towards or away from a coastal state, such activities would be likely to fall within the ambit of UNCLOS Article 19(2)(a), which as [7.2.5.1] noted, specifies that ‘any threat or use of force against the sovereignty, territorial integrity or political independence of the coastal State, or in any other manner in violation of the principles of international law embodied in the UN Charter’ shall render passage non-innocent. This would enable the coastal state take the ‘necessary steps to prevent such passage’ under Article 25.²⁸² Furthermore UNCLOS Article 19(2)(g), which specifies that the ‘loading or unloading of any commodity, currency or person contrary to the customs, fiscal, immigration or sanitary laws and regulations of the coastal State’²⁸³ could enable coastal states to interdict suspected terrorist vessels transferring weaponry or terrorist-connected persons within the territorial sea.

²⁸¹ That is, whether UNCLOS, when read in light of Resolution 1540, should be understood as enabling or prohibiting interdictions of laterally transiting foreign vessels

²⁸² For an analysis of what the ‘necessary steps’ under UNCLOS Article 25 may involve, see [6.2.3.2] ‘Interdictions of suspected terrorist vessels within territorial seas’

²⁸³ Providing the “interdicting” coastal state had such laws in place - UNCLOS Article 21 authorises coastal states to adopt and give due publicity to laws and regulations relating to innocent passage through the territorial sea, in respect of (inter alia) the prevention of infringement (inter alia) the immigration laws and regulations of the coastal State

However, the legality of interdictions of laterally transiting foreign vessels would be less straightforward. Whilst as at 1 October 2013 there is no global treaty specifically addressing the trafficking of small arms, a number of treaties address the manufacture and trafficking of small arms more generally.²⁸⁴ On 26 September 2013, Security Council Resolution 2117, which addressed the trafficking of small arms and light weaponry generally, required States to eliminate the supply of small arms and light weaponry to terrorists, but did not specifically authorise interdictions.²⁸⁵

Following a similar approach to the interpretations of UNCLOS noted in [7.2.5], a restrictive view of UNCLOS would presumably distinguish the national focus of UNCLOS Article 19(2)(a)²⁸⁶ from the *international* focus of Resolution 1390²⁸⁷ in paragraphs 2(a),²⁸⁸ 2(b)²⁸⁹ and 2(c)²⁹⁰ – which re-affirmed that acts of international terrorism constitute a threat to *international* peace and security, and emphasise the importance of a direct nexus between the presence of terrorist weaponry, persons or financing activities and the security of the coastal state. It could also interpret the “should not” within UNCLOS Article 27(1) as a mandatory (rather than hortatory) prohibition on coastal states’ ability to exercise criminal jurisdiction against foreign vessels. By contrast a liberal view might hold that UNCLOS Article 19(2)(a) – when considered in light of the obligations imposed by Resolution 1390 in paragraphs 2(a),²⁹¹ 2(b)²⁹² and 2(c)²⁹³ – could enable a coastal state to interdict such suspected shipments. In particular, the specific obligations within Resolution 1390 paragraph 2(b) to ‘prevent the transit

²⁸⁴ UN Report of Secretary-General ‘Oceans and the Law of the Sea’ (10 March 2008) UN DocA/63/63, para 75. Cited in Klein, above n 68, 318

²⁸⁵ UNSC Res 2117 (26 September 2013) UN Doc S/RES/2117, para 9

²⁸⁶ Guilfoyle, above n 31, 16

²⁸⁷ Although Security Council Resolution 1390 was titled ‘The Situation in Afghanistan’, it followed the approach of the post-9/11 counter-terrorism Security Council resolutions reviewed in [2.7.1] through imposing obligations that were neither geographically nor temporally constrained. [2.7.1] also noted that the obligations imposed under Resolution 1390 have been re-affirmed in ten subsequent Security Council resolutions

²⁸⁸ Which as [2.7.1] noted, obliged states to ‘... freeze the funds and other financial assets or economic resources of these individuals, groups, undertakings and entities - including funds derived from property owned or controlled, directly or indirectly, by them or by persons acting on their behalf or at their direction, and ensuring that neither these nor any other funds, financial assets or economic resources are made available, directly or indirectly, for such persons’ benefit, by their nationals or by any persons within their territory

²⁸⁹ Which as [2.7.1] noted, obliged states to ‘... prevent the entry into or the transit through their territories of [the specified] individuals’

²⁹⁰ Which as [2.7.1] noted, obliged states to ‘... [prevent] the direct or indirect supply, sale and transfer, to these individuals, groups, undertakings and entities from their territories or by their nationals outside their territories, or using their flag vessels or aircraft, of arms and related materiel of all types including weapons and ammunition, military vehicles and equipment, paramilitary equipment, and spare parts for the aforementioned and technical advice, assistance, or training related to military activities’.

²⁹¹ For terrorist uses of vessels as a means of raising funds

²⁹² For terrorist uses of vessels to transport persons connected with their groups

²⁹³ For terrorist uses of vessels to transport conventional weaponry

through their territories’²⁹⁴ and in paragraph 2(c) to ‘prevent the direct or indirect supply, sale and transfer of weaponry from their territories’ contrast to the mere “invitation” in paragraph 10 of Resolution 1540,²⁹⁵ could strengthen this liberal view. A liberal view could also interpret the ‘should not’ within UNCLOS Article 27(1) as a hortatory, rather than mandatory, prohibition on coastal states’ ability to exercise criminal jurisdiction against foreign vessels.

The 2003 interdiction of the *Baltic Sky* whilst transiting the Greek territorial sea seems to evidence a liberal view of UNCLOS. After this interdiction, the Greek Merchant Marine Minister George Anomeritis explained to reporters that ‘[t]he team discovered 680 tonnes of explosives and 18,000 detonators on board the ship, making it a floating “nuclear bomb” and that ‘[n]o one would call legal such a cargo that is going around the Mediterranean for a month’. Vasilis Kapralos, an explosives specialist, also said that ‘[i]f one detonator had gone off, . . . it would have caused the whole load to explode, resulting in a 2.5 kilometre shock wave and the disappearance of a small city from the map’²⁹⁶ – leading Song to characterise this interdiction as legal under UNCLOS.²⁹⁷

[7.3.3.2] “Other than WMD” interdictions within Contiguous Zones

As noted in [7.2.5.2], the generally-accepted view of coastal state interdiction powers under the UNCLOS Contiguous Zone provisions is a restrictive one – holding that coastal states enjoy greater powers over outward-bound foreign vessels under Article 33(1)(b) than inward-bound foreign vessels under Article 33(1)(a). A restrictive view of UNCLOS Article 33 would presumably emphasise the references to ‘territory or territorial sea’ within both limbs of Article 33(1) as imposing a “direct nexus” requirement which would prohibit coastal states from interdicting foreign vessels laterally transiting the contiguous zone. Conversely a liberal view might hold that when considered in light of the obligations imposed by Resolution 1390 in paragraphs 2(a),²⁹⁸ 2(b),²⁹⁹ and 2(c),³⁰⁰ UNCLOS Article 33(1) could enable a coastal state to

²⁹⁴ Without precluding maritime territories

²⁹⁵ which *call[ed] 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”

²⁹⁶ ‘Black Ship’ Down’ *Al-Ahram Weekly Online*, July 10–16, 2003, no. 646, available at weekly.ahram.org.eg/2003/646/in3.htm. Cited in Song, above n 11, 142

²⁹⁷ Song, above n 11, 121 - 122

²⁹⁸ For terrorist uses of vessels as a means of raising funds

²⁹⁹ For terrorist uses of vessels to transport persons connected with their groups

³⁰⁰ For terrorist uses of vessels to transport conventional weaponry

interdict foreign vessels suspected of transporting weaponry, terrorist connected persons or financing terrorist activities. In particular, the specific obligations within Resolution 1390 in paragraphs 2(a) and 2(b) to ‘prevent the transit through their territories’³⁰¹ and in paragraph 2(c) to ‘prevent the direct or indirect supply, sale and transfer of weaponry from their territories’ could add further support to a liberal view of coastal state interdiction powers. Again, whichever view is taken, UNCLOS is silent on what actions the ‘exercise ... of the necessary control’ under UNCLOS Article 33 might entail – meaning coastal state interdictions of foreign vessels laterally transiting their Contiguous Zones could be controversial.

[7.3.3.3] “Other than WMD” interdictions on the High Seas

[7.3.1.1] noted several instances of terrorist groups transporting conventional weaponry over long distances by sea – one of the longest ranges being the 1994 shipment of 60 tonnes of explosives from the Ukraine to Sri Lanka by the LTTE. It also noted five out of the seven reported interdictions of suspected conventional weaponry shipments occurring on the high seas. From these five interdictions, three suspected terrorist vessels – the *Santorini*, the *Karine A*, and the *Abu Hassan* – were interdicted on the high seas by Israeli naval forces through being suspected of transporting weaponry to Palestinian groups and to Hezbollah. Given the long-running conflicts between Israel and these Palestinian groups, international legal rules other than those examined in this Study such as rights of blockade could be applicable to the interdiction of such vessels. But similarly to the *Baltic Sky* interdiction, it is plausible that Israel may have determined these weapons shipments to constitute a direct threat to its national security, and as Chapter 8 notes, the absence of international protest about these high seas interdictions has been noted by international legal scholars.³⁰²

The 2002 interdiction by Indian authorities of the abandoned Lebanese dry bulk cargo vessel *Al Murtada* approximately 170 kilometres off the Indian coast, where a large cache of weaponry was found (suspected of being for destined for terrorist purposes) – was not linked to a long-running conflict similarly to that between Israel and Palestinian groups. Whilst the details of this incident (for example how it first came to the attention of the Indian coastguard),

³⁰¹ Without precluding maritime territories

³⁰² Klein, above n 68, 275

are quite scant, because the *Al Murtada* had been abandoned the interdiction might be justified as the interdiction of a stateless vessel under UNCLOS Article 110.

The review in [7.3.1.2] showed that terrorist groups have successfully utilised, and have attempted to utilise, a range of vessels (and also shipping containers aboard vessels) to transport operatives over various distances. Long international voyages have included one successful case of suspected Al Qaeda operatives travelling under false seafarer identification from Egypt to Italy; one recorded attempt of an Al Qaeda operative attempting to travel in a shipping container from Italy to Canada; and an attempt by the PLF to transport operatives from Algeria to Israel. The short range distances have been mostly in the Eastern Mediterranean with the intention of launching attacks against Israel. Whilst the sources reviewed for [7.3.1.2] tended to be generalised about the locations of interdictions, there are were at least two recorded attempts of terrorists launching operatives from mother ships whilst in international waters – with one such recorded attempt being interdicted 22 nautical miles off the Israeli coast.

A restrictive view of UNCLOS could interpret the reservation of the high seas for ‘peaceful purposes’ in Article 88 as referring to the activities of vessels whilst actually on the high seas – rather than enabling “non-peaceful” activities such as terrorist attacks at a later time on land through the provision of weaponry, operatives or funds. It could also take a restrictive interpretation of Article 92³⁰³ and a literal interpretation of Article 110 as containing an exhaustive list of exceptions to the jurisdiction of flag states over their vessels on the high seas – with the terrorist utilisation of vessels to transport conventional weaponry, persons or fundraising would not “fit”,³⁰⁴ and could interpret ‘treaties’ in Article 110 in a formalised sense. Finally it could deny the application of Resolution 1390 paragraphs 2(a),³⁰⁵ 2(b)³⁰⁶ and 2(c)³⁰⁷ to the high seas, which do not constitute the ‘territories’ of any state,³⁰⁸ as prohibiting the interdiction of suspected terrorist vessels.

By contrast, a liberal view of the powers of coastal states under UNCLOS to interdict suspected illicit shipments conventional weaponry could arguably be stronger than the liberal view with

³⁰³ That is, prohibiting interdictions without the consent of the vessel’s flag state

³⁰⁴ See for example Logan, above n 9, 268

³⁰⁵ For terrorist uses of vessels as a means of raising funds

³⁰⁶ For terrorist uses of vessels to transport persons connected with their groups

³⁰⁷ For terrorist uses of vessels to transport conventional weaponry

³⁰⁸ UNCLOS Article 89 ‘Invalidity of claims of sovereignty over the high seas’

respect to WMD materiel for terrorist purposes for three reasons. First, Resolution 1390 paragraph 2(c)³⁰⁹ imposed several obligations (which have been re-affirmed in 27 subsequent Security Council resolutions) on States to prevent the supply of weaponry and related materials to terrorists, compared to the mere “invitation” within Resolution 1540.³¹⁰ Second, except for explosives such as Ammonium Nitrate (which are widely used for construction and agricultural activities), it is far less likely that more readily usable³¹¹ conventional weaponry would have legitimate peaceful dual uses to the same extent that many forms of WMD materiel might. Third, whilst several scholars favouring the restrictive view of UNCLOS have cited UNCLOS Article 23³¹² as disallowing coastal states from interdicting laterally transiting nuclear-powered vessels, no similar provisions would apply to the maritime trafficking of “more readily usable” conventional weaponry. Such a liberal view could also interpret the list of exceptions to the sole jurisdiction of the flag state under UNCLOS Article 110 as indicative rather than exhaustive, and possibly cite the obligation of all States to cooperate in the suppression of drug trafficking on the high seas³¹³ as further support for interdictions of suspected terrorist vessels.

[7.3.3.4] “Other than WMD” interdictions within international straits

Following the reasoning in [7.2.5.4], a restrictive view of the interdiction powers of “bordering states” under UNCLOS over vessels suspected of being utilised to enable the perpetration of subsequent terrorist attacks would presumably emphasise both the ‘non-discriminatory’ character of the UNCLOS transit passage regime and its references to the ‘freedom of navigation’ through international straits as prohibiting “bordering states” from interdicting laterally transiting suspected terrorist vessels.³¹⁴ It could also view the terms ‘any threat or use of force against the sovereignty, territorial integrity or political independence of [bordering

³⁰⁹ As noted [2.7.2], UNSC Res 1390 (16 January 2002) UN Doc S/RES/1390 para 2(c) obliged states to ‘... [prevent] the direct or indirect supply, sale and transfer, to these individuals, groups, undertakings and entities from their territories or by their nationals outside their territories, or using their flag vessels or aircraft, of arms and related materiel of all types including weapons and ammunition, military vehicles and equipment, paramilitary equipment, and spare parts for the aforementioned and technical advice, assistance, or training related to military activities’.

³¹⁰ As [7.2.4] noted, UNSC Res 1540 (28 April 2004) UN Doc S/RES/1540, para 10 merely ‘call[ed] 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’.

³¹¹ More “readily usable” conventional weaponry would most likely present a more imminent security threat than (possibly dual use) WMD materiel - which would require highly specialized skills, time and resources to assemble and utilise

³¹² Which specifically recognizes the innocent passage rights of vessels carrying nuclear materials

³¹³ [7.3.1.3] noted previous reports of terrorists utilising such activities to raise funds

³¹⁴ See for example Garvey, above n 38, 131 - 132; Logan, above n 9, 264

states], or in any other manner in violation of the principles of international law embodied in the UN Charter’ in UNCLOS Article 39 as being limited to acts that have a “direct nexus” to peace and security of the “bordering state” – not to other states that such vessels might be transiting towards.

By contrast a liberal view could hold that UNCLOS enables “bordering states” to interdict suspected terrorist vessels laterally transiting international straits. It could hold that whilst UNCLOS specifies that the rights of innocent passage *should not* be suspended,³¹⁵ nor the rights of transit passage of foreign vessels impeded,³¹⁶ “bordering states” such as Singapore to could interdict laterally transiting suspected terrorist vessels because Article 34(1) provides that straits transit passage ‘should not’ in other respects affect the legal status of the waters forming such straits or the exercise, by the states bordering the straits, of their sovereignty or jurisdiction over such waters.³¹⁷

[7.3.4] Contribution of the PSI to “other than WMD” interdictions

Whilst the PSI, through the political and operational linkages developed amongst ‘participants’ and through the ship-boarding agreements reviewed in [7.2.7] are understood to focus on countering the proliferation of ‘WMD and related materials’, Becker opined that whilst ‘related materials’ presumably refers to WMD components such as chemical weapon ingredients or sensitive dual-use equipment and technologies, there were indications that PSI interdictions may have other cargoes in mind, including the illegal drugs or conventional arms that help keep states and non-state actors of proliferation concern financially afloat’.³¹⁸ It is also conceivable that the political and operational linkages developed amongst participants might also facilitate the interdiction of vessels where there were grounds for suspecting the presence of terrorist-connected persons on-board. Paragraph 4(f) of the Interdiction Principles supports this view. It calls upon participants to ‘take specific actions in support of interdiction efforts regarding cargoes of WMD, their delivery systems, or related materials ... and consistent with their obligations under international law and frameworks, to not transport or assist in the transporting

³¹⁵ UNCLOS Article 38

³¹⁶ UNCLOS Article 45

³¹⁷ Song, above n 11, 116

³¹⁸ Becker, above n 38, 159 - 160

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* [emphasis added].

[7.3.5] 2005 SUA Convention

This section examines the extent to which the 2005 SUA Convention would enable States to prevent vessels being utilised to enable subsequent terrorist attacks through transporting conventional weaponry, operatives or financing terrorist activities. In relation to the transportation of conventional weaponry by vessels to enable subsequent terrorist attacks, as noted in [7.2.9], the 2005 SUA Convention makes it an offence to knowingly transport for “terrorist-like” purposes³¹⁹ (inter alia) ‘... any explosive ... material’.³²⁰ Whilst the review of previous instances of terrorists transporting conventional weaponry by vessels in [7.3.1.1] noted several cases of explosives being transported by vessels, it also noted several cases where only small arms were transported. It is not clear whether such weaponry would also constitute ‘explosives’ under the 2005 SUA Convention, as this term is not defined in the Convention.

In relation to the utilisation of vessels to transport operatives or finance terrorist activities, Article 3ter makes it an offence to unlawfully and intentionally transport a person on board a ship knowing that the person has committed an offence under Articles 3,³²¹ 3bis³²² and 3quater, or any of the nine counter-terrorism treaties listed in its Annex.³²³ The combined effect of

³¹⁹ See Note 206 above

³²⁰ 2005 SUA Convention Article 3bis(1)(b)(i) – which whilst not mentioning terrorism, incorporates the mental element of ‘knowing that it is intended to be used to cause, or in a threat to cause, with or without a condition, as is provided for under national law, death or serious injury or damage for the purpose of intimidating a population, or compelling a government or an international organization to do or to abstain from doing any act’

³²¹ [6.2.4] examined the Article 3 offences

³²² [6.2.5] and [7.2.9] overviewed the offences under Article 3bis of the 2005 SUA Convention

³²³ The nine treaties listed in the Annex of the 2005 SUA Convention are the Convention for the Suppression of Unlawful Seizure of Aircraft, done at the Hague on 16 December 1970; Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, done at Montreal on 23 September 1971; Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, Including Diplomatic Agents, adopted by the General Assembly of the United Nations on 14 December 1973; International Convention Against the Taking of Hostages, adopted by the General Assembly of the United Nations on 17 December 1979; the Convention on the Physical Protection of Nuclear Material, adopted at Vienna on 26 October 1979; Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, done at Montreal on 24 February 1988; Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf, done at Rome on 10 March 1988; International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15 December 1997; and the International Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly of the United Nations on 9 December 1999. These treaties are cited here in the same format as they appear in the 2005 SUA Convention, with [2.2.1] providing the precise citations for these treaties.

Article 3ter (through including the nine sectoral counter-terrorism treaties), and Article 3quater, which includes offences of being broadly involved in terrorist activities, is that the 2005 SUA Convention would “capture” a very broad range of both terrorist-connected persons, and also the utilisation of vessels as a means of financing terrorist activities. In relation to offences under Articles 3, 3bis or 3ter of the 2005 SUA Convention, Article 3quater makes it an offence to unlawfully and intentionally injure or kill any person in connection with such offences;³²⁴ attempt to commit such offences;³²⁵ participate as an accomplice;³²⁶ organize or direct others to commit an offence;³²⁷ or contribute to the commission of such offences.³²⁸

If a state party suspected a vessel flagged to another state party was suspected of being utilised to commit one or more of these offences, the Article 8bis boarding provisions which were overviewed in [6.2.5] could be invoked. However as [6.2.5] also noted due to the low levels of ratifications as at 1 October 2013, the 2005 SUA Convention would only be applicable in a very limited range of circumstances – for example enabling the interdiction of a Panamanian-flagged vessel by Spanish authorities.

[7.4] CONCLUSION

This Chapter has further illustrated the practical application of the Threat Matrix for analysing the threat contexts for the utilisations of vessels to enable subsequent terrorist attacks. It showed the small number of publicly-reported interdictions of suspected illicit shipments of WMD materiel have involved large vessels engaged on international voyages, and have been cooperatively inspected in port rather than being confrontationally interdicted at sea. It also showed how there have been considerably more reported instances of terrorists successfully transporting conventional weaponry by sea, and attempting to do so; and that such transfers have involved both large and small vessels, and both lengthy international voyages and short-distance transfers. It showed how several significant terrorist attacks, including the 1998 African embassy bombings and the 2002 Bali bombings, have been “enabled” through weaponry and explosives transported by sea. It also showed how both large and small vessels have been utilised by terrorists to transport operatives over both long international distances,

³²⁴ 2005 SUA Convention Article 3quater(a)

³²⁵ 2005 SUA Convention Article 3quater(b)

³²⁶ 2005 SUA Convention Article 3quater(c)

³²⁷ 2005 SUA Convention Article 3quater(d)

³²⁸ 2005 SUA Convention Article 3quater(e)

and over short ranges to perpetrate subsequent attacks on land; and finally that both large and small vessels have been utilised to finance terrorist organisations. Although most of the previous successful and attempted instances of vessels being utilised for these purposes have been terrorist-controlled in the first instance, this chapter noted some instances of vessels being forcibly taken over, so taking account of the “best case” / “worst case” scenario analysis articulated in [4.2.7], it reasoned that rigorously-applied ISPS Code security measures might well lessen the scope for such forcible take overs to occur.

The chapter showed how the WMD interdiction measures outlined in the PSI Interdiction Principles have prompted extensive debate regarding the powers of States under UNCLOS to interdict laterally-transiting vessels. Significantly, this Study has been the first to articulate the “restrictive” and “liberal” views of UNCLOS, which largely diverge on the implications that post-9/11 counter terrorism Security Council resolutions should have in understanding the ambiguous provisions of UNCLOS. The chapter also extended the reasoning underlying these “restrictive” and “liberal” views of UNCLOS to interdictions of “other than WMD transporting” utilisations of vessels. It explained the difficulties in assessing international “support” for the PSI, even following the formalisation of nine PSI bilateral ship boarding agreements between the US and key registry states. Finally it explained that while the 2005 SUA Convention objectively and clearly enables interdictions of vessels suspected of illicitly transporting WMD materiel, its current international acceptance is quite low, thereby lessening its prospects for enabling the interdiction of vessels suspected of enabling possible future terrorist attacks.

Given these jurisdictional uncertainties of UNCLOS (and ambiguities with the PSI) and the low acceptance of the 2005 SUA Convention, Chapter 8 considers the extent to which States might, in exceptional circumstances where there was no jurisdictional basis under UNCLOS or the 2005 SUA Convention, interdict suspected terrorist vessels on the basis of countering an ‘armed attack’ on the basis of self-defence under Article 51 of the UN Charter. After explaining the challenges in defining what constitutes an ‘armed attack’, and the actions States may take to defend against armed attacks (similarly to this chapter), it formulates a “restrictive” and “liberal” view of ‘armed attack’ in the post-9/11 maritime terrorism context. It also explores the possibility of States interdicting suspected terrorist vessels on the basis of the doctrine of Necessity.

Chapter 9 examines options for refining the current international legal framework noted above. It argues in first preference for increased ratification of the 2005 SUA Convention; in second preference for further development of bilateral ship-boarding agreements similar to those formalised between the US and key registry states under the PSI; in third preference for increased institutionalisation of the PSI; and in fourth preference for developing further support for the liberal view of UNCLOS.

CHAPTER 8

COUNTERING MARITIME TERRORISM IN EXCEPTIONAL CIRCUMSTANCES UNDER ARTICLE 51 OF THE UN CHARTER AND THE DOCTRINE OF NECESSITY

[8.1] INTRODUCTION

Chapters 6 and 7 highlighted several jurisdictional gaps under UNCLOS for States to interdict suspected (foreign-flagged) vessels deemed to constitute terrorist threats in the absence of specific agreement with the foreign vessel's flag state.¹ In such exceptional circumstances, the only international legal basis to enable States to interdict suspected terrorist vessels could be their 'inherent' rights of self-defence against an 'armed attack' under Article 51 of the UN Charter ('Article 51'), or alternatively on the basis of the doctrine of Necessity.² The possibility of States interdicting suspected terrorist vessels on the basis of self-defence has been briefly acknowledged (but not yet comprehensively examined) by several of the international legal

¹ Such specific agreements could include the 2005 SUA Convention, the 2005 SUA Platforms Protocol, the PSI Bilateral Ship Boarding Agreements, or ad-hoc agreements between the vessel's flag state and the "interdicting" state. This Chapter addresses the fourth sub-question posed in [1.2.2], namely '(4) Considering how maritime terrorism incidents have previously occurred, and might occur in the future, how might the international agreements apply in practice in preventing maritime terrorism incidents?'

² Stuart Kaye 'International Measures to Protect Oil Platforms, Pipelines, and Submarine Cables from Attack' (2007) 31 *Tulane Maritime Law Journal*, 416 – 418; Douglas Guilfoyle 'Maritime Interdiction of Weapons of Mass Destruction' (2007) 12 *Journal of Conflict and Security Law*, 13; and Craig Allen *Maritime Counter-proliferation Operations and the Rule of Law* (Praeger Security International, 2007), 173 - 174

scholars cited in both Chapter 6³ and Chapter 7;⁴ and may also be inferred from key policy statements by the United States and other States.⁵

Article 51 provides (inter alia) that: ‘Nothing in the [UN] Charter shall impair the inherent⁶ right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security ...’.⁷ This Chapter explains that whilst traditionally understood in the context of “State vs State” conflicts, since 9/11 Article 51 has been increasingly (although not universally⁸) recognised as allowing States to defend against armed attacks by non-state

³ Kaye, above n 2, 413 – 414; Robin Churchill and Vaughan Lowe *The Law of the Sea* 3rd Edition (Manchester University Press, 1999), 99 note that ‘States enjoy a general right of self-defence in international law: thus, if they are facing an imminent attack from foreign vessels in their territorial sea and have no other means of protection, they may use any necessary force against the vessels in order to defend themselves’

⁴ Matthew Fitzgerald ‘Seizing Weapons of Mass Destruction from Foreign-Flagged Ships on the High Seas Under Article 51 of the UN Charter’ (2009) 49 *Virginia Journal of International Law* 473; Michael Byers ‘Policing the High Seas: The Proliferation Security Initiative’ (2004) 98 *American Journal of International Law*, 532 (who used the example of a North Korean merchant vessel carrying WMD 13 nautical miles from Los Angeles); Michael Becker ‘The Shifting Public Order of the Oceans: Freedom of Navigation and the Interdiction of Ships at Sea’ (2005) 46 *Harvard Journal of International Law*, 193; Joel Doolin ‘The Proliferation Security Initiative: Cornerstone of a New International Norm’ (Spring 2006) 59(2) *Naval War College Review*, 46 – 48 (who argued for Article 51 to be used selectively as a “trump card” to justify the interdiction of suspected illicit shipments of WMD materiel in exceptional circumstances); Douglas Guilfoyle ‘The Proliferation Security Initiative: Interdicting Vessels in International Waters to Prevent the Spread of Weapons of Mass Destruction?’ (2005) 29 *Melbourne University Law Review*, 760; Douglas Guilfoyle ‘Maritime Interdiction of Weapons of Mass Destruction’ (2007) 12 *Journal of Conflict and Security Law*, 13; Samuel Logan ‘The Proliferation Security Initiative: Navigating the Legal Challenges’ (2005) 14 *Journal of Transnational Law and Policy*, 269 – 270; Stuart Kaye ‘The Proliferation Security Initiative in the Maritime Domain’ (2006) 81(141) *US Naval War College International Legal Studies Series*, 153 – 155; Craig Allen *Maritime Counter-proliferation Operations and the Rule of Law* (Praeger Security International, 2007) at 43; 90 – 91; and 138 – 140; and Natalie Klein *Maritime Security and the Law of the Sea* Oxford Monographs in International Law (Oxford University Press, 2011), 298

⁵ For example, Matthew Fitzgerald ‘Seizing Weapons of Mass Destruction from Foreign-Flagged Ships on the High Seas Under Article 51 of the UN Charter’ (2009) 49 *Virginia Journal of International Law*, 476 – 477 notes that former US Under-Secretary of State for Arms Control and International Security John Bolton (one of the principal architects of the PSI) stated that if the US lacked a jurisdictional basis for interdicting suspected WMD shipments, it could look to Article 51 to justify such interdictions. The United States’ contemplation of interdicting under Article 51 can also be inferred from Bolton’s remarks at a November 2003 PSI meeting, where he explained that ‘... where there are gaps or ambiguities in our authorities, we may consider seeking additional sources for such authority, as circumstances dictate. What we do not believe, however, is that only the [UNSC] can grant the authority we need, and that may be the real source of the criticism we face’; and earlier that year during the July 2003 PSI meeting in Brisbane, he declared the United States had a “general right of self-defence if there was a serious belief that North Korean vessels were carrying material for use in weapons of mass destruction”: Cited in Michael Byers ‘Policing the High Seas: The Proliferation Security Initiative’ (2004) 98 *American Journal of International Law*, 541

⁶ As explained in [8.2.1], the reference to “inherent” rights of self-defence are generally taken to encompass the two Caroline Principles of necessity and proportionality

⁷ Article 51 further provides ‘Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security’

⁸ As [8.4.1] explains, the US-led intervention into Afghanistan under Operation Enduring Freedom from October 2001 onwards has prompted considerable debate on this question

actors such as terrorists. Several scholars have pointed out that while Article 51 specifies a State must be the *target of* an armed attack, it does not specify that an armed attack can only be *perpetrated by* States.⁹ Through a historically progressive analysis of relevant UN pronouncements,¹⁰ ICJ judgements, Security Council resolutions, State practice¹¹ and scholarly writings, it examines how meanings of ‘armed attack’, and the international legal rules governing the use of force by States to defend against armed attacks, have been developed, and also criticised. This analysis draws upon the approaches of the most recent and comprehensive study on Article 51¹² which considered the meaning of ‘armed attack’ through three questions. Firstly, the *ratione materiae* (materiality threshold) of armed attacks, asking ‘*what* acts count as armed attacks?’; second, the *ratione temporis* (temporal threshold) of armed attacks, asking ‘*when* does an ‘armed attack’ occur, and at what point may States take measures to defend against such armed attacks?’; and third, the *ratione personae* of armed attacks, asking ‘*who* can perpetrate or threaten an armed attack?’. In particular, the *ratione personae* question considers whether non-state actors can perpetrate armed attacks, and if so, whether such attacks must be attributable to a State? Through focusing its analysis on these three ‘ratione’ questions, this Chapter develops (similarly to Chapter 7) “restrictive” and “liberal” views of ‘armed attack’ for enabling States to interdict suspected terrorist vessels. Significantly, this chapter undertakes the first detailed analysis about how Article 51 might be applied to justify the interdiction of suspected terrorist vessels. While this chapter reasons the liberal view would best enable States to interdict suspected terrorist vessels, it also argues that recourse to Article 51 should be an absolute last resort option. This chapter also explores the possibility of States interdicting suspected terrorist vessels on the basis of the doctrine of Necessity.

[8.2] FOUNDATIONAL MEANINGS OF “ARMED ATTACK”

[8.2.1] The Caroline criteria

⁹ Yoram Dinstein *War Aggression and Self-Defence* (Cambridge University Press, 4th ed, 2005)

¹⁰ Particularly the UNGA Definition of Aggression (examined in [8.2.3]), and more recently (although more implicitly than explicitly) the 2004 High Level Report (examined in [8.4.2])

¹¹ The term ‘State practice’ here refers to the uses of force by states that have led to debate within the UN Security Council. But as this Chapter explains, many instances of states using force under the purported justification of Article 51 of the UN Charter are not formally reported to the Security Council as envisaged under Article 51

¹² Tom Ruys *‘Armed Attack’ and Article 51 of the UN Charter: Evolutions in Customary Law and Practice* (Cambridge Studies in International and Comparative Law, 2010) - which as at 1 October 2013 is the most recent and comprehensive (584 pp.) study on the meaning of armed attack under Article 51 of the UN Charter

Article 51 refers to States' 'inherent' rights of self-defence, with 'inherent' having been held to refer to customary international law which pre-dates the UN Charter.¹³ Customary international law on the use of force by States in self-defence largely derives from the principles enunciated during a diplomatic exchange between the United States and Britain between 1837 and 1842 following the sinking of the *Caroline* steamboat over Niagara Falls during the Upper Canadian Rebellion against the British colonial government in 1837. Whilst the United States remained officially neutral during this conflict, American sympathisers provided supplies and weapons to the Canadian rebels – including through the use of the steamboat *Caroline*. In response to this activity, a British force based in Canada crossed the Niagara River into US territory at night, seized the *Caroline*, set it on fire and sent it crashing over Niagara Falls.¹⁴ This incident prompted a diplomatic protest by the US government to the British Ambassador about what it regarded as an excessive and illegal use of force against the territorial integrity of the United States. In the final letter to the British, the United States asserted that to be legally justifiable, uses of force by States in self-defence needed to establish '... a necessity of self-defence was instant, overwhelming, leaving no choice of means, and no moment of deliberation ... and that the British force, even supposing the necessity of the moment authorized them to enter the territories of the United States at all, did nothing unreasonable or excessive; since the act, justified by the necessity of self-defence, must be limited by that necessity, and kept clearly within it'.¹⁵ Following a British apology in response to this letter, the above principles have been synthesised into the well-established customary international legal principles of Necessity and Proportionality.¹⁶ As [8.3] below explains, these two customary international legal principles have been repeatedly confirmed by the ICJ to govern the use of force by States in self-defence, and more recently have been acknowledged in the San Remo Manual of International Law Applicable to Armed Conflicts at Sea,¹⁷ and the UN High Level Panel Report on the 2010 Gaza Flotilla incident. However as the following sections explain, scholarly opinion has been divided on the practical application of these necessity and proportionality principles.

¹³ *Military and Paramilitary Activities (Nicaragua v United States of America)* [1986] ICJ Reports 14, 94 ('Nicaragua [1986]') – which is examined in [8.3.1] below

¹⁴ Thomas Nichols *The Coming Age of Preventive War* (University of Pennsylvania Press, 2008), 2

¹⁵ Nichols, above n 14, 3

¹⁶ [8.4.3] below provides an outline of these concepts have been understood in the post-9/11 counter-terrorism context

¹⁷ Louise Doswald-Beck (ed) *San Remo Manual On International Law Applicable To Armed Conflicts At Sea* (International Institute of Humanitarian Law, 1995)

[8.2.2] Foundational academic writings: Temporal aspects of Article 51

Since 1945, the UN Charter has governed the use of force by States, with Article 2(4) obliging member states to ‘... refrain from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations’. Accordingly, Article 51 has become widely understood as being the only permissible exception to the general UN Charter prohibition on the use of force by States. In the years following 1945 and before 9/11, international legal scholars remained divided on the *ratione temporis* question of whether Article 51 self-defence rights can only be lawfully invoked following an *actual* armed attack, or whether Article 51 allows the use of force to defend against a *threatened* attack. Although since 1945 numerous terminological distinctions have been made for the various conceptions of the temporal lawfulness of self-defence amongst international legal scholars, Ruys helpfully summarises the various conceptions of the temporal lawfulness of self-defence from the most restrictive to the most liberal.¹⁸

The first (and most restrictive) ‘reactive self-defence’ conception covers self-defence measures that follow after an armed attack has struck the territory of the defending state, or its external manifestations abroad. The attack may be completed or may still be on-going – but its material nature is to some extent an observable fact of reality. The second ‘interceptive self-defence’ conception¹⁹ covers situations where an attack has been launched, and whilst not having struck the “defending” state, there is clear and compelling evidence of the aggressor embarking upon an apparently irreversible course of action. An example of this would where be a missile has been launched against the territory of a State, but is still in the air.²⁰ The third ‘anticipatory self-defence’ conception is an “umbrella” term for two “future-assumptive” forms of self-defence. Firstly pre-emptive self-defence, being directed towards an attack which has not yet been launched, but which is deemed to be imminent – presupposing that certain preparations for an attack (such as the mobilisation of armed forces) have already been made.²¹ Secondly preventive self-defence, being self-defence actions that seek to counter a future threat which has not yet fully materialised, but which is suspected of becoming imminent at some point in

¹⁸ Ruys, above n 12, 253 – 254

¹⁹ Ruys, above n 12, 253 – describes this category as ‘... located on the fault line between reactive and anticipatory self-defence’, and also notes Dinstein as being the key proponent of this doctrine

²⁰ Ruys, above n 12, 253

²¹ Ruys, above n 12, 253 - 254

the future.²² Interdictions of suspected terrorist vessels before they are utilised in an offensive manner to perpetrate dangerous or disruptive acts (as examined in Chapter 6), or before they enabled the perpetration of subsequent terrorist attacks on land (as examined in Chapter 7) would involve self-defence measures being exercised in a pre-emptive sense.

Critics of anticipatory self-defence have been termed ‘restrictionists’,²³ with Ian Brownlie regarded as the founding proponent of this school of thought - who regarded “preventive” self-defence actions as contrary to Article 51 as such an interpretation it would allow forcible action in self-defence to destroy a *putative* enemy’s capacity to mount a possible future attack.²⁴ Other restrictionists have regarded Article 51 as being ‘limited to an actual armed attack, which is clear, unambiguous, subject to proof, and not easily open to interpretation or fabrication’, and have cautioned against States being allowed to strike under the pretext of preventative or pre-emptive self-defence.²⁵ International legal scholars favouring a restrictive view of UNCLOS (as noted in [7.2.5]) generally also take a restrictive view of the ability of States to interdict suspected shipments of WMD materiel under Article 51 – with Garvey cautioning that ‘... without the limits of imminence and necessity, the doctrine of self-defence could be used to justify virtually any use of force, in the most volatile international contexts, including by India against Pakistan and by China against Taiwan’.²⁶ Along similar lines Guilfoyle argues that anticipatory self-defence may be criticised for being highly presumptive as to future events.²⁷

By contrast, proponents of anticipatory self-defence have been referred to as ‘counter-restrictionists’ and ‘expansionists’. Bowett, who is generally regarded as the founding proponent of this school of thought, argued it was unrealistic for states to await an initial attack, particularly given the growing prevalence of nuclear armaments during the early decades of the Cold War capable of threatening a state’s very existence in order to justify self-defence measures.²⁸ As noted in [8.4], more recent ‘counter-restrictionists’ have argued the absurdity

²² Ruys, above n 12, 254

²³ Ruys, above n 12., 258 - 266

²⁴ Ian Brownlie *Principles of Public International Law* (6th Edition), 2003, 259. Cited in Douglas Guilfoyle ‘The Proliferation Security Initiative: Interdicting Vessels in International Waters to Prevent the Spread of Weapons of Mass Destruction?’ (2005) 29 *Melbourne University Law Review*, 750

²⁵ Gillian Triggs *International Law: Contemporary Principles and Practices* (Oxford University Press, 2006), 578

²⁶ Jack Garvey ‘The International Institutional Imperative for Countering the Spread of Weapons of Mass Destruction: Assessing the Proliferation Security Initiative’ (2005) 10(2) *Journal of Conflict & Security Law*, 134

²⁷ Douglas Guilfoyle ‘The Proliferation Security Initiative: Interdicting Vessels in International Waters to Prevent the Spread of Weapons of Mass Destruction?’ (2005) *Melbourne University Law Review*, 750

²⁸ Derek Bowett *Self-Defence in International Law* (Manchester University Press, 1958), 187

of only permitting self-defence measures once missiles have already hit the territory of the attacked State.²⁹

[8.2.3] Pre-9/11 state practice³⁰ and the 1974 UNGA Definition of Aggression

The foundational perspectives noted above from the “1945 to 9/11” period reflected predominant state practice of the Cold War being the use or threat of force in a “State vs State” context. For the purposes of this Chapter, “state practice” refers to demonstrated uses of force by States on the stated grounds of self-defence, and the consequent Security Council dialogues relating to the uses of such force³¹ - notwithstanding that not all uses of force by States purportedly in self-defence are publicised or reported to the Security Council as required by Article 51.³² As this Chapter shows, there is a very fine and subjective line between the uses of force that will constitute permissible acts of self-defence, and impermissible reprisals or acts of aggression against other states, with several anticipatory uses of force since 1945 having been sharply criticised by the international community.³³ One heavily criticised incident involving the use of force purportedly in pre-emptive self-defence was Israel’s 1981 bombing of the Osirak nuclear reactor inside Iraq in 1981 at which Israel feared Iraq was developing of nuclear weapons. Israel’s strike was unanimously condemned by the Security Council in Resolution 487 on 19 June 1981, with the UK representative declaring ‘ ... [Israel’s bombing] was not a response to an armed attack on Israel by Iraq. There was no instant nor overwhelming

²⁹ Natalino Ronzitti ‘The Expanding Law of Self-Defence’ (2006) 11(3) *Journal of Conflict and Security Law*, 347

³⁰ State practice on the justification of uses of force in self-defence under Article 51 is analysed second here because it is state practice which has, does and will, shape understandings of UN Charter Article 51 - with the contending arguments of the involved states (ie the attacker and the victim) drawing upon (either explicitly or implicitly) on either the “restrictionist” or the “counter-restrictionist” schools of thought

³¹ Notable instances where UN Charter Article 51 has been invoked by states to justify the use of force include: by the former USSR to justify interventions and the use of military force into Hungary in 1956 and Afghanistan in 1979; by the United States to justify interventions and/or the use of military force in the Dominican Republic in 1965, Grenada in 1983, Libya in 1986 and Panama in 1989; by The United States, the United Kingdom and Australia to justify the intervention and the use of military force in Vietnam in 1966; and by Israel in invasion of Egypt in 1967, rescue of hostages in Uganda in 1976, and its interventions into Lebanon since 1978. Gillian Triggs *International Law: Contemporary Principles and Practices* (Oxford University Press, 2006), 576

³² Also the 2004 High Level Report noted at [186] that: ‘For the first 44 years of the United Nations, Member States often violated these rules and used military force literally hundreds of times, with a paralysed Security Council passing very few Chapter VII resolutions and Article 51 only rarely providing credible cover.’

³³ These have included: South Africa’s attacks on the neighbouring states of Angola and Zambia between 1976 and 1979; the United Kingdom’s action to recover the Falklands from Argentina after it invaded the islands in 1982; the United States’ attacks on Baghdad in 1993, on military training camps in Afghanistan and a chemical plant in Sudan (in response to terrorist attacks against US embassies in Kenya and Tanzania); the United States invasion of Afghanistan after 11 September 2001; and the United Kingdom, United States and Australian invasion and occupation of Iraq (collective defence against weapons of mass destruction) on 20 March 2003

necessity for self-defence; nor [could] it be justified as a forcible measure of self-protection’.³⁴ Israel’s strike on the Osirak reactor has been cited by several international legal scholars as an example of an unjustified use of force to counter threats of future development of nuclear weapons, and ipso facto, the interdiction of vessels suspected of illicitly transporting WMD materiel.³⁵

The threat of the use of nuclear weapons during the first decades of the Cold War added impetus to the formulation of an international definition of “aggression” (which had been occurring since 1923) in order to reduce the scope for subjective assessments of when uses of force by States should be warranted. Following negotiations between 1968 and 1974, the United Nations General Assembly (UNGA) passed the UNGA Definition of Aggression on 14 December 1974 (UNGA Definition).³⁶ Article 3 of the UNGA Definition outlined six acts which subject to Article 2,³⁷ would qualify as acts of aggression. Four out of these six acts referred to actions by the armed forces of States,³⁸ reflecting the predominantly “East vs West”, state-centric international security environment of the Cold War. Nevertheless, in several cases, the superpowers and their allies provided various levels of overt and covert support to non-state actors such as rebel groups to destabilise the influence of governments to which they were ideologically opposed – which was also addressed by the UNGA Definition in Article 3(f).³⁹

³⁴ UNSC Res 487 (19 June 1981) UN Doc S/RES/487. Cited in Ruys, above n 12., 287

³⁵ Guilfoyle, above n 27, 760

³⁶ Ruys, above n 12, 129 - 139

³⁷ Article 2 of the UNGA Definition reinforces the primacy of the UNSC in determining the lawfulness of uses of force, providing that: ‘The first use of armed force by a State in contravention of the Charter shall constitute prima facie evidence of an act of aggression although the Security Council may, in conformity with the Charter, conclude that a determination that an act of aggression has been committed would not be justified in the light of other relevant circumstances, including the fact that the acts concerned or their consequences are not of sufficient gravity’.

³⁸ These acts within Article 3 of the UNGA Definition included (in descending order of state involvement): (a) The invasion or attack by the armed forces of a State of the territory of another State, or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another State or part thereof; (b) Bombardment by the armed forces of a State against the territory of another State or the use of any weapons by a State against the territory of another State; (c) The blockade of the ports or coasts of a State by the armed forces of another State; (d) An attack by the armed forces of a State on the land, sea or air forces, or marine and air fleets of another State; and (e) The use of armed forces of one State which are within the territory of another State with the agreement of the receiving State, in contravention of the conditions provided for in the agreement or any extension of their presence in such territory beyond the termination of the agreement

³⁹ Article 3(f) of the UNGA Definition also noted that: ‘The action of a State in allowing its territory, which it has placed at the disposal of another State, to be used by that other State for perpetrating an act of aggression against a third State’

However for this Chapter's purpose of examining the extent to which Article 51 might justify self-defence measures against non-state actors, the most directly relevant paragraph of the UNGA Definition is Article 3(g), which includes as acts of aggression: 'The *sending by or on behalf of a State* of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein'. [Emphasis added] The italicised aspects of Article 3(g) reflect the predominantly state-centric international security environment of the Cold War, in which as [2.7] noted, terrorism was a "mere sideshow" to the greater "East vs West" confrontation. [2.6.2] also noted the general consensus amongst terrorism scholars that most contemporary terrorist groups operate with little or no support from states as envisaged by the Article 3(g) of the UNGA Definition. As outlined in [8.3], Article 3(g) of the UNGA Definition has been cited with approval by the ICJ in *Nicaragua v United States* (1986)⁴⁰ and *DRC v Uganda* (2005).⁴¹ It has also been cited with approval by several of the scholars favouring restrictive views of UNCLOS and Article 51 in relation to the interdiction of WMD shipments.⁴²

However, as reasoned in [8.5], through Article 4 of the UNGA Definition noting that 'The acts enumerated [within Article 3] are not exhaustive, and the Security Council may determine that other acts constitute aggression under the provisions of the Charter', a "liberal view" of 'armed attack' might, similarly to the liberal view of UNCLOS enunciated in Chapter 7, regard the post-9/11 counter-terrorism Security Council resolutions noted in [2.7] as supporting pre-emptive self-defence measures by States to counter imminent armed attacks by contemporary terrorist groups.

[8.3] ICJ JURISPRUDENCE REGARDING ARTICLE 51

This section examines how four key ICJ cases have shaped understandings of the term 'armed attack'. International legal scholars have criticised the ICJ for strictly confining its attention to only determining the specific questions put to it by state parties on a case-by-case basis, rather than enunciating generalised criteria for the lawfulness of force in self-defence. Whilst ICJ

⁴⁰ *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America)* (Merits) [1986] ICJ Reports 14 ('*Nicaragua* [1986]')

⁴¹ *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v Uganda)* [2005] ICJ Reports 168 ('*DRC v Uganda*')

⁴² See for example Guilfoyle, above n 27, 733

judgements⁴³ are adjudicative on the specific issues before the court as opposed to being advisory, and the ICJ may be extremely cautious not to grant its imprimatur to the unbridled use of force by states, this reluctance, and also certain aspects of the reasoning in the ICJ cases has been extensively criticised by international legal scholars. Indeed some scholars argue the cases examined below no longer reflect the realities of twenty-first century international security.⁴⁴ Nevertheless, these four ICJ decisions are useful in terms of articulating a “restrictive” view of Article 51, which if followed would be less likely to enable States to interdict suspected terrorist vessels in exceptional circumstances.

[8.3.1] Nicaragua v United States [1986]

Notwithstanding the criticisms of it, *Nicaragua* [1986] is significant for defining the hostile actions which will, and will not, constitute an ‘armed attack’ in three respects. First, it specifically acknowledged for the first time that customary international law regarding the use of force⁴⁵ coexists alongside the UN Charter. Second, the ICJ it made inroads into the *ratione materiae* question (that is, the materiality threshold of what degrees of force will constitute an armed attack) – through conceptualising “more grave” and “less grave” uses of force. Third, and following from this second point, it distinguished an ‘armed attack’ from States’ protection of their “essential security interests”.

This case arose from actions by the United States during the last decade of the Cold War. Under the “Reagan Doctrine”, the United States provided both overt and covert support to anti-Marxist rebel and guerrilla movements to “roll back” the influence of communism in Afghanistan, Angola and Nicaragua. Within Nicaragua, between 1981 and 1984 the United States provided various levels of support to the Contras – a rebel group opposed to the Marxist Sandinista National Liberation Front which had seized power to govern Nicaragua in 1979. The United States viewed the Sandinistas as aiding the left wing Farabundo Marti National Liberation Front (FMLN) in neighbouring El Salvador, which it also viewed as a Marxist threat to the security of the Central American region.

⁴³ As opposed to advisory opinions

⁴⁴ Particularly Christine Gray *International Law and the Use of Force* 3rd Edition (Oxford University Press, 2008) As [8.3.2] below notes, the ICJ’s reasoning in the *Oil Platforms* decision has been particularly criticised

⁴⁵ That is, the Caroline principles – see [8.2.1] above

In 1984, Nicaragua instituted proceedings in the ICJ against the US alleging, inter alia, breaches of Article 2(4) of the UN Charter - which prohibits the threat or use of force against the territorial integrity or political independence of any State.⁴⁶ Nicaragua alleged⁴⁷ (and the ICJ held)⁴⁸ that whilst not directly controlling the actions of the Contras (which the CIA codenamed Unilaterally Controlled Latino Assets (UCLAs), the United States had directed and supported them through providing weapons, training and logistical support to the Contras, directing UCLAs to attack Nicaraguan naval bases, and also to lay sea mines in Nicaraguan harbours.

However, the United States subsequently withdrew from these proceedings, following President Reagan's withdrawal of the US from the ICJ's compulsory jurisdiction, and through its influence within the UN Security Council, vetoed the enforcement of the ICJ's decision. A subsequent post-FSLN Nicaraguan government under Violeta Chamorro withdrew Nicaragua's complaint before the ICJ in 1992, leading the ICJ to decide the case *ex parte*. However before its withdrawal, in its reply to Nicaragua's claim, the United States argued it was acting under Article 51 in collective self-defence of El Salvador, and also submitted that it had responded to similar requests for assistance from El Salvador, Costa Rica and Honduras.⁴⁹ The ICJ's judgement, which found for Nicaragua against the United States on 16 counts,⁵⁰ made four key declarations regarding the meaning of 'armed attack' under Article 51.

First, the ICJ recognised the co-existence of customary international law and the UN Charter. It held that Article 51 '... by no means covers the whole area of the regulation of the use of force in international relations';⁵¹ that '... a definition of the "armed attack" which if found to exist, authorises the exercise of the "inherent right" of self-defence, is not provided in the Charter, and is not part of treaty law. It cannot therefore be held that Article 51 is a provision which "subsumes and supervenes" customary international law', but rather demonstrated that

⁴⁶ *Nicaragua* [1986], para 15 sets out what Nicaragua alleged were the breaches of international agreements by the United States – including Articles 18 and 20 of the Charter of the Organization of American States; Article 8 of the Convention on Rights and Duties of States; and Article 1 of the Third, of the Convention concerning the Duties and Rights of States in the Event of Civil Strife

⁴⁷ *Nicaragua* [1986] para 15 sets out Nicaragua's allegations, with further particulars regarding the damage caused by sea mines were outlined at para 76, and a summary of the alleged attacks on its ports and oil facilities were detailed at para 81

⁴⁸ *Nicaragua* [1986] para 105 – 106

⁴⁹ *Nicaragua* [1986] para 126 set out the United States' grounds of defence; with Nicaragua's reasons for rejecting the US's arguments outlined at para 127. Also, at para 48 the ICJ noted that whilst El Salvador submitted a Declaration of Intervention to the ICJ on 15 August 1984, the ICJ rejected its validity – as El Salvador had not formally declared itself under attack to the UN Security Council

⁵⁰ *Nicaragua* [1986] para 292

⁵¹ *Nicaragua* [1986] para 172

‘... customary international law continues to exist alongside treaty law’;⁵² and that ‘... it was never intended that the [UN] Charter should embody written confirmation of every essential principle of international law in force’.⁵³ Whilst these passages do not specifically mention the *Caroline* criteria of necessity and proportionality discussed in [8.2.1], it is generally understood as referring to them.⁵⁴

Second, the ICJ addressed the *ratione materiae* (materiality threshold) question (albeit in a highly generalised manner) through declaring the uses of force that will and will not amount to an ‘armed attack’⁵⁵ through enunciating the concept of “most grave” and “less grave” uses of force.⁵⁶ As the question of the legality of self-defence in relation to imminent attacks (which this Chapter focuses on) was not raised, the ICJ refrained from expressing a view on the legality of uses of force in such circumstances, limiting its consideration to the legality of self-defence measures in response to armed attacks which *had already occurred*.⁵⁷

After referring to Article 3(g) of the UNGA Definition⁵⁸ (which it regarded as constituting customary international law), the ICJ enunciated the actions which would constitute an ‘armed attack’ under Article 51. It declared that ‘... an armed attack must be understood as including not merely action by regular armed forces across an international border, but also ‘the sending *by or on behalf of a State of armed bands, groups, irregulars or mercenaries* [ie non-state actors]⁵⁹ which carry out acts of armed force against another State of such gravity as to amount to’ (inter alia) ‘an actual armed attack conducted by regular forces, or its substantial involvement therein’.⁶⁰ [Emphasis added]. The ICJ also inferred that an armed attack in contravention of international legal prohibitions on the use of force may result from the actions of armed bands *sent by a State* into the territory of another State, if the “scale and effects” of attacks by of such armed bands would be more significant than what the ICJ termed a ‘mere

⁵² *Nicaragua* [1986] para 176

⁵³ *Nicaragua* [1986] para 202

⁵⁴ Ruys, above n 12., 53 - 60

⁵⁵ *Nicaragua* [1986] paras 187 – 201

⁵⁶ *Nicaragua* [1986] para 191

⁵⁷ In *Nicaragua* [1986] at para 194 the ICJ noted that ‘In view of the circumstances in which the dispute has arisen, reliance is placed by the Parties only on the right of self-defence in the case of an armed attack which has already occurred, and the issue of the lawfulness of a response to the imminent threat of armed attack has not been raised. Accordingly the Court expresses no view on that issue’

⁵⁸ Discussed above at [8.2.3]

⁵⁹ Author’s annotation

⁶⁰ *Nicaragua* [1986], para 195

frontier incident'.⁶¹ However, the ICJ did not elaborate further on the practical meaning of these 'scale and effects' and 'mere frontier incident' concepts.

The ICJ also noted other hostile actions which would not constitute 'armed attacks' as including '... assistance to rebels in the form of the provision of weapons or logistical or other support', which the ICJ explained '... may be regarded as a threat or use of force, or amount to intervention in the internal or external affairs of other States'.⁶² Later in its judgment, the ICJ reiterated that an 'armed attack' would not include the provision by a State to rebels of weaponry,⁶³ logistical support⁶⁴ and financial support.⁶⁵ These declarations by the ICJ have been cited by international legal scholars taking a restrictive view of both UNCLOS and Article 51 with respect to the WMD vessel interdictions examined in Chapter 7.⁶⁶

The ICJ emphasised that an "attacked State" seeking collective self-defence assistance from another State needed to formally declare itself to have been attacked, and that an "assisting" State could not validly exercise the right of collective self-defence based on its own assessment of the situation.⁶⁷ From this basis the ICJ criticised the failure by the United States to report the purported taking of collective self-defence measures to the Security Council,⁶⁸ leading it to conclude that US support to the Contras exceeded the principles of Necessity and

⁶¹ In *Nicaragua* [1986] at para 195, the ICJ referred to UNGA Resolution 2625 (XXV) regarding the duties of states to refrain from uses of force, acts supporting interventions and incursions against other states Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, 24 October 1970, and Resolution 78 of the General Assembly of the Organization of American States on 21 April 1972

⁶² *Nicaragua* [1986], para 195

⁶³ In *Nicaragua* [1986] at para 230, the ICJ explained '... the Court is unable to consider that, in customary international law, the provision of arms to the opposition in another State constitutes an armed attack on that State. Even at a time when the arms flow was at its peak, and again assuming the participation of the Nicaraguan Government, that would not constitute such armed attack'

⁶⁴ In *Nicaragua* [1986] at para 247, the ICJ noted that whilst the supply of arms and other support could not be equated with an armed attack, '... such activities may well constitute a breach of the principle of the non-use of force and an intervention in the internal affairs of a State, that is, a form of conduct which is certainly wrongful, but is of lesser gravity than an armed attack' and at para 249 it noted 'While an armed attack would give rise to an entitlement to collective self-defence, a use of force of a lesser degree of gravity cannot, as the Court has already observed, produce any entitlement to take collective countermeasures involving the use of force'

⁶⁵ At para 228, the ICJ noted that '... the mere supply of funds to the *contras*, while undoubtedly an act of intervention in the internal affairs of Nicaragua ... does not in itself amount to a use of force'

⁶⁶ See for example Guilfoyle, above n 27,733

⁶⁷ *Nicaragua* [1986], paras 48, 126, 130 and 195

⁶⁸ In *Nicaragua* [1986] at para 235, the ICJ noted 'At no time up to the present has the United States Government addressed to the Security Council, in connection with the matters the subject of the present case. The report which is required by Article 51 of the United Nations Charter in respect of measures which a State believes itself bound to take when it exercises the right of individual or collective self-defence

Proportionality.⁶⁹ It also held the United States' plea of collective self-defence against alleged armed attacks on El Salvador, Honduras and Costa Rica could not be upheld.⁷⁰

Third, at the ICJ quite briefly considered⁷¹ the international legal consequences of the United States' laying of mines in Nicaraguan waters – which it did not characterise as an armed attack, but rather as an 'infringement of Nicaragua's freedom of communications and maritime commerce'.⁷² Fourth, the ICJ distinguished between the terms 'armed attack' and the infringement of 'essential security interests'⁷³ – a term included in the Treaty of Friendship, Commerce and Navigation concluded between the United States and Nicaragua in 1956⁷⁴ – which Nicaragua also claimed to have been breached by the actions of the United States. The ICJ noted that whilst self-defence against an armed attack would encompass measures necessary to protect essential security interests, '... the concept of essential security interests certainly extends beyond the scope of an armed attack, and has been subject to very broad interpretations in the past'.⁷⁵ However the ICJ did not elaborate further on what these 'broad interpretations' included; nor did it further explain its conception of 'essential security interests'. Relevantly for the purposes of this Study, on a restrictive view of Article 51, "disruptive but not deadly" maritime terrorism incidents such as interference with submarine cables could constitute interference with 'essential security interests', but not qualify as an 'armed attack'.

[8.3.2] Oil Platforms (Iran v United States) (2003)

The second significant ICJ decision on Article 51, *Oil Platforms (Iran v United States)* (2003),⁷⁶ is particularly relevant for this Chapter's analysis of the meaning of 'armed attack' both because it results from uses of force purportedly in self-defence at sea (albeit in a "State

⁶⁹ *Nicaragua* [1986], para 237

⁷⁰ *Nicaragua* [1986], para 238

⁷¹ The discussion of the *Oil Platforms* (2003) decision at [8.3.2] below contains more extensive analysis on the international legal consequences following from the laying of sea mines

⁷² *Nicaragua* [1986], paras 213 – 215; 253

⁷³ *Nicaragua* [1986], para 224

⁷⁴ Relevantly, Article XXI of the 1956 Treaty provided (inter alia) that 'the present Treaty shall not preclude the application of measures (c) regulating the production of or traffic in arms, ammunition and implements of war, or traffic in other materials carried on directly or indirectly for the purpose of supplying a military establishment; and (d) necessary to fulfil the obligations of a Party for the maintenance or restoration of international peace and security, or necessary to protect its essential security interests'.

⁷⁵ *Nicaragua* [1986], para 224

⁷⁶ *Case concerning Oil Platforms (Islamic Republic of Iran v United States of America)* (Merits) [2003] ICJ Reports 161 ('*Oil Platforms*')

vs State” context that did not involve non-state actors), and because it illustrates the ICJ’s very restrictive conception of ‘armed attack’. As explained below, the ICJ held that a State seeking to justify uses of force in self-defence needed to demonstrate a very high standard of proof⁷⁷ regarding an aggressor’s intent to specifically target *that* State, and also responsibility for *having specifically targeted* that State. The ICJ also reiterated the vague “most grave” vs “less grave” test enunciated in Nicaragua [1986]. As explained below, several aspects of this judgement have been criticised – particularly the ICJ’s apparent addition of a “third Caroline requirement” of ‘legitimate military targets’,⁷⁸ and the ICJ’s statement of the negative aspect of what an armed attack *is not* – without defining the positive aspects of *what will* constitute an armed attack.

This case originated out of the 1980-1988 Iran-Iraq War, where Iraq’s attacks on Iranian tankers and an Iranian oil terminal in 1984 prompted retaliatory attacks by Iran on tankers carrying Iraqi oil from Kuwait, and later tankers of other States trading with Iraq. The ensuing series of attacks between 1984 and 1988 on merchant shipping by Iraq and Iran became known as the “Tanker War”,⁷⁹ with both Iran and Iraq declaring exclusion zones within various vicinities of their coastlines.⁸⁰ It has been estimated that around 546 merchant vessels were damaged, and around 430 civilian sailors were killed during the Tanker War. In response to concerns about Iranian targeting of its merchant vessels, in late 1986 Kuwait requested the United States, the United Kingdom and the Soviet Union to re-flag Kuwaiti merchant vessels to ensure their protection from attacks.⁸¹ In response to this request, the US Navy began escorting Kuwaiti tankers through the Persian Gulf from 7 March 1987 – with the Soviet Union and the United Kingdom, France, Italy, the Netherlands, and Belgium also providing naval escorts to ships flying their flags within the Persian Gulf around this time.⁸²

The US Navy’s protective escorts of US-flagged merchant vessels were undertaken under the rubric of Operation Earnest Will between 24 July 1987 and 26 September 1988.⁸³ On several

⁷⁷ Almost akin to the common law ‘beyond reasonable doubt’ standard (Author’s annotation)

⁷⁸ *Oil Platforms*, para 51

⁷⁹ *Oil Platforms*, para 23; Paras 23 – 26 provide an overview of the Iran – Iraq Tanker War, see also Efraim Karsh *The Iran-Iraq War 1980–1988* (Osprey, 2002)

⁸⁰ *Oil Platforms*, para 23

⁸¹ *Oil Platforms*, para 24

⁸² *Oil Platforms*, para 24; Dominic Raab “‘Armed Attack’ after the Oil Platforms Case” (2004) 17 *Leiden Journal of International Law*, 719

⁸³ See generally Stephen Andrew Kelley *Better Lucky Than Good: Operation Earnest Will as Gunboat Diplomacy* (Master of Arts in National Security Studies Thesis, Naval Postgraduate School, 2007)

occasions, which are discussed below, US naval forces launched military strikes against Iranian oil platforms and vessels which it deemed to have been involved in the perpetration of attacks against US-flagged shipping. In response to these military strikes, Iran instituted proceedings⁸⁴ in the ICJ against the United States for what it regarded as a breach of a 1955 bilateral economic relations treaty.⁸⁵ In reply to Iran's complaints, the United States claimed its strikes against the oil platforms were justified as self-defence measures under Article 51.⁸⁶

In eleven separate judgements, the ICJ did not find entirely for either party – Iran did was not entitled to claim a breach of the 1955 bilateral treaty, and the United States could not rely upon self-defence as a justification for its naval strikes against the Iranian oil platforms.⁸⁷ In dismissing the United States' claim to be acting in self-defence, the ICJ reiterated the necessity and proportionality tests from *Nicaragua* [1986], holding uses of force to protect essential security interests must be 'necessary' for that purpose, with the determination of 'necessity' not being a question for the subjective judgement of the party taking such measures.⁸⁸ It also followed *Nicaragua* [1986] in holding that the right of a State to use force in self-defence would depend upon that State *having been the victim* of an armed attack⁸⁹ - thereby favouring what [8.2.2] termed a "reactive self-defence" conception of 'armed attack'.

The first significant incident argued (unsuccessfully) by the US to constitute an armed attack by Iran occurred on 16 October 1987 when the Kuwaiti tanker *Sea Isle City* (which had been reflagged to the United States), was hit by a Silkworm missile near Kuwait harbour – an attack which the United States attributed to Iran.⁹⁰ Three days later on 19 October 1987, the US launched Operation Nimble Archer, consisting of a naval attack on the Iranian Reshadat and Resalat offshore oil production installations, which resulted in two platforms forming the Reshadat installation being destroyed.⁹¹ The US argued these naval strikes were justified on the basis of self-defence, alleging Iranian military forces stationed on these platforms had

⁸⁴ As noted between [1] and [18], the proceedings took over a decade between 1992 and 2003

⁸⁵ Iran's claims were based on Article X, paragraph 1 of the 1955 Treaty of Amity, Economic Relations and Consular Rights between the United States and Iran Treaty – being an alleged infringement of freedom of commerce between the territories of the Parties by US attacks on Iranian oil platforms

⁸⁶ *Oil Platforms*, para 37

⁸⁷ *Oil Platforms*, para 125

⁸⁸ *Oil Platforms*, para 43

⁸⁹ *Oil Platforms*, para 51

⁹⁰ *Oil Platforms*, para 52, the ICJ noted that it was the missile attack on the *Sea Isle City* that had figured most prominently in the US contentions - so that incident was the focus of most of the court's analysis

⁹¹ *Oil Platforms*, para 25

facilitated attacks on US and other neutral ships and aircraft through collecting intelligence on vessel movements, laying sea mines, assisting small boat attacks, and firing at US military helicopters.⁹² Iran acknowledged stationing its military forces on these platforms, but claimed this stationing was to defend against attacks by Iraqi forces.⁹³ The ICJ held the United States had not proven the attack on the *Sea Isle City* was an ‘armed attack’ that could be attributed to Iran.⁹⁴ It imposed a very high evidentiary threshold upon the United States to prove the Silkworm missiles were deliberately fired at the *Sea Isle City* by Iran – which the United States had not satisfied due to Iran casting significant doubt on the shortcomings in the United States’ evidence about the capabilities of the Silkworm missiles (with Iran arguing the missiles could have been fired by Iraq);⁹⁵ the United States’ failure to recover and produce as evidence fragments of the missile;⁹⁶ and disagreement between the parties on the range and tracking patterns of Silkworm missiles.⁹⁷ It also cast doubt on the United States’ argument of an announcement by the Iranian president that Iran would attack US ships if it did not ‘leave the region’ indicating Iran’s responsibility for this attack, holding that ‘... this [statement] is evidently not sufficient to justify the conclusion that any subsequent attack on the United States in the Persian Gulf was indeed the work of Iran’.⁹⁸ It based this high “attribution threshold” on similar remarks in *Nicaragua* [1986]⁹⁹ – with this aspect of the ICJ’s determination being criticised as overly restrictive.¹⁰⁰

The ICJ also considered and dismissed¹⁰¹ several other claims by the US to have acted in self-defence regarding attacks on US-flagged, and US-owned, vessels and aircraft.¹⁰² First, the mining of the US-flagged tanker *Bridgeton* on 24 July 1987¹⁰³ - with the ICJ concluding the US had not proved that the mine struck by the *Bridgeton* was laid ‘with the specific *intention*

⁹² *Oil Platforms*, para 48

⁹³ *Oil Platforms*, para 75

⁹⁴ *Oil Platforms*, para 51, with the ICJ’s reasoning being outlined at paras 53 – 63

⁹⁵ *Oil Platforms*, paras 53 – 55

⁹⁶ *Oil Platforms*, para 58

⁹⁷ *Oil Platforms*, para 59

⁹⁸ *Oil Platforms*, para 60

⁹⁹ In *Nicaragua* [1986] at para 63, the ICJ had noted that ‘Widespread reports of a fact may prove on closer examination to derive from a single source, and such reports, however numerous, will in such case have no greater value as evidence than the original source’.

¹⁰⁰ Raab, above n 82, 729

¹⁰¹ Albeit in less detail than its analysis of the attacks on the Reshadat and Resalat offshore oil production installations in response to the attack on the *Sea Isle City*

¹⁰² *Oil Platforms*, para 63] – [75]

¹⁰³ This incident lead to Operation Prime Chance – which resulted in the USN’s interdiction of the *Iran Ajr* on 21 September 1987

of harming that ship, or other United States vessels'.¹⁰⁴ In response to the mining of the *Bridgeton*, and several other US vessels striking mines, the US Navy launched Operation Prime Chance in August 1987, which resulted in the interdiction of the Iranian mine-laying craft *Iran Ajr* on 21 September 1987. The ICJ accepted Iran's explanation that the *Iran Ajr* was transporting these mines to another location, holding that '... there is no evidence that the mine-laying alleged to have been carried out by the *Iranian Ajr*, at a time when Iran was at war with Iraq, was aimed specifically at the United States'.¹⁰⁵ Second, the mining of the US-owned *Texaco-Caribbean* on 10 August 1987, with the ICJ holding '... the *Texaco-Caribbean*, whatever its ownership, was not flying a United States flag, so that an attack on the vessel is not in itself to be equated with an attack on that State'.¹⁰⁶ The ICJ has been criticised for not further analysing the issue of the nationality of this ship or the "genuine link" requirement.¹⁰⁷ Third, the firing on US military helicopters by Iranian gunboats and from the Reshadat oil platform on 8 October 1987, with the ICJ finding no evidence that Iran had specifically targeted US shipping or helicopters from these platforms.¹⁰⁸

Based on the above findings, the ICJ reached an extremely restrictive conclusion, holding that 'Even taken cumulatively, and reserving, as already noted, the question of Iranian responsibility, these incidents do not seem to the Court to constitute an armed attack on the United States, of the kind that the Court, in [*Nicaragua* (1986)], qualified as a "most grave" form of the use of force'.¹⁰⁹

The second significant incident argued (again unsuccessfully) by the US to constitute an armed attack by Iran occurred on 14 April 1988 - when the USS *Samuel B. Roberts* struck a mine in international waters near Bahrain while returning from an escort mission as part of Operation Earnest Will.¹¹⁰ On account of intelligence gained through its own sources, and also through Belgian and Dutch mine-clearing forces in the Persian Gulf at the same time, the US regarded

¹⁰⁴ *Oil Platforms*, para 64

¹⁰⁵ *Oil Platforms*, para 64

¹⁰⁶ *Oil Platforms*, para 64

¹⁰⁷ Raab, above n 82, 727. UNCLOS Article 91(1) 'Nationality of Ships' provides that: 'Every State shall fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory, and for the right to fly its flag. Ships have the nationality of the State whose flag they are entitled to fly. There must exist a genuine link between the State and the ship'.

¹⁰⁸ *Oil Platforms*, para 64

¹⁰⁹ *Oil Platforms*, para 64 the ICJ referred to its previous approval of the "most grave" cf "less grave" test that it had previously formulated in *Nicaragua* [1986]

¹¹⁰ Which was considered in *Oil Platforms*, para 65

Iran as responsible for laying these mines in an effort to target neutral shipping.¹¹¹ In response, four days later on 18 April 1988, the US Navy launched Operation Praying Mantis, during which it attacked and destroyed simultaneously the Nasr and Salman oil platforms. The United States reported its actions to the Security Council, arguing these strikes were justified as an exercise of its Article 51 self-defence rights¹¹² – as it regarded these platforms as being used by Iran to collect and report intelligence about passing US vessels, act as a military communications link, and serve as staging bases from which to launch helicopter and small boat attacks on neutral commercial shipping.¹¹³ However Iran similarly denied responsibility for laying the mines that struck the USS *Samuel B Roberts*, asserting these mines were laid by Iraq.¹¹⁴ Whilst acknowledging the presence of military forces on these oil platforms, Iran insisted their purpose was purely defensive, and was justified by previous Iraqi attacks on its oil production facilities.¹¹⁵

The ICJ concluded that since both Iran and Iraq as belligerents had engaged in mine laying during the Tanker War, the US had failed to prove that US-flagged vessels had been specifically targeted by Iran, noting evidence presented by the US that the mine which had struck the USS *Samuel B Roberts* bore serial numbers matching those found aboard the *Iran Ajr*¹¹⁶ as being ‘... highly suggestive but not conclusive’.¹¹⁷ It concluded the United States was not justified in

¹¹¹ *Oil Platforms*, para 68

¹¹² In a letter to the UNSC by the US Permanent Representative of 18 April 1988, SI1 979 1), the US declared: ‘In accordance with Article 51 of the Charter of the United Nations, I wish, on behalf of my Government, to report that United States forces have exercised their inherent right of self-defence under international law by taking defensive action in response to an attack by the Islamic Republic of Iran against a United States naval vessel in international waters of the Persian Gulf. The actions taken are necessary and are proportionate to the threat posed by such hostile Iranian actions. At approximately 1010 Eastern Daylight Time on 14 April the USS *Samuel B. Roberts* was struck by a mine approximately 60 miles east of Bahrain, in international waters. Ten US sailors were injured, one seriously, and the ship was damaged. The mine which struck the *Roberts* was one of at least four mines laid in this area. The United States has subsequently identified the mines by type, and we have conclusive evidence that these mines were manufactured recently in Iran. The mines were laid in shipping lanes known by Iran to be used by US vessels, and intended by them to damage or sink such vessels. This is but the latest in a series of offensive attacks and provocations Iranian naval forces have taken against neutral shipping in the international waters of the Persian Gulf. Through diplomatic channels, the United States has informed the Government of the Islamic Republic of Iran on four separate occasions, most recently 19 October 1987 that the United States would not accept Iran's mine laying in international waters or in the waters of neutral States. In October, my Government indicated that the United States did not seek a military confrontation with Iran, but that it would take appropriate defensive measures against such hostile actions. Starting at approximately 0100 Eastern Daylight Time 18 April US forces attacked military targets in the Persian Gulf which have been used for attacks against non-belligerent shipping in international waterways of the Gulf. The US actions have been against legitimate military targets. All feasible measures have been taken to minimize the risk of civilian damage or casualties . . .’: Noted in *Oil Platforms*, para 67

¹¹³ *Oil Platforms*, para 74

¹¹⁴ *Oil Platforms*, para 70

¹¹⁵ *Oil Platforms*, paras 65 and 75

¹¹⁶ *Oil Platforms*, para 63

¹¹⁷ *Oil Platforms*, para 71

attacking the Salman and Nasr platforms.¹¹⁸ Through reiterating its previous determinations regarding necessity and proportionality in a State's exercise of its self-defence rights in both the *Legality of the Threat or Use of Nuclear Weapons* Advisory Opinion [1996]¹¹⁹ and *Nicaragua* [1986]¹²⁰ decision, the ICJ concluded that it was not satisfied that the USN's strikes against the oil platforms during Operation Praying Mantis were necessary to respond to armed attacks by Iran.¹²¹ It also determined the US Navy's strikes against the platforms were not proportionate to the mine damage (without loss of life) sustained by the *USS Samuel B Roberts*.¹²² Overall, the ICJ concluded the US strikes against the Iranian oil platforms constituted acts of armed force not qualifying as acts of self-defence.¹²³

Raab criticises this conclusion for its undue strictness, arguing that '... mine-laying in international waters, even before it has resulted in injury or damage, may justify the exercise of the right of self-defence. Mine-laying may be interpreted as the commencement of the commission of an actual armed attack justifying self-defence or, alternatively, as amounting to an imminent attack justifying the exercise of the right of anticipatory self-defence. It would seem unduly strict to require a mine to hit a ship before protective measures can be taken'.¹²⁴ He also notes that through the above reasoning, the ICJ implied (but did not explicitly state) that an attack on a state's merchant shipping could, in principle, be regarded as an armed attack against that flag State¹²⁵ - a proposition which he noted as well established under customary international law. He also criticised the ICJ's reasoning as not considering whether self-defence rights apply if crews of merchant vessels are injured,¹²⁶ and for adding a "mental element" to the definition of armed attack (that is, an intention to attack the particular state injured) in its

¹¹⁸ Whilst not specifically excluding the possibility that the mining of a single military vessel might be sufficient to bring into play the inherent right of self-defence: *Oil Platforms*, para 72

¹¹⁹ Which had noted 'The submission of the exercise of the right of self-defence to the conditions of necessity and proportionality is a rule of customary international law' at [41]

¹²⁰ Which had noted '... whereby self-defence would warrant only measures which are proportional to the armed attack and necessary to respond to it' as 'a rule well established in customary international law' at [176]

¹²¹ *Oil Platforms*, para 76

¹²² *Oil Platforms*, para 77

¹²³ *Oil Platforms*, para 78

¹²⁴ Raab, above n 82, 730 -731

¹²⁵ Raab, above n 82, 726

¹²⁶ Raab, above n 82, 728 notes 'If a merchant ship is attacked with injury to crew (who may not necessarily bear the nationality of the ship) but without damage to the ship itself, it is not clear whether this would justify the finding of an armed attack. It is submitted that the right of self-defence ought, in principle, to apply in such circumstances, whether or not the flag state would be regarded as intervening to protect the ship or the crew themselves'.

remarks in relation to the mining of the *Bridgeton*.¹²⁷ He also criticised the ICJ's failure to analyse the rights of states to protect their nationals abroad under Article 51.¹²⁸

The *Oil Platforms* [2003] decision has also been criticised for holding that in addition to requiring the United States to show its actions were necessary and proportional to the armed attack made on it, it also needed to 'that the platforms were a legitimate military target open to attack in the exercise of self-defence'.¹²⁹ This passage has been criticised by legal scholars, firstly for adding a third "legitimate military targets" criterion to necessity and proportionality, which was not mentioned in *Nicaragua* [1986].¹³⁰ It has also been criticised because whilst reaffirming the *Nicaragua* [1986] necessity and proportionality tests, the ICJ restricted itself to negative conclusions about the actions being faced by the United States as *not* amounting to armed attacks, without any explanation of what level or kind of force, within the maritime context, *would* constitute an armed attack.¹³¹

[8.3.3] Palestinian Walls Advisory Opinion (2003)¹³²

On 9 July 2004 the ICJ handed down its Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, in response to UNGA Resolution 10/14 on 8 December 2003.¹³³ This Advisory Opinion was its first decision or advisory opinion discussing Article 51 following the 9/11 attacks, and also considered (albeit very briefly) the influence of Security Council Resolutions 1368 and 1373 which were examined in [2.7]. After

¹²⁷ Raab, above n 82, 728

¹²⁸ Raab, above n 82, 731 - 732 notes that 'One view holds that the right to exercise self-defence arises if nationals have been attacked, because an attack on nationals is an attack on the state itself. This, it may be argued, follows from the fact that population comprises one of the key constituent criteria of statehood. Another view, on the basis that Article 51 of the UN Charter is a 'without prejudice' provision, derives an independent right to protect nationals from customary international law. The latter view is strengthened by the nature of the right of self-defence, which is prospective (not retrospective), in that it is only justified in order to repel an ongoing armed attack (or an imminent attack). Frequently, the two views merge or are referred to interdependently ... On either interpretation, the injuries suffered by the US sailors on the USS *Samuel B. Roberts* and the crew (including the US master) of the *Sea Isle City*, and the ongoing threat in the Persian Gulf to US nationals and crews of US-flagged ships, arguably strengthened the US claim of self-defence

¹²⁹ *Oil Platforms*, para 51

¹³⁰ James Green 'The Oil Platforms Case: An Error in Judgement?' (2004) 9 *Journal of Conflict & Security Law*, 380 criticises the ICJ's reasoning, pointing out that 'by indicting a requirement that a target must be of a military nature before it can be legitimately attacked in self-defence, the Court appears to have incorporated an element of the *jus in bello* (the law of warfare) into the norms of the *jus ad bellum* (governing the use of force).'

¹³¹ Raab, above n 82, 724

¹³² *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territories* [2004] ICJ Reports 136 ('*Palestinian Walls Advisory Opinion*')

¹³³ UNGA Res 10/14 UN Doc GA Res. A/RES/ES-10/14 of 8 December 2003, adopted by ninety votes against eight, with seventy-four abstentions

determining that Israel's construction of the Palestinian Wall violated aspects of both international humanitarian law international human rights law,¹³⁴ the ICJ considered whether there were any possible justifications for Israel's actions in erecting the Wall.¹³⁵ In its submission, Israel had argued that the original report of the UN Secretary General had been one-sided, and had failed to acknowledge the effect of Resolutions 1368 and 1373.¹³⁶ In rejected Israel's argument, the ICJ held (with what has been characterised as 'surprising - and perhaps disturbing – brevity')¹³⁷ that:

'Article 51 of the Charter recognises the existence of an inherent right of self-defence in the case of armed attack by one State against another State. However, Israel does not claim that the attacks against it are attributable to a foreign State. The Court also notes that Israel exercises control in the Occupied Palestinian Territory and that as Israel itself states, the threat which it regards as justifying the construction of the wall originates within, and not outside, that territory. The situation is thus different from that contemplated by Resolutions 1368 (2001) and 1373 (2001), and therefore Israel could not in any event invoke those resolutions in support of its claim to be exercising a right of self-defence. Consequently, the Court concludes that Article 51 of the Charter has no relevance in this case'.¹³⁸

However the ICJ did not further explain its reasoning for concluding that Article 51 and Resolutions 1368 and 1373 are confined to threats originating from States. In their Separate Opinions, Judges Higgins and Kooijmans were critical of the ICJ's reasoning on this point. In her separate opinion, Judge Higgins opined that 'there is, with respect, nothing in the text of Article 51 that *thus* stipulates that self-defence is available only when an armed attack is made by a State',¹³⁹ and noted the majority's conclusion appeared to have directly applied para [195]

¹³⁴ *Palestinian Walls Advisory Opinion* para 115 – 137, Noted in Ruys, above n 12, 473

¹³⁵ Ruys, above n 12, 473

¹³⁶ Para 2.25 of Israel's submission noted: 'In the main body of the Report, Israel considers that the passing acknowledgement, immediately qualified, of Israel's right to protect its citizens, fails to accord sufficient weight to the now accepted appreciation that stands at the core of Security Council resolution 1373 (2001) and other related resolutions in the response against terrorism. That resolution reaffirmed that terrorist attacks of the kind faced by Israel 'constitute a threat to international peace and security'. It reaffirmed 'the inherent right of individual and collective self-defence' in such circumstances. It reaffirmed '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'. The Report is entirely one-sided in its treatment of these issues: *Written Statement of the Government of Israel on Jurisdiction and Propriety* 30 January 2004

¹³⁷ Ruys, above n 12, 473

¹³⁸ *Palestinian Walls Advisory Opinion*, para 139

¹³⁹ *Palestinian Walls Advisory Opinion* Separate Opinion of Judge Higgins, para 33

of the Nicaragua judgement to the facts before the ICJ.¹⁴⁰ Furthermore, but less directly relevant to the purposes of this Chapter,¹⁴¹ Judge Higgins was also critical of the majority's contention that because the threatened use of force which Israel sought to defend itself against emanated from within an occupied territory, as opposed to a State, this would not constitute an 'armed attack'.¹⁴² Similarly, in his Separate Opinion, Judge Kooijmans relevantly¹⁴³ noted the significance and focus of Resolutions 1368 and 1373 and their influence on interpreting Article 51, which he reasoned was not confined to threats emanating from within States – explaining that:

'Resolutions 1368 (2001) and 1373 (2001) recognize the inherent right of individual or collective self-defence without making any reference to an armed attack by a State. The Security Council called acts of international terrorism, without any further qualification, a threat to international peace and security which authorizes it to act under Chapter VII of the Charter. And it actually did so in resolution 1373 (2001) without ascribing these acts of terrorism to a particular State. This is the completely new element in these resolutions. This new element is not excluded by the terms of Article 51 since this conditions the exercise of the inherent right of self-defence on a previous armed attack without saying that this armed attack must come from another State even if this has been the generally accepted interpretation for more than 50 years. The Court has regrettably by-passed this new element, the legal

¹⁴⁰ *Palestinian Walls Advisory Opinion* Separate Opinion of Judge Higgins, para 33, which noted 'That qualification [that Article 51 applies to armed attacks from states] is rather a result of the Court so determining in *Military and Paramilitary Activities in and against Nicaragua* (*Nicaragua v. United States of America*) (Merits, Judgment, I. C.J. Reports 1986, p. 14). It there held that military action by irregulars could constitute an armed attack if these were sent by or on behalf of the State and if the activity "because of its scale and effects, would have been classified as an armed attack . . . had it been carried out by regular armed forces" (*ibid.*, p. 103, para. 195). While accepting, as I must, that this is to be regarded as a statement of the law as it now stands, I maintain all the reservations as to this proposition that I have expressed elsewhere (R. Higgins, *Problems and Process: International Law and How We Use It*, pp. 250-251)'.

¹⁴¹ As explained in [8.1], the purpose of this Chapter is to distil general principles about the interpretation and operation of Article 51 – as opposed to examining international law with respect to occupation of territories

¹⁴² *Palestinian Walls Advisory Opinion* Separate Opinion of Judge Higgins at para 34 explained that: 'I also find unpersuasive the Court's contention that, as the uses of force emanate from occupied territory, it is not an armed attack "by one State against another". I fail to understand the Court's view that an occupying Power loses the right to defend its own civilian citizens at home if the attacks emanate from the occupied territory - a territory which it has found not to have been annexed and is certainly "other than" Israel. Further, Palestine cannot be sufficiently an international entity to be invited to these proceedings, and to benefit from humanitarian law, but not sufficiently an international entity for the prohibition of armed attack on others to be applicable. This is formalism of an uneven-handed sort. The question is surely where responsibility lies for the sending of groups and persons who act against Israeli civilians and the cumulative severity of such action.'

¹⁴³ The first paragraph of para 35 of the Separate Opinion of Judge Kooijmans is less directly relevant to the purposes of this chapter and has been omitted

implications of which cannot as yet be assessed but which marks undeniably a new approach to the concept of self-defence.’¹⁴⁴ [Underlined in original]

Judge Kooijmans last sentence is particularly interesting because he recognises the significance and focus of the post-9/11 counter terrorism Security Council Resolutions (analysed in [2.7]), and because he recognises ‘a new approach to the concept of self-defence ... the legal implications of which cannot yet be assessed’. As [8.4.2] shows, the 2004 UN High Level Report has taken a similar ‘new approach to the concept of self-defence’. However Judge Kooijmans overall agreed with the Court’s conclusion that Israel’s justification for constructing the Wall on the grounds of self-defence against armed attacks under Article 51 (and therefore also the application of Resolutions 1368 and 1373) ought to be rejected – as these related to international terrorism – as opposed to terrorist acts emanating from within an occupied territory.¹⁴⁵

The ICJ also briefly considered, and rejected, Israel’s argument that a state of Necessity (which [8.6] below examines) could preclude the wrongfulness of the construction of the wall,¹⁴⁶ before concluding that Israel could not rely upon either the right of self-defence or a state of necessity to preclude the wrongfulness of the construction of the wall – which it concluded was contrary to international law.¹⁴⁷

¹⁴⁴ *Palestinian Walls Advisory Opinion* Separate Opinion of Judge Kooijmans, para 35

¹⁴⁵ *Palestinian Walls Advisory Opinion* Separate Opinion of Judge Kooijmans at para 36, where he reasoned that: ‘The argument which in my view is decisive for the dismissal of Israel’s claim that it is merely exercising its right of self-defence can be found in the second part of paragraph 139. The right of self-defence as contained in the Charter is a rule of international law and thus relates to international phenomena. Resolutions 1368 (2001) and 1373 (2001) refer to acts of *international* terrorism as constituting a threat to *international* peace and security; they therefore have no immediate bearing on terrorist acts originating within a territory which is under control of the State which is also the victim of these acts. And Israel does not claim that these acts have their origin elsewhere. The Court therefore rightly concludes that the situation is different from that contemplated by resolutions 1368 (2001) and 1373 (2001) and that consequently Article 51 of the Charter cannot be invoked by Israel’.

¹⁴⁶ *Palestinian Walls Advisory Opinion*, para 140 noted that ‘As the Court observed in the case concerning the Gabčíkovo-Nagymaros Project (Hungary / Slovakia), “the state of necessity is a ground recognised by customary international law” that “can only be accepted on an exceptional basis”; it can only be invoked under certain strictly defined conditions which must be cumulatively satisfied; and the State concerned is not the sole judge of whether those conditions have been met: (ICJ Reports 1997, p. 40, para 51.” The ICJ went on to note that one of those conditions was that the act being challenged be “... the only way for the State to safeguard an essential interest against a grave and imminent peril”: Article 25 of the ILC’s Articles on Responsibility of States for Internationally Wrongful Acts; and Article 33 of the Draft Articles on the International Responsibility of States.

¹⁴⁷ *Palestinian Walls Advisory Opinion* para 142

[8.3.4] DRC v Uganda (2005)

As at 1 October 2013, the most recent ICJ case on Article 51 is *DRC v Uganda* (2005).¹⁴⁸ In this case, the Democratic Republic of the Congo (DRC) instituted ICJ proceedings against Uganda for what it alleged were unlawful military incursions into its territory by Ugandan military forces under Operation Safe Haven. The DRC argued that Uganda could not justify its military actions as self-defence measures against armed attacks by cross-border armed bands in the lawless and uncontrollable north-eastern part of its territory.¹⁴⁹

Rejecting Uganda's liberal reading of Article 3(g) of the UNGA Definition, the ICJ determined that through Operation Safe Haven Uganda was not acting in self-defence against armed attacks, but in the protection of its 'legitimate security interests' – which the ICJ found did not equate to an armed attack.¹⁵⁰ The ICJ held the attacks by anti-Ugandan rebels did not originate from armed bands or irregulars sent by the DRC or on behalf of the DRC for the purposes of Article 3(g) of the UNGA Definition of Aggression.¹⁵¹ It concluded that '... the legal and factual circumstances for the exercise of a right of self-defence by Uganda against the DRC were not present' and that accordingly, the Court '... had no need to respond to the contentions of the parties as to whether and under what conditions contemporary international law provides for a right of self-defence against large-scale attacks by irregular forces'.¹⁵²

Furthermore, the ICJ rejected a pre-emptive conception of armed attack (that is, a reaction to a latent threat¹⁵³), concluding with a very restrictive interpretation of Article 51, holding that it '... may justify a use of force in self-defence only within the strict confines there laid down. *It does not allow the use of force to protect perceived security interests beyond those parameters.* Other means are available to a concerned state, including, in particular, recourse to the Security Council'.¹⁵⁴ [Emphasis added]

¹⁴⁸ *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v Uganda)* [2005] ICJ Reports 168 ('*DRC v Uganda*')

¹⁴⁹ The background facts leading to this dispute are complex and are set out in *DRC v Uganda* paras 32 - 41

¹⁵⁰ Ruys, above n 12., 479 – 485

¹⁵¹ *DRC v Uganda*, para 146

¹⁵² *DRC v Uganda*, para 147, where the ICJ also noted that 'Equally, since the preconditions for the exercise of self-defence do not exist in the circumstances of the present case, the Court has no need to enquire into whether such an entitlement to self-defence was in fact exercised in circumstances of necessity and in a manner that was proportionate'.

¹⁵³ Noted in Natalino Ronzitti 'The Expanding Law of Self-Defence' (2006) 11 *Journal of Conflict and Security Law*, 346

¹⁵⁴ *DRC v Uganda*, para 148

However following a similar reasoning process to his Separate Opinion in the Palestinian Walls Advisory Opinion, in his Separate Opinion Judge Kooijmans criticised the ICJ's restrictive, state-centric view of Article 3(g) of the UNGA Definition which was applied in *Nicaragua* (1986). In his view '... [the *Nicaragua* (1986)] threshold has been subject to increasingly severe criticism ever since it was established in 1986. The Court thus has missed a chance to fine-tune the position it took 20 years ago in spite of the explicit invitation by one of the Parties to do so'.¹⁵⁵ After reiterating the criticisms he previously expressed in his separate opinion in the Palestinian Walls Advisory Opinion (2003), he concluded that 'If the activities of armed bands present on a State's territory cannot be attributed to that State, the victim State is not the object of an armed attack by it. But if the attacks by the irregulars would, because of their scale and effects, have had to be classified as an armed attack had they been carried out by regular armed forces, there is nothing in the language of [Article 51] that prevents the victim State from exercising its *inherent* right of self-defence'.¹⁵⁶ Judge Kooijmans' reasoning in both the above decision and the Palestinian Walls Advisory Opinion (2003) evidences a liberal view of the *ratione personae* question on the meaning of "armed attack", and also acknowledges the influence of the post-9/11 counter terrorism Security Council Resolutions (analysed in [2.7]) in providing a contemporaneous expression that threats to international peace and security (and therefore "armed attacks") may emanate from non-state actors such as terrorist groups. As [8.4] shows, post-9/11 State practice and the arguments of several international legal scholars lend support to this liberal view.

[8.4] POST 9/11 STATE PRACTICE REGARDING ARTICLE 51

[8.4.1] Post-9/11 state practice and academic reactions

Following the 9/11 attacks, there have been several instances of States using force against non-state actors under the justification of Article 51 – which have lead to varied assessments by international legal scholars about the legality of self-defence measures against non-state actors.¹⁵⁷ These actions have included the US-led intervention into Afghanistan from October 2001 under Operation Enduring Freedom to neutralise the Taliban (which was understood to

¹⁵⁵ *DRC v Uganda*, Separate Opinion of Judge Kooijmans, para 25

¹⁵⁶ *DRC v Uganda* Separate Opinion of Judge Kooijmans, para 29

¹⁵⁷ For an overview of the contending academic reactions, see Ruys, above n 12, 318 – 327

have provided support to the Al Qaeda movement)¹⁵⁸ – with the underlying rationale behind this intervention being expressed in the 2002 US National Security Strategy;¹⁵⁹ Israel’s widely-criticised intervention into Syria in 2003 to counter attacks by Islamic Jihad;¹⁶⁰ Israel’s intervention into Southern Lebanon in 2006 to repel attacks by Hezbollah militants (which attracted less international criticism than its 2003 intervention into Syria);¹⁶¹ and Turkish military raids into northern Iraq to counter attacks by the Kurdistan Workers Party (PKK).¹⁶² Given that these actions involved more “full scale” uses of military force against, and interventions into, other States to counter threats of armed attacks from non-state actors – as opposed to the “more limited” measures of interdicting of suspected terrorist vessels which are the focus of this Study, these examples of state practice are only mentioned here to provide context, and are not analysed in further detail.

Several of the international legal scholars whose writings were analysed in Chapter 7 have expressed divergent views about the influence of that post-9/11 counter terrorism Security Council Resolutions should have on interpretations of Article 5 – which generally “mirror” their interpretations on the influence of these resolutions on interdiction powers under UNCLOS that were noted in [7.3.3]. For instance, Guilfoyle (who as [7.3.3] noted adopts a restrictive view of UNCLOS in relation to the legality of WMD interdictions), pointed out that whilst characterizing the 9/11 attacks as a ‘threat to international peace and security’, Resolution 1373 stopped short of specifically characterizing 9/11 as an ‘armed attack’ – thereby lessening the extent to which States might take self-defence measures to defend against terrorist threats under Article 51.¹⁶³ By contrast Allen, who as [7.3.3] noted favors a liberal view of UNCLOS in relation to the legality of WMD interdictions argues that through passing Resolutions 1368 and 1373 which affirmed and re-affirmed that terrorism constitutes a serious threat to international peace and security, the Security Council implicitly found that attacks by non-state actors can trigger the right of self-defence under Article 51, and notes that no States

¹⁵⁸ Ruys, above n 12, 433 - 437

¹⁵⁹ Ruys, above n 12, 443 - 445

¹⁶⁰ Ruys, above n 12, 447 - 449

¹⁶¹ Ruys, above n 12, 449 - 457

¹⁶² Ruys, above n 12, 457 – 462. As Appendix A notes, the PKK is currently designated by several States as a terrorist organisation

¹⁶³ Douglas Guilfoyle ‘The Proliferation Security Initiative: Interdicting Vessels in International Waters to Prevent the Spread of Weapons of Mass Destruction?’ (2005) 29 *Melbourne University Law Review*, 751 - 752

objected to the passing of Resolutions 1368 and 1373.¹⁶⁴ Similarly Schmitt points out that UN Article 39 of the UN Charter¹⁶⁵ ‘... is similarly devoid of reference to State action when charging the Security Council with responsibility for deciding on the measures to take in the face of a threat to the peace, breach of the peace or act of aggression’,¹⁶⁶ with Ronzitti makes similar conclusions.¹⁶⁷ The next section explains how two significant post-9/11 UN reports tend to implicitly follow a more liberal view of Article 51.

[8.4.2] 2004 UN High Level Report on Threats, Challenges and Changes¹⁶⁸

In a speech to the UN General Assembly in September 2003, UN Secretary General Kofi Annan commented that as a result of international divisions and paralysis developing within the Security Council surrounding the Iraqi crisis, the UN had reached ‘a fork in the road’ in terms of maintaining an international consensus on collective security for the twenty-first century. Whilst acknowledging contemporary security threats confronting States from clandestine groups, possibly involving the use of WMD, and also acknowledging arguments expressed in some quarters that States have the right, under Article 51 to strike pre-emptively (unilaterally or in ad hoc coalitions) against such threats before such weapons systems develop, he also expressed concern that the unbridled uses of such force could lead to lawlessness at the international level.¹⁶⁹

¹⁶⁴ Craig Allen *Maritime Counter-proliferation Operations and the Rule of Law* (Praeger Security International, 2007) 43 As [2.7.1] noted, with the exception of UNSC Resolution 1450 (13 December 2002) – which was passed 14:1 with Syria abstaining, all of the post-9/11 counter-terrorism UNSC Resolutions were passed unanimously

¹⁶⁵ Article 39 of the UN Charter provides that ‘the Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security’

¹⁶⁶ Michael Schmitt *Counter-Terrorism and the Use of Force in International Law* (George C Marshall Center Papers, No. 5 (2002), 26 - 27

¹⁶⁷ Ronzitti, above n 153, 348 - 349

¹⁶⁸ United Nations *A More Secure World: Our Shared Responsibility* - Report of the Secretary-General High-level Panel on Threats, Challenges and Change GA 59th session, Agenda Item 55 UN Doc A/59/565 (2 December 2004)

¹⁶⁹ In his address the Secretary General commented that: [Article 51] prescribes that all States, if attacked, retain the inherent right of self-defence. But until now it has been understood that when States go beyond that, and decide to use force to deal with broader threats to international peace and security, they need the unique legitimacy provided by the United Nations. Now, some say this understanding is no longer tenable, since an “armed attack” with weapons of mass destruction *could be launched at any time, without warning, or by a clandestine group*. Rather than wait for that to happen, they argue, States have the right and obligation to use force pre-emptively, even on the territory of other States, and *even while weapons systems that might be used to attack them are still being developed*. According to this argument, States are not obliged to wait until there is agreement in the Security Council. Instead, they reserve the right to act unilaterally, or in ad hoc coalitions. This logic represents a fundamental challenge to the principles on which, however imperfectly, world peace and stability have rested for the last fifty-eight years. My concern is that, if it were to be adopted, it could set precedents that resulted in a proliferation of the unilateral and lawless use of force, with or without credible justification: UN Secretary-General Kofi Annan Address to the General Assembly, New York, 23 September 2003 [Emphasis added]

As a result, a High Level Panel of eminent persons was formed to assess contemporary threats to international peace and security; to evaluate how existing international policies and institutions had addressed those threats; and to make recommendations for better preparing the UN's collective security framework for the twenty-first century.¹⁷⁰ In its report to the UN General Assembly, the High Level Panel recognising that the international security environment had expanded beyond states waging aggressive war,¹⁷¹ identified "six clusters" of twenty-first century international security threats (including terrorism),¹⁷² and outlined recommendations that should guide the international system in addressing these threats.¹⁷³

Part Three of the Panel's report addressed the use of force in the maintenance of international security. The Panel acknowledged the *Caroline* criteria (discussed above in [8.2.1]) as regulating uses of force by States, noting that 'a threatened State, according to long established international law, can take military action as long as the threatened attack is *imminent*, no other means would deflect it¹⁷⁴ and the action is proportionate. The problem arises where the threat in question is not imminent but still claimed to be real: for example the acquisition, with allegedly hostile intent, of nuclear weapons-making capability'.¹⁷⁵ [Emphasis in original] In this last sentence the Panel acknowledges the frequently subjective judgements that are involved in determining the lawfulness of uses of force in self-defence – which whilst presumably being intended to apply to military strikes against, and interventions into, other States, could arguably also encompass measures such as interdicting suspected terrorist-related WMD shipments (and indeed other terrorist utilisations of vessels) that are examined within

<http://www.un.org/webcast/ga/58/statements/sgeeng030923.htm> This passage was also noted in Ruys, above n 12, 327 – 328

¹⁷⁰ UN General Assembly Fifty-ninth session Agenda item 55 A/59/565: Follow-up to the outcome of the Millennium Summit, Note by the Secretary General 2 December 2004, 1 enclosing 'A More Secure World: Our Shared Responsibility: Report of the High-level Panel on Threats, Challenges and Change'

¹⁷¹ United Nations *A More Secure World: Our Shared Responsibility* - Report of the Secretary-General High-level Panel on Threats, Challenges and Change GA 59th session, Agenda Item 55 UN Doc A/59/565 (2 December 2004), 11

¹⁷² These security threats included economic and social threats, including poverty, infectious diseases and environmental degradation; inter-State conflict; internal conflict, including civil war, genocide and other large - scale atrocities; nuclear, radiological, chemical and biological weapons; terrorism; and transnational organized crime.

¹⁷³ The High Level Panel's discussion of how terrorism ought to be countered focused more on the longer-term, preventative approaches for states to adopt – for example addressing the root causes of terrorism, public education and debate etc – and are therefore outside the scope of this Study

¹⁷⁴ Here the High Level Panel was referring to the *Caroline* criterion of Necessity

¹⁷⁵ United Nations *A More Secure World: Our Shared Responsibility* - Report of the Secretary-General High-level Panel on Threats, Challenges and Change GA 59th session, Agenda Item 55 UN Doc A/59/565 (2 December 2004), para 188

this Study. The Panel went on to note (but without giving an indication of approving) arguments in favour of States exercising their self-defence rights in an anticipatory manner against non-imminent threats not just pre-emptively (against imminent or proximate threats) but preventively¹⁷⁶ (against a non-imminent or non-proximate threats),¹⁷⁷ which again could be relevant considerations in the interdiction of suspected terrorist-related WMD shipments on the basis of Article 51. On this point, the Panel acknowledging international concerns about the possibility of ‘nightmare scenarios’ of terrorist groups acquiring WMD,¹⁷⁸ which the Panel noted ‘... may conceivably justify the use of force, not just reactively but preventively and before a latent threat becomes imminent’.¹⁷⁹ However the Panel emphasised the importance of such measures only being undertaken as a last resort, and on the best available evidence of capability and specific intent of would-be acquirers of WMD.¹⁸⁰

The Panel concluded its analysis by enunciating five generalised criteria of legitimacy¹⁸¹ to guide the Security Council’s future considerations¹⁸² when authorising uses of military force,

¹⁷⁶ This was the same categorisation as Ruys, above n 12, noted above in [6.2.2]

¹⁷⁷ At [189], the Panel questioned (but only answered in an indirect manner) ‘Can a State, without going to the Security Council, claim in these circumstances the right to act, in anticipatory self-defence, not just pre-emptively (against an imminent or proximate threat) but preventively (against a non-imminent or non-proximate one)? Those who say “yes” argue that the potential harm from some threats (e.g., terrorists armed with a nuclear weapon) is so great that one simply cannot risk waiting until they become imminent, and that less harm may be done (e.g., avoiding a nuclear exchange or radioactive fallout from a reactor destruction) by acting earlier’.

¹⁷⁸ The following year on 21 March 2005, the UN’s *In Larger Freedom* Report noted similar concerns at para [84], declaring that ‘We must act to ensure that catastrophic terrorism never becomes a reality. This will require a new global strategy, which begins with Member States agreeing on a definition of terrorism and including it in a comprehensive convention. It will also require all States to sign, ratify, implement and comply with comprehensive conventions against organized crime and corruption. And it will require from them a commitment to take urgent steps to prevent nuclear, chemical and biological weapons getting into the hands of terrorist groups.’ *In Larger Freedom: Towards Development, Security and Human Rights for All* Report of the Secretary-General A/59/2005 UN General Assembly Fifty-ninth session Agenda items 45 and 55

¹⁷⁹ At [194] the Panel noted: ‘In the world of the twenty-first century, the international community does have to be concerned about nightmare scenarios combining terrorists, weapons of mass destruction and irresponsible States, and much more besides, which may conceivably justify the use of force, not just reactively but preventively and before a latent threat becomes imminent. The question is not whether such action can be taken: it can, by the Security Council as the international community’s collective security voice, at any time it deems that there is a threat to international peace and security. The Council may well need to be prepared to be much more proactive on these issues, taking more decisive action earlier, than it has been in the past’.

¹⁸⁰ At [195] the Panel noted ‘Questions of legality apart, there will be issues of prudence, or legitimacy, about whether such preventive action *should* be taken: crucial among them is whether there is credible evidence of the reality of the threat in question (taking into account both capability and specific intent) and whether the military response is the only reasonable one in the circumstances’

¹⁸¹ United Nations *A More Secure World: Our Shared Responsibility* - Report of the Secretary-General High-level Panel on Threats, Challenges and Change GA 59th session, Agenda Item 55 UN Doc A/59/565 (2 December 2004) at [207]

¹⁸² The Panel Report at p. 53 noted that ‘the adoption of these guidelines (seriousness of threat, proper purpose, last resort, proportional means and balance of consequences) will not produce agreed conclusions with push-button predictability, but should significantly improve the chances of reaching international consensus on what have been in recent years deeply divisive issues’.

involving considerations of the seriousness of the threat;¹⁸³ the proper purpose for the use of force;¹⁸⁴ whether the use of force was a last resort measure;¹⁸⁵ whether the force was used in a proportional manner;¹⁸⁶ and whether the State using force balanced the consequences of such actions.¹⁸⁷ It is submitted that these five criteria of legitimacy, whilst contemplating more “full scale” uses of force such as military strikes and interventions, nevertheless provide useful principles for assessing the legality of the interdiction of suspected terrorist vessels in exceptional circumstances under Article 51. [8.5] applies these five criteria of legitimacy to post-9/11 scholarly arguments about how the Caroline Principles should be applied in the context of countering armed attacks by contemporary terrorist groups which are examined below in [8.4.3].

[8.4.3] Scholarly opinions: Caroline principles in the post-9/11 counter-terrorism context

Before [8.5] draws together all of the above points in this Chapter to enunciate restrictive and liberal views of Article 51 in enabling (or at the very least justifying) the interdiction of suspected terrorist vessels, two leading international legal scholars have made some relevant arguments about how the Caroline Principles of necessity and proportionality should be understood in the context of countering contemporary post-9/11 terrorist threats. These arguments provide further, more practical pointers than the five generalised criteria of legitimacy noted in the 2004 High Level Panel Report, and acknowledge the potentially serious threat of contemporary terrorism that was explained in Chapter 2.

Regarding the meaning of imminence¹⁸⁸ in the contemporary terrorism context, Ronzitti opines that: ‘In the past, the imminence of attack was much more visible because it consisted of the mobilisation of armies, navies and air forces. Nowadays, terrorist movements operate

¹⁸³ Which asks: Is the threatened harm to State or human security of a kind, and sufficiently clear and serious, to justify *prima facie* the use of military force? In the case of internal threats, does it involve genocide and other large -scale killing, ethnic cleansing or serious violations of international humanitarian law, actual or imminently apprehended?

¹⁸⁴ Which asks: Is it clear that the primary purpose of the proposed military action is to halt or avert the threat in question, whatever other purposes or motives may be involved?

¹⁸⁵ Which asks: Has every non-military option for meeting the threat in question been explored, with reasonable grounds for believing that other measures will not succeed?

¹⁸⁶ Which asks: Are the scale, duration and intensity of the proposed military action the minimum necessary to meet the threat in question?

¹⁸⁷ Which asks: Is there a reasonable chance of the military action being successful in meeting the threat in question, with the consequences of action not likely to be worse than the consequences of inaction?

¹⁸⁸ Whilst the Caroline Principles noted above in [8.2.1] use the terms ‘instant and overwhelming’, the High Level Panel Report used the term ‘imminent’

underground, ready to hit ... not deterred by Nuclear Weapon States lawfully detaining nuclear weapons'.¹⁸⁹ Along similar lines Schmitt argues that armed attacks by terrorists will be "imminent" when the potential victim state must immediately act to defend itself because a potential aggressor has irrevocably committed itself to the attack, and that 'in the context of [contemporary] terrorism, this point may occur well before the planned attack due to the difficulty of locating and tracking terrorists ... [Imminence] is not measured by an objective time differential between the act of self-defence and the attack it is meant to prevent, but instead by the extent to which the self-defence occurred during the *last "window of opportunity"*'.¹⁹⁰ [emphasis added] Schmitt's 'last window of opportunity' concept provides a helpful practical test addressing the *ratione temporis* question noted by Ruys in [8.2] for analysing the "imminence" of terrorist threats involving vessels being utilised as a means of transporting weaponry and people, and fundraising for terrorist purposes and also for countering the offensive utilisation of vessels.

Regarding the first Caroline principle of necessity, Schmitt argues (similarly to the 2004 High Level Panel Report, which reasoned that States should consider whether the use of force was a last resort measure¹⁹¹) that '... necessity requires an absence of reasonable alternatives to the use of force. In this context, then, the State may only act against the terrorists if classic law enforcement reasonably appears unlikely to net those expected to conduct further attacks before they do so ... there is no requirement for an expectation that law enforcement will fail; rather the requirement is that success is not be expected to prove timely enough to head off a continuation of the terrorist campaign'.¹⁹² [Emphasis added] Regarding proportionality, he opined that: '... in the context of [contemporary] terrorism, the proportionality standard allows only that degree of force necessary to fend off a terrorist attack and protect oneself from a future continuation thereof. But the force necessary to achieve this purpose may far exceed that employed in the [terrorist] attack. Terrorists often operate in loose networks from dispersed locations, receiving logistic support in many ways intended to mask its nature. Further, they may be fanatical devotees willing to die for their cause; this makes it extremely difficult to meaningfully affect their cost-benefit calculations. Taking then on is a daunting task that

¹⁸⁹ Ronzitti, above n 153, 347

¹⁹⁰ Schmitt, above n 166, 65

¹⁹¹ Which asks: Has every non-military option for meeting the threat in question been explored, with reasonable grounds for believing that other measures will not succeed?

¹⁹² Schmitt, above n 166, 28

typically requires extremely aggressive measures'.¹⁹³ As noted above, Schmitt's remarks recognise the demonstrated propensity of contemporary terrorist groups to perpetrate significant casualty attacks, frequently through the use of suicide tactics

[8.5] Restrictive and liberal views of 'armed attack' for interdicting suspected terrorist vessels on the basis of self-defence

Situations where the jurisdictional gaps and uncertainties identified in Chapters 6 and 7 might (in the absence of specific agreement with a suspected terrorist vessel's flag State) leave a State seeking to interdict suspected terrorist vessels with no other jurisdictional option than exercising its 'inherent' self-defence rights recognised under Article 51, or alternatively on the basis of Necessity which [8.6] examines. To recap, the jurisdictional gaps identified in Chapter 6 included the lack of specific powers for coastal states to interdict vessels suspected of being about to be utilised as weapons or as floating bombs against other vessels outside the territorial sea;¹⁹⁴ as weapons or as floating bombs against offshore platforms outside of the territorial sea, and outside of the 500 metre safety zones allowed under UNCLOS Article 60(5);¹⁹⁵ and as "disruption tools" to interfere with submarine cables located outside the territorial sea.¹⁹⁶ Chapter 7 identified several jurisdictional uncertainties¹⁹⁷ regarding the powers of States to interdict foreign vessels suspected of being utilised to enable the perpetration of subsequent terrorist attacks on land through transporting WMD materiel,¹⁹⁸ transporting conventional weaponry, terrorist connected persons or as a means of terrorist financing.¹⁹⁹

Drawing together the contending views about the meaning of 'armed attack' from the analysis in [8.2] to [8.4], this section enunciates the grounds for "restrictive" and "liberal" views of 'armed attack' relating to the interdiction of suspected terrorist vessels – similarly to the "restrictive" and "liberal" views of UNCLOS articulated in Chapter 7. To add structure to the

¹⁹³ Schmitt, above n 166, 22

¹⁹⁴ See [6.2.3.3]

¹⁹⁵ See [6.3.3]

¹⁹⁶ See [6.4.3.2]

¹⁹⁷ The term 'jurisdictional uncertainties' is used in preference to 'jurisdictional gaps' here because Chapter 7 explained that there is scope for both restrictive and liberal views of the relevant UNCLOS provisions

¹⁹⁸ See [7.2.5]

¹⁹⁹ See [7.3.3]

enunciation of these views, it utilises the three ‘ratione’ considerations articulated by Ruys as noted in [8.1].²⁰⁰

The first **ratione personae** question considers *who* may perpetrate ‘armed attacks’; and if non-State actors are involved, whether and to what extent their actions must be attributable to a State. A restrictive view could hold firm to Article 3 of the “state-centric” 1974 UNGA Definition of Aggression, Article 3(g) of which was cited with approval by the ICJ in *Nicaragua v United States* (1986), the Palestinian Walls Advisory Opinion (2003) and *DRC v Uganda* (2005), which emphasised that Article 51 was intended to justify armed attacks emanating from States, as opposed to non-State actors. Relevantly, in *Nicaragua v United States* (1986) the ICJ noted that the supply of arms or other support to hostile non-state actors could not be equated with an ‘armed attack’ – which could therefore mean that interdictions of vessels suspected of transporting weaponry or operatives to enable subsequent terrorist attacks would not be justified on the grounds of self-defence. By contrast, a liberal view could take account of more recent sources such as the post-9/11 counter terrorism Security Council Resolutions (reviewed in [2.7]), the separate opinions of Judge Kooijmans in Palestinian Walls (2003) and *DRC v Uganda* (2005), the 2004 High Level Report and post-9/11 scholarly opinions to hold that ‘armed attacks’ might also be perpetrated or threatened by non-State actors – and therefore justify the interdiction of suspected terrorist vessels in exceptional circumstances where the State otherwise lacked clear jurisdiction under UNCLOS to do so.²⁰¹

The second **ratione materiae** criterion considers the materiality threshold that must be satisfied for an ‘armed attack’. A restrictive view could strictly apply the criteria enunciated in *Nicaragua v United States* (1986) in holding that whilst the sending of “armed bands” by sea might constitute an ‘armed attack’ – providing such an attack was significant in its ‘scale and effects’ (although the ICJ did not elaborate further on that test). A restrictive view could also hold that the utilisation of vessels to provide arms, logistical or financial support to enable subsequent terrorist attacks might constitute a ‘less grave’ use of force not amounting to an ‘armed attack’. Similarly the ICJ in *Nicaragua v United States* (1986) held that Article 51 did

²⁰⁰ As [8.2] noted these include firstly the *ratione materiae* (materiality threshold) of armed attacks, asking ‘*what* acts count as armed attacks?’; secondly, the *ratione temporis* (temporal threshold) of armed attacks, asking ‘*when* does an ‘armed attack’ occur, and at what point may States take measures to defend against such armed attacks?’; and thirdly, the *ratione personae* of armed attacks, asking ‘*who* can perpetrate or threaten an armed attack?’ – in particular, can non-state actors perpetrate armed attacks - and if so, must such acts be attributable to a State?

²⁰¹ Natalie Klein *Maritime Security and the Law of the Sea* Oxford Monographs in International Law (Oxford University Press, 2011), 308

not justify uses of force by States to protect their ‘essential security interests’ which did not constitute ‘armed attacks’.²⁰² *Oil Platforms* (2003) also supports a very restrictive view of the *ratione materiae* criteria – adopting a very reactive concept of armed attack. As [8.3.2] noted, this decision has been criticised for its addition of a mental element to the definition of armed attack – that is, a specifically evidenced intention to target a specific targets of a State, and also its imposition of a ‘legitimate military targets’ criterion. Additionally, the restrictive reasoning in both *Nicaragua* [1986] and *Oil Platforms* found the laying of sea mines did not constitute an ‘armed attack’. By contrast a liberal view of the *ratione materiae* criteria could place greater weight on the post-9/11 international security context – particularly the post-9/11 counter terrorism Security Council Resolutions reviewed in [2.7] rather than strictly applying the criteria formulated in the ICJ decisions reviewed in [8.3]. Additionally, it could have regard to five legitimacy criteria²⁰³ enunciated in the 2004 High Level Report regarding the use of force in self-defence.

The third ***ratione temporis*** question considers when an ‘armed attack’ occurs, and following from this, at what point States may take self-defence measures to counter armed attacks. A restrictive view would most likely adopt a reactive or interceptive conception of self-defence as explained in [8.2.2]. Although the temporal threshold question was not specifically tested in the ICJ decisions reviewed in [8.3], a restrictive view could follow the very strict intent thresholds set out in the *Oil Platforms* (2003) decision in limiting the circumstances in which States might use force in self-defence. A restrictive view could also strictly follow the reasoning in *Nicaragua v United States* (1986) that the supply of arms or other support to hostile non-state actors by vessels could not amount to an ‘armed attack’ – in other words an armed attack would not commence until the bombs were detonated or the weapons were fired. By contrast, a liberal view could be supported by the post-9/11 counter terrorism Security Council Resolutions noted in [2.7], which have confirmed the seriousness of the threat of contemporary terrorism to international peace and security, and both obligated and invited states to take various measures to counter contemporary terrorist threats. A liberal view of the *ratione temporis* criterion could also be based on arguments that state practice against contemporary terrorism supports self-defence measures being undertaken in an anticipatory manner.

²⁰² A conclusion which was also cited with approval in *Oil Platforms* (2003) and *DRC v Uganda* (2005)

²⁰³ As [8.4.2] noted, the five legitimacy criteria included of the seriousness of the threat; the proper purpose for the use of force; whether the use of force was a last resort measure; whether the force was used in a proportional manner; and whether the State using force balanced the consequences of such actions.

However this could be a tenuous argument – given international criticism of state practice noted in [8.4.1] – which was in fact the main reason for the convening of the 2004 High Level Panel. As [8.4.2] noted, whilst the High Level Panel acknowledged increasing state practice involving anticipatory self-defence, it stopped short of specifically endorsing this doctrine. Relevantly, in the case of Israel’s interdictions of the *Santorini* and *Karin-A* in 2001 and 2002 respectively which as [7.3.1.1] noted were both conducted on the high seas, no international agreements were specifically invoked by the Israeli authorities, leading to the inference that Israel’s rights to self-defence under Article 51 would be the only applicable source of international law in these situations. Several international legal scholars including Byers,²⁰⁴ Kwast,²⁰⁵ Fitzgerald²⁰⁶ and Klein²⁰⁷ have opined that Israel was justified in interdicting these vessels on the basis of self-defence, and point out there were no reported international protests regarding Israel’s actions.

In conclusion, the above analysis has shown that both restrictive and liberal views of ‘armed attack’ under Article 51 may be formulated. Given the almost complete lack of warning of attacks by contemporary terrorist groups, and their independence from state support (as noted in Chapter 2), a restrictive view of ‘armed attack’ in the contemporary post-9/11 maritime terrorism context would most likely significantly restrict the abilities of States to interdict suspected terrorist vessels before attacks occurred. It would also most likely not allow States to interdict laterally transiting vessels suspected of enabling the perpetration of subsequent terrorist attacks on land, meaning that potentially serious terrorist attacks might take place on land - with Chapter 7 noting the 1998 East African embassy bombings and the 2002 Bali bombings as having been “enabled” through explosives transported by sea. By contrast, a liberal view of ‘armed attack’ would allow the interdiction of suspected terrorist vessels, as well as vessels suspected of enabling the perpetration of subsequent terrorist attacks. However States seeking to interdict suspected terrorist vessels on the basis of their Article 51 self-defence would need to carefully weigh up the political consequences of doing so – with Chapter 7 noting North Korean radio broadcasts warning that any interferences with its vessels would be considered an act of war. For these reasons, it is submitted that resort to Article 51 to justify

²⁰⁴ Byers, above n 5, 534

²⁰⁵ Patricia Kwast ‘Maritime Interdiction of Weapons of Mass Destruction in an International Legal Perspective’ (2007) *Netherlands Yearbook of International Law* 163 – 241

²⁰⁶ Fitzgerald, above n 5, 476

²⁰⁷ Klein, above n 201, 275

the interdiction of suspected terrorist vessels should be an absolute last resort, as it could well lead to conflict and possibly retaliatory actions from the flag States of interdicted vessels.

[8.6] INTERDICTING SUSPECTED TERRORIST VESSELS ON THE BASIS OF NECESSITY

An alternative basis upon which a State might justify the interdiction of suspected terrorist vessels is the doctrine of Necessity, which has been acknowledged in Article 25 of the International Law Commission's Draft Articles on State Responsibility for Internationally Wrongful Acts.²⁰⁸ Article 25 provides that an otherwise unlawful act of a State can be justified if the act was the only means of safeguarding an essential interest of the State against a grave and imminent peril; and the act did not seriously impair an essential interest of the State towards which the obligation existed.²⁰⁹ Kaye explains that the identical predecessor of Article 25, Article 33 of the Draft Articles on State Responsibility,²¹⁰ was cited with approval by the ICJ in the *Gabčíkovo-Nagymaros Project* case,²¹¹ and was also acknowledged (but not applied) by the International Tribunal for the Law of the Sea in *M/V Saiga (No. 2)*.²¹²

Kaye explains that Necessity has previously been invoked by States to justify environmental protection measures that would otherwise have been contrary to international law. Examples of such actions include Russia's closure of its offshore sealing grounds in 1893, Britain's 1967 bombing of the stricken Liberian-flagged *Torrey Canyon* whilst she was foundering on the high seas in order to protect the coast of Cornwall from pollution (with no States protesting against this action), and Canada's arrest of the European *Estai* fishing vessel during the 'Turbot War' fisheries dispute in 1995.²¹³ He opines that the interdiction of vessels suspected of being about

²⁰⁸ Kaye, above n 2 377 at 416 – 418 See also James Crawford *The International Law Commission's Articles on State Responsibility: Introduction, Text and Commentaries* (2002), 179 – 180

²⁰⁹ International Law Commission, *Draft Articles on Responsibility of States for Internationally Wrongful Acts* UN Doc A/56/10 (2001), http://untreaty.un.org/ilc/texts/instruments/english/draftl/o20articles/9_6_2001.pdf. Cited in Kaye, above n 2, 416

²¹⁰ International Law Commission, *Draft Articles on State Responsibility*, Article 33, UN Doc CN.4/SER.A/1996/Add.1 (part 2) (1996)

²¹¹ *Case Concerning the Gabčíkovo-Nagymaros Project (Gabčíkovo-Nagymaros Project (Hungary/Slovakia), Judgment*, 1997 ICJ Reports, para 51 and 52

²¹² *M/V "Saiga" (No 2) (Saint Vincent and the Grenadines v Guinea)* ITLOS Case No 2; (1999) 38 ILM 1323, paras 133 - 139

²¹³ Kaye explains that Canada sought to invoke a similar justification for its arrest of the Spanish vessel *Estai* on the basis that it faced an environmental crisis from the collapse of the Newfoundland cod fisheries that were being exacerbated by the actions of Spanish and Portuguese fishing vessels; however the ICJ found it did not have jurisdiction to hear the case. *Fisheries Jurisdiction (Spain v. Canada)*, 1998 ICJ Reports 431: Kaye, above n 2, 417

to perpetrate or facilitate an attack against offshore platforms where the “interdicting” State otherwise lacked jurisdiction (for example, outside the limits of the 500 metre safety zones allowed under UNCLOS Article 60(5) (which [6.3.3] examined) would be a valid use of the doctrine of Necessity – due to the grave consequences of environmental harm that could follow from such an attack.²¹⁴ He also opines that Necessity could be invoked by coastal States seeking to interdict vessels suspected of being about to cause deliberate damage to submarine cables located outside the limits of the territorial sea²¹⁵ - with [6.4.3.2] explaining the inadequacies of UNCLOS in enabling States to protect submarine cables outside the territorial sea from terrorist interference.

Whilst it has been noted that Necessity might be invoked to justify the interdiction of suspected illicit shipments of WMD materiel where a State otherwise lacked a jurisdictional basis under UNCLOS,²¹⁶ (see the analysis in [7.3.3]) Kaye notes that Necessity has not been invoked by PSI participants as a basis for interdicting suspected illicit shipments of WMD materiel for fears that doing so would acknowledge such interdictions as being an ‘otherwise unlawful act’.²¹⁷

[8.7] CONCLUSION

This chapter has explained that defining what constitutes an ‘armed attack’, and the measures States may permissibly take to defend against armed attacks, is very challenging and will most likely always be disputed. However through applying the three ‘ratione’ criteria enunciated by Ruys, following a historically progressive analysis of the ICJ jurisprudence on the meaning of ‘armed attack’, this chapter enunciated “restrictive” and “liberal” views of ‘armed attack’ within the post-9/11 maritime terrorism context. Significantly, through this analysis this chapter undertook the first detailed review of how Article 51 might justify interdictions of suspected terrorist vessels. Whilst the chapter concluded a liberal view would better enable States to interdict suspected terrorist vessels, it reasoned that recourse to Article 51 should be

²¹⁴ Kaye, above n 2, 416 – 417

²¹⁵ Kaye, above n 2, 419 – 420

²¹⁶ Craig Allen *Maritime Counter-proliferation Operations and the Rule of Law* (Praeger Security International, 2007), 173 – 174; Michael Becker ‘The Shifting Public Order of the Oceans: Freedom of Navigation and the Interdiction of Ships at Sea’ (2005) 46 *Harvard Journal of International Law*, 214; Stuart Kaye ‘The Proliferation Security Initiative in the Maritime Domain’ (2006) 81(141) *US Naval War College International Legal Studies Series*, 153 - 155

²¹⁷ Kaye, above n 216, 154

an absolute last resort measure, with concomitant political risks of retaliation from other States to consider. The chapter also considered the alternative, albeit less well-developed, basis for interdicting suspected terrorist vessels under the doctrine of Necessity – noting whilst this could justify measures to protect maritime infrastructure such as offshore platforms and submarine cables from attack, it has not been favoured as a basis to justify the interdiction of vessels suspected of illicitly transporting WMD materiel for terrorist purposes.

The next concluding Chapter 9 argues in favour of formalising more specific agreements between States (including through greater ratification of the 2005 SUA Convention), and for refinements (through IMO guidance) to the protective powers of States under UNCLOS to reduce the scope for States to need to have recourse to self-defence or Necessity in order to justify the interdiction of suspected terrorist vessels.²¹⁸

²¹⁸ Natalie Klein *Maritime Security and the Law of the Sea* Oxford Monographs in International Law (Oxford University Press, 2011), 299 also makes this assertion

CHAPTER 9

CONCLUSION AND FUTURE RECOMMENDATIONS

[9.1] INTRODUCTION

This chapter summarises the significance of this Study and its principal findings in addressing the research question noted in [1.2.2]: “To what extent are the international agreements noted at [1.1] likely to be successful in enabling the prevention of contemporary forms of maritime terrorism?”. It then outlines proposals for refining the international legal framework (that is, ensuring the existing instruments are best utilised in order to prevent maritime terrorism incidents from occurring), and recommends areas for further research based on the approaches and findings of this Study.¹

[9.2] SIGNIFICANCE AND PRINCIPAL FINDINGS

Chapter 1 explained that although since 9/11 *discrete aspects* of the threat of contemporary terrorism in the maritime domain, and the range of international agreements that are applicable to countering it, have been studied to varying degrees, this Study has been the first to undertake an overall assessment of the extent to which the international agreements are likely to succeed in enabling the prevention of contemporary post-9/11 maritime terrorism incidents.

Chapter 2 explained that because maritime terrorism has accounted for only two per cent all of recorded terrorist attacks since 1968, it is important to understand maritime terrorism in its broader global context. From the basis of Rapaport’s Four Waves theory, it formulated the generalised distinguishing terms “contemporary terrorism” and “pre-contemporary terrorism” to distinguish the dominant forms of terrorism that have been perpetrated by both Al Qaeda-influenced groups, and groups such as the LTTE over the last two decades from older, more restrained forms of terrorism. It demonstrated how contemporary terrorism has been characterised by the perpetration of infrequent yet very deadly mass-casualty attacks, frequently involving the suicides of the attackers. It also explained that such forms of terrorism

¹ This chapter addresses the fifth and final of the research sub-questions noted at [1.2.2], namely ‘(5) Going forward, what should be done to maximise the prospects for the international agreements being successful in preventing contemporary post-9/11 maritime terrorism incidents?’

contrast to the “more constrained” and negotiable hostage takings of attacks by pre-contemporary terrorist groups (which Chapter 2 termed the ‘operational profile’). Chapter 2 also noted how terrorist attacks over the last two decades have been perpetrated by fanatically-driven, transnational, increasingly independent and home-grown groups (which Chapter 2 termed the ‘organisational profile’). It concluded that contemporary forms of terrorism are likely to remain a significant international security challenge for many years to come and are not able to be “defeated” in traditional military terms. Lastly it showed how recognition of the seriousness and extensiveness of contemporary terrorism has influenced a paradigm shift in post-9/11 counter-terrorism Security Council resolutions, through imposing of counter-terrorism obligations on States that have been neither geographically nor temporally constrained.

Chapter 3 explained how maritime attacks by contemporary terrorist groups over the last two decades have involved significant casualty and suicide attacks – reflecting the global trend articulated in Chapter 2. It reasoned that the disruptive consequences following from a significant maritime terrorism incident² could be very profound, and argued the importance of preventing attacks from occurring in the first instance, rather than responding after the event. It articulated the coverage and acceptance criteria for assessing the prospects for the international agreements to prevent maritime terrorism threats. Most significantly, Chapter 3 developed the Maritime Terrorism Threat Matrix to provide the most structured general framework to date for statistically analysing all of the ways in which contemporary maritime terrorism incidents could conceivably occur. As [9.4] explains, the Threat Matrix provides the foundations for a structured database on maritime terrorism that can be regularly updated over future years. Chapters 5, 6 and 7 showed the practical application of the Threat Matrix, and how it “captures” all of the maritime terrorism scenarios that have been postulated by maritime security specialists – thereby demonstrating that it is the most comprehensive framework developed to date. Through providing a basis for considering how maritime terrorism incidents have previously occurred, and might occur in the future, the Threat Matrix provided the most well-informed basis for analysing how the international agreements might apply in practice in preventing maritime terrorism incidents.

² As [1.2] explained, this Study used the “umbrella” term ‘maritime terrorism incident’ to encompass both maritime terrorist attacks, and the utilisation of vessels to enable the perpetration of subsequent terrorist attacks through transporting weaponry, operatives or financing terrorist activities

Chapter 4 explained how the ISPS Code and other SOLAS Chapter XI maritime security measures have developed a framework for consistently managing maritime security risks by States, and within maritime industries. Significantly, it undertook the first major review of how the recognised limitations of the ISPS Code have been addressed within the IMO since its entry into force in July 2004. It highlighted the preference amongst contracting governments to address these limitations through the development of voluntary guidance rather than extending the mandatory application of the ISPS Code. It also explained that it is impossible to make an overall assessment the extent to which ISPS Code security measures have become accepted and ingrained internationally, due to unreliability of information provided by contracting governments to the IMO, and the confidential nature of ISPS Code security arrangements and compliance levels. Instead, the chapter identified the factors that could influence the likelihood of “best case” and “worst case” scenarios of ISPS Code security measures lessening the scope for the occurrence of maritime terrorism incidents. These factors were applied against the threat contexts in Chapters 5, 6 and 7 consider how the ISPS Code might apply in practice. Chapter 4 also concluded that there are both strengths and inevitable shortcomings of AIS in the maritime security context, and also undertook the first in-depth examination of how LRIT arrangements have functioned internationally since progressively becoming operational from early 2011 onwards. It showed that audits by the LRIT Coordinator indicate LRIT systems function according to requirements, and that LRIT information has proven valuable to naval force commanders in protecting commercial shipping from pirate attacks around the Gulf of Aden. However it also noted that unanswered questions remain regarding the actions States might permissibly take based on LRIT information. Lastly it explained that whilst ratifications of the 2003 SID Convention have been slow, it has encouragingly has been ratified by significant “seafarer supplying” states - thereby potentially minimising the scope for terrorists and criminals to freely move under the guise of fraudulent seafarer identity documentation.³

Chapter 5 demonstrated the increased lethality of attacks on vessels by contemporary terrorist groups compared to attacks by pre-contemporary terrorist groups. It also showed that large vessels (which would be more likely to be subject to the ISPS Code) have been the targets of most recorded terrorist attacks. Through exploring “best case” and “worst case” scenarios of how the ISPS Code (and AIS in relation to vessel-based attacks) might apply, it highlighted the

³ However – Chapter 7 reasoned the 2003 SID Convention would be less relevant to situations where terrorists were inserted clandestinely by small vessels – as opposed to entering States through seaports

importance of contracting governments, ships and port facilities continuously applying ISPS Code security measures in a rigorous manner. It reasoned that terrorist attacks from within vessels are the most “preventable” through rigorously-implemented security measures. It also explained that since around 2005, vessel-based attacks on high profile vessels by pirates around the Gulf of Aden have assumed greater prominence over maritime terrorist attacks. Through showing how the combination of various preventative security measures have been demonstrably effective in countering vessel-based attacks by economically-motivated pirates, it reasoned there are both positive and negative inferences that may be drawn from this demonstrated effectiveness for countering maritime terrorist attacks. It concluded by arguing that pirate and terrorist targeting of vessels should not be “conflated”, as the two are very distinct phenomena, and emphasised the importance of vigilance and continued rigorous implementation of ISPS Code security measures by large high profile vessels that might be potential targets of terrorist attacks.

Chapter 6 showed that aside from the 23 recorded uses by insurgent groups around the Gulf of Guinea of vessels as “weapons-launching platforms” for attacks on offshore platforms, the majority of the small number of instances of terrorists utilising vessels to perpetrate dangerous acts have involved contemporary terrorist groups. It also reasoned that whilst several of the offensive utilisations have thus far only been planned and postulated (rather than having been actually perpetrated or attempted), it is still important to consider (and plan against) such scenarios. The chapter highlighted several jurisdictional gaps under UNCLOS relating to the powers of States to protect submarine cables and offshore platforms from terrorist attacks, and to control dangerous activities by vessels outside territorial seas. It also explained the consequences of the current low ratification levels of the 2005 SUA treaties, which it noted have significantly improved the abilities of States to interdict suspected terrorist vessels.

Chapter 7 explained how the WMD interdiction measures alluded to in the PSI Interdiction Principles (whilst not a formal international agreement, but rather a non-binding, political expression of how “participants” might consider exercising their jurisdictional rights and obligations under UNCLOS) have prompted debate about the powers of States under UNCLOS to interdict laterally-transiting vessels suspected of illicitly transporting WMD materiel. Significantly, from its analysis of this debate, this Study was the first to specifically articulate the contending “restrictive” and “liberal” views on the legality of WMD interdictions under UNCLOS made by international legal scholars, which diverged on reasoning about the

implications of post-9/11 counter terrorism Security Council resolutions. It was also the first to apply these contending “restrictive” and “liberal” views to assessing the legality of interdicting the three “other than WMD trafficking” utilisations of vessels to enable subsequent terrorist attacks on land through transporting conventional weaponry, terrorist-connected persons and financing terrorist activities. Chapter 7 showed that although these utilisations and interdictions of vessels have not been subject to the same amount of scholarly analysis as WMD trafficking, they have occurred more times – with several significant terrorist attacks having been “enabled” through weaponry and operatives transported by sea. It also noted several cases where vessels suspected of transporting conventional weaponry for terrorist purposes have been interdicted on the high seas – without international protest. It reasoned the liberal view of UNCLOS better enables States to interdict laterally transiting vessels, with this conclusion supporting the calls by scholars such as Klein on the need for greater flexibility in understanding the law of the sea.⁴ However overall Chapter 7 argued that specific international agreements should be further developed between States to facilitate interdictions of vessels, and reduce the scope for disagreements and conflict. It showed that whilst objectively defining key terms and detailing interdiction procedures with appropriate safeguards, the 2005 SUA Convention is currently less than adequate due to its current low level of 21 ratifications. It also explained how it is difficult to assess international “support” for the PSI, even though several formal bilateral ship boarding agreements have been concluded between the United States and key registry states. Chapter 7 also reasoned that the scope for vessels to be utilised to enable subsequent terrorist attacks on land can be reduced through rigorously-applied “preventative” SOLAS maritime security measures, and applied the “best case / worst case” scenario analysis articulated in Chapter 4.

Chapter 8 examined the extent to which in exceptional circumstances (due to the jurisdictional gaps and uncertainties articulated in Chapters 6 and 7) States might, in the absence of specific agreement with the suspected terrorist vessel’s flag State, interdict suspected vessels on the basis of their ‘inherent’ right of self-defence recognised under Article 51 of the UN Charter, or alternatively the doctrine of Necessity. It explained that since 9/11 there has been increased (although not universal) acknowledgement of Article 51 applying to non-state actors such as terrorists. It explained the challenges of defining what constitutes an ‘armed attack’ and the

⁴ Natalie Klein *Maritime Security and the Law of the Sea* Oxford Monographs in International Law (Oxford University Press, 2011)

measures States may permissibly take to defend against armed attacks. Through a historically progressive review of academic analyses, ICJ judgments, UN reports and State practice, it enunciated “restrictive” and “liberal” views of ‘armed attack’ around the three key questions posed by Ruys. These questions were by whom can an armed attack be perpetrated?; what materiality threshold must be satisfied; and when does an armed attack occur? It explained that a “restrictive” view might be supported by the majority of the relevant ICJ cases, and that a liberal view might be supported by minority ICJ jurisprudence, post-9/11 state practice and (by inference) the 2004 High Level Panel Report. Whilst it reasoned a liberal view would better enable States to interdict suspected terrorist vessels, recourse to self-defence rights under Article 51 should be an absolute last resort measure. It also reasoned that whilst the doctrine of Necessity might arguably justify the interdiction of vessels suspected of being about to be utilised to attack offshore platforms or submarine cables, it has been concluded to be less likely to be invoked to justify the interdiction of suspected illicit shipments of WMD materiel.

[9.3] RECOMMENDATIONS FOR REFINING THE INTERNATIONAL LEGAL FRAMEWORK FOR COUNTERING MARITIME TERRORISM

Whilst this Study concluded overall that the international legal framework enabling the prevention of maritime terrorism threats has been significantly improved in the years following 9/1, it also identified several jurisdictional gaps and uncertainties under UNCLOS, and several concerns regarding the extent to which ISPS Code security measures have become accepted and ingrained internationally.

It also identified the factors likely to influence the prospects for the international agreements to succeed in preventing maritime terrorism incidents. Whilst the Study does not advocate sweeping reforms such as expanding the scope of the ISPS Code (with contracting governments preferring to address the ISPS Code’s limitations through non-mandatory guidance) nor the formulation of new international agreements, it argues for continual refinement to ensure the best utilisation of the current international agreements. As outlined in [9.3.1] below, it argues first for preventative security measures to lessen the scope for maritime terrorism incidents to occur, then for cooperation (through greater formalisation of agreements between States), and lastly if those measures do not succeed in preventing the occurrence of maritime terrorism incidents, for flexible interpretation of UNCLOS, and (as a last resort) Article 51 of the UN Charter or the doctrine of Necessity in exceptional cases.

[9.3.1] Recommendations to refine preventative security arrangements

Chapter 4 reasoned that a “best case” scenario of the ISPS Code lessening the scope for maritime terrorism incidents would be more likely when these measures are rigorously implemented by all entities – that is, contracting governments, shipping companies, operators of port facilities and most importantly, personnel aboard individual ships. Chapters 5, 6 and 7 also reasoned that rigorously implemented preventative security measures could significantly lessen the scope for maritime terrorism incidents to occur. Chapter 4 also explained how the IMO has facilitated the development of extensive guidance for contracting governments, shipping companies and operators of port facilities to implement the ISPS Code both around the time of its entry into force, and since that time. It is recommended the IMO should continue to facilitate the provision of this guidance to ensure that knowledge about maritime security best practice is shared internationally.

[4.2.6] noted concerns regarding delays in the reporting of updates and changes to maritime security arrangements to the IMO by contracting governments; and it is recommended that the IMO should continue to assist and encourage contracting governments to report updates to such information in a timely manner. Chapter 4 also noted slow responses by contracting governments to invitations to respond to voluntary questionnaires about maritime security arrangements – which calls into question the extent to which SOLAS Chapter XI-2 and the ISPS Code have been taken seriously amongst contracting governments and within maritime industries. Additionally, while the IMO has emphasised that it does not have an auditing role in assessing compliance with the requirements of the ISPS Code, it is suggested that there could be a role for the IMO in evaluating best practice in relation to maritime security arrangements by SOLAS contracting governments.

In relation to criticisms of the limited application of the ISPS Code to large vessels engaged in international voyages, Chapter 4 noted the preference expressed by contracting governments during IMO proceedings to pursue “sub-SOLAS” vessel security arrangements through the development of voluntary guidance, rather than “extending downwards” the mandatory application of the ISPS Code. It also noted that several SOLAS contracting governments including the United States, the United Kingdom and Singapore have contributed information about their security arrangements for smaller vessels for the information of other contracting governments, and that the IMO has promulgated guidance to contracting governments. Given

that Chapter 5 found the majority of vessels that have been targeted by terrorists have been larger vessels more likely to (since 2004) be subject to the mandatory application of the ISPS Code, it is recommended that the IMO should continue to formulate voluntary guidance on “sub-SOLAS” vessel security for promulgation to contracting governments, rather than “extending downwards” the mandatory application of the ISPS Code internationally.

Chapter 4 explained that since 2004 the IMO has worked cooperatively with the World Customs Organisation (WCO) to improve supply chain security arrangements beyond the ship/port interface. The IMO has affirmed the primacy of the WCO over supply chain security, with the IMO confining its role to issues specifically involving the ship-port interface. As contracting governments have favoured this approach continuing, rather than expanding the mandatory scope of the ISPS Code beyond the ‘ship-port interface’, it is recommended that the IMO should continue its current approach of working cooperatively with the WCO to formulate voluntary guidance relating to supply chain security.

Chapter 4 noted the paucity of IMO guidance relating to the security of offshore platforms – both in terms of preventative security measures, and the promulgation of safety zones greater than 500 metres for offshore platforms located outside the territorial sea (discussed in [9.3.2] below). Although Chapter 6 noted attacks on offshore platforms have thus far been limited to attacks by MEND and other insurgent groups around the Gulf of Guinea, and to the two closely coordinated suicide attacks on the Iraqi offshore platforms in 2004, it is submitted that there is scope for the IMO to facilitate more detailed guidance on preventative security measures for offshore platforms similar to that developed for contracting governments, shipping companies and operators of port facilities. Whilst the future concept of an ‘International Offshore Petroleum Facilities Security’ (IOPFS) Code has been suggested,⁵ taking into account the preference amongst SOLAS contracting governments for voluntary guidance rather than extending the mandatory application of the ISPS Code (or indeed developing new Codes), it is recommended that a similar approach should be followed in relation to preventative security measures for offshore platforms.

⁵ Mikhail Kashubsky *Offshore Petroleum Security: Analysis of Offshore Security Threats, Target Attractiveness, and the International Legal Framework for the Protection and Security of Offshore Petroleum Installations* (PhD thesis, University of Wollongong, 2011), 334

Chapter 4 noted scope for uncertainty regarding the arrangements amongst contracting governments for responding to activations of SSAS alerts. It also noted that the IMO has thus far focused on issues relating to the technical functioning of SSAS systems. Although Chapter 5 showed SSAS systems have been demonstrably successful in alerting coalition naval forces about ships under threat of pirate attack around the Gulf of Aden since 2005, it is submitted there is scope for the IMO to facilitate discussion amongst contracting governments to improve coordination between contracting governments in responding to activations of SSAS alerts.

Lastly, in terms of vessel identification and tracking measures, Chapter 4 noted concerns about unauthorised access to AIS information. It is submitted there is scope for the IMO to encourage contracting governments to place more stringent controls regarding unauthorised access to AIS information; and to criminalise the publication of AIS data on the internet. Chapter 4 found that LRIT arrangements now function effectively as required, so no refinement suggestions are proffered. Finally it is recommended that the 2003 SID Convention should be ratified more widely, as this would lessen the scope for terrorists and criminals to travel internationally under false seafarer identification.

[9.3.2] Recommendations for refining arrangements for interdicting suspected terrorist vessels

Chapter 6 highlighted three key jurisdictional gaps under UNCLOS. First, it noted that UNCLOS does not directly address the powers of coastal States to intervene to prevent dangerous actions by foreign-flagged vessels outside of territorial seas. In first preference for addressing this, it is recommended that greater ratification of the 2005 SUA Convention - which comprehensively addresses the interdiction of vessels suspected of being about to be used in a manner that causes death or serious injury or damage'⁶ – would add greater certainty to the abilities of States to interdict offensive utilisations of vessels by terrorists. As a secondary option, greater discussion about the intervention powers of coastal States under UNCLOS Article 56(1)(b)(iii), which enables coastal states to 'preserve and protect' the marine environments of their EEZs, could also reduce the scope for uncertainty regarding the powers of coastal States to interdict vessels suspected of being about to engage in acts that could result

⁶ 2005 SUA Convention Article 3bis(a)(iii)

in significant pollution – including the offensive utilisations of vessels by terrorists examined in Chapter 6.

Second, Chapter 6 reasoned that the 500 metre safety zones around offshore platforms within EEZs and outside of territorial seas would be inadequate to protect offshore platforms from terrorist attacks. Noting that contracting governments have generally been reluctant to extend the breadth of such safety zones beyond 500 metres, it is recommended that the IMO should develop guidance for coastal States to declare and enforce 3,000 metre ‘security warning zones’ around offshore platforms when circumstances require, as Chapter 6 noted Kaye and Kashubsky suggesting.⁷ Third, Chapter 6 noted the limitations of UNCLOS in specifically authorising coastal States to protect submarine cables from terrorist interference outside the territorial sea. It is recommended that the IMO should facilitate further guidance for States in protecting submarine cables similarly to the protection of offshore platforms that [9.3.1] argued for.

Chapter 7 highlighted several jurisdictional uncertainties under the vaguely-worded UNCLOS provisions regarding the powers of States (without specific agreement with the suspected terrorist vessel’s flag state) to interdict vessels suspected of being utilised to enable subsequent terrorist attacks on land. As noted above, Chapter 7 of this Study was the first to articulate the scope for varying interpretations of States’ interdiction powers under UNCLOS – which were termed the restrictive and liberal views of UNCLOS.

In order of preference, this Study argues firstly for wider ratification of the 2005 SUA Convention. As [6.2.5] and [7.2.9] explained, the 2005 SUA Convention objectively defines key terms and details interdiction procedures with appropriate safeguards – thereby significantly decreasing the scope for disagreements between States. In second preference, it is recommended that more bilateral ship-boarding agreements similar to those formalised between the United States and key registry states should be developed, with Chapter 7 noting

⁷ If UNCLOS Article 60(5) were to be amended – it could reflect the wording of Article 41(2) ‘Sea lanes and traffic separation schemes in straits used for international navigation’ which provides that ‘Such States may, when circumstances require, and after giving due publicity thereto, substitute other sea lanes or traffic separation schemes for any sea lanes or traffic separation schemes previously designated or prescribed by them; and Article 53(7) Right of archipelagic sea lanes passage, which provides that ‘An archipelagic State may, when circumstances require, after giving due publicity thereto, substitute other sea lanes or traffic separation schemes for any sea lanes or traffic separation schemes previously designated or prescribed by it’.

that the development of further such agreements has been contemplated by the United Kingdom. In third preference, it is recommended that consideration be given to the calls from several international legal scholars (and more recently, President Obama) for institutionalisation of the PSI to increase its transparency and hence legitimacy (although this would require a very fine balancing of transparency and the protection of sensitive national security information about previous WMD interdictions).

In fourth preference, it is suggested that support for the liberal view of UNCLOS articulated in [7.2.5.1] could be further developed to provide further legitimacy to interdictions of suspected illicit shipments of WMD materiel. Whilst amending UNCLOS is widely viewed as unlikely to ever succeed,⁸ a more achievable solution for developing support for the liberal view could involve updating the 1989 USA-USSR Uniform Interpretation of Rules of International Law Governing Innocent Passage⁹ - which [7.2.5.1] noted is widely regarded as an authoritative statement on the interpretation of UNCLOS Article 19. A possible amendment (with the suggested amendment underlined) might read:

‘3. Article 19 of the Convention of 1982 sets out in paragraph 2 an exhaustive list of activities that would render passage not innocent - with the reference to ‘violation of the principles of international law embodied in the Charter of the United Nations’¹⁰ including activities declared to be a threat to international peace and security under Article 39 of the Charter of the United Nations. A ship passing through the territorial sea that does not engage in any of those activities is in innocent passage.’

This amendment would give greater support to the liberal view of UNCLOS through confirming the influence of post-9/11 counter-terrorism Security Council resolutions¹¹ on interpretations of UNCLOS as discussed in [7.2] and [7.3].

⁸ See for example David Freestone and Alex Oude Elferink ‘Flexibility and Innovation in the Law of the Sea – Will the LOS Amendment Procedures Ever be Used?’ in Alex Oude Elferink (ed) *Stability and Change in the Law of the Sea Convention* (Martinus Nijhoff, 2005), 169

⁹ Union of Soviet Socialist Republics-US: Joint Statement with Attached Uniform Interpretation of Rules of International Law Governing Innocent Passage (Union of Soviet Socialist Republics-US) (signed at Jackson Hole, Wyoming, 23 September 1989) 28 ILM 1444

¹⁰ As [7.2] discussed, this terminology is used in both UNCLOS Article 19(2)(a) relating to the innocent passage of foreign vessels through the territorial sea, and UNCLOS Article 39(1)(b) relating to transit passage of foreign vessels through straits used for international navigation

¹¹ Particularly Security Council Resolutions 1373, 1540 and 1390 which were discussed in Chapter 7

As noted above, resort to self-defence rights under Article 51 of the UN Charter to justify the interdiction of suspected terrorist vessels should be limited to being an absolute last resort measure, but one which should not be disregarded given the current low ratifications of the 2005 SUA treaties and the jurisdictional gaps and uncertainties under UNCLOS. Given that an ICJ judgment or advisory opinion on the legality of interdicting suspected terrorist vessels is unlikely in the foreseeable future, it is recommended that further scholarly dialogue regarding the meaning of ‘armed attack’ in the maritime terrorism context could assist in more fully exploring these issues. Indeed as [9.4] reasons, continued scholarly dialogue should help to keep maritime terrorism “on the radar” of maritime industry and policy agendas – given both the more immediate contemporary threat of piracy around the Gulf of Aden, and the increasing passage of time since the 9/11 attacks.

[9.4] DIRECTIONS FOR FURTHER RESEARCH

It is hoped the findings of this Study will stimulate a range of further studies. In the field of terrorism and counter terrorism studies, this Study could stimulate discussion about the concepts of contemporary and pre-contemporary terrorism as the best descriptive delineators between terrorism past and present – with [2.4] explaining the considerable debate on these points. Furthermore, the Successful, Attempted, Planned and Postulated (“SAPP”) approach to recording and analysing maritime terrorism statistics could also be applied to the analysis of terrorism statistics more broadly, and will be useful for scholars and commentators. Historical studies could research further the details of older maritime terrorist attacks and add greater specificity as to how they occurred.

It is intended for the Maritime Terrorism Threat Matrix to be developed into an accessible database that can be updated periodically according to new successful, attempted, planned and postulated instances of maritime terrorism incidents. The Threat Matrix will enable scholars (from both the terrorism, international security and strategic studies disciplines; and from international maritime law disciplines), policy makers, international organisations such as the IMO, operators of ships, maritime industry organisations, insurers, security companies, law enforcement agencies and militaries to discuss and analyse maritime terrorism threats with the benefit of the structured and statistically-informed framework it develops. Similarly to, but extending upon, the widely-cited actual and attempted piracy statistics contained in the yearly ICC/IMB Annual Reports on Piracy and Armed Robbery Against Ships, the Threat Matrix

provides a useful framework for analysing politically or ideologically-motivated acts of maritime violence, with the important addition of planned and postulated previous manifestations of maritime terrorism – given the more creative and potentially more serious consequences of maritime terrorism compared to piracy.

Shorter studies will be able to fine tune from the Threat Matrix to focus on particular regions or countries (for example Southeast Asia or the Middle East); terrorist or insurgent groups (such as Al Qaeda or the LTTE); categories of vessels targeted or utilised by terrorists (such as small vessels or container ships); and/or time periods (for example pre- or post-9/11). Within maritime industries, it is intended that the Threat Matrix will provide the best “conceptual baseline” to ensure all relevant maritime terrorism scenarios have been addressed within ship or port facility security plans

In the field of international legal studies, shorter studies could compare the implementation of SOLAS Chapter XI security arrangements between States. Shorter studies could also examine domestic laws relating to vessel interdictions and the domestic arrangements for prosecuting offences and confiscating illicit materials found aboard interdicted vessels. Shorter studies could also analyse the liability of States and their authorities for wrongful interdictions and unwarranted delays of ship or injuries to ships’ crews.

It is also hoped this Study will stimulate further discussion and debate about the interdiction powers of States under UNCLOS and in exceptional circumstances, Article 51 of the UN Charter. In particular, scholarly debate could focus on the validity and desirability of the restrictive and liberal views of these instruments, and the influence that Security Council Resolutions should have on their interpretation of these instruments.

Whichever lines of future inquiry are undertaken into these issues, further studies will now have a well-informed basis through the approaches of this Study.

BIBLIOGRAPHY

International agreements

Multilateral

Charter of the United Nations, opened for signature 26 June 1945, 59 Stat 1031 (entered into force 24 October 1945)

Seafarers Identity Documents Convention, opened for signature 13 May 1958, ILO Convention No. 108 (entered into force 19 February 1961)

Optional Protocol of Signature Concerning the Compulsory Settlement of Disputes (entered into force 30 September 1962) 499 UNTS 311

Convention on the High Seas 450 UNTS 11 (entered into force 30 September 1962)

Convention on the Continental Shelf 499 UNTS 311 (entered into force 10 June 1964)

Convention on the Territorial Sea and the Contiguous Zone 516 UNTS 205 (entered into force 10 September 1964)

Convention on Fishing and Conservation of the Living Resources of the High Seas 559 UNTS 285 (entered into force 23 March 1966)

Tokyo Convention on Offences and Certain Other Acts Committed On Board Aircraft, opened for signature 14 September 1963, 704 UNTS 219 (entered into force 4 December 1969)

Treaty on the Non-proliferation of Nuclear Weapons, opened for signature 1 July 1968 729 UNTS 161 (entered into force 5 March 1970)

Vienna Convention on the Law of Treaties, opened for signature 23 May 1969, 1155 UNTS 331 (entered into force 27 January 1980)

Hague Convention for the Suppression of Unlawful Seizure of Aircraft, opened for signature 16 December 1970, 860 UNTS 105 (entered into force 14 October 1971)

Montreal Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, opened for signature 23 September 1971, 974 UNTS 177 (entered into force 26 January 1973)

Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, opened for signature 10 April 1972 1015 UNTS 163 (entered into force 26 March 1975)

Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, opened for signature December 1973, 1035 UNTS 15410 (entered into force 20 February 1977)

International Convention for the Safety of Life at Sea, opened for signature 1 November 1974, 1184 UNTS 278 (entered into force 25 May 1980)

Convention on the Physical Protection of Nuclear Material, opened for signature 26 October 1979, 1456 UNTS 101 (entered into force 8 February 1987)

International Convention against the Taking of Hostages, opened for signature 17 December 1979, 1316 UNTS 205 (entered into force 3 June 1983)

United Nations Convention on the Law of the Sea, opened for signature 10 December 1982, 1833 UNTS 3 (entered into force 16 November 1994)

Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, opened for signature 24 February 1988, 1589 UNTS 474 (entered into force 6 August 1989)

Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, opened for signature 10 March 1988, 1678 UNTS 221 (entered into force 1 March 1992)

Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf, opened for signature 10 March 1988, 1678 UNTS 304 (entered into force 1 March 1992)

Convention on the Marking of Plastic Explosives for the Purpose of Detection, opened for signature 1 March 1991, 2122 UNTS 359 (entered into force 21 June 1998)

Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, opened for signature 3 September 1992, 1974 UNTS 45 (entry into force 29 April 1997)

International Convention for the Suppression of Terrorist Bombings, opened for signature 15 December 1997, 2149 UNTS 284 (entered into force 23 May 2001)

International Convention for the Suppression of the Financing of Terrorism, opened for signature 9 December 1999, 39 ILM 270 (entered into force 10 April 2002)

Seafarers Identity Documents Convention (Revised), opened for signature 19 June 2003, 2304 UNTS 121 (entered into force 9 February 2005)

International Convention for the Suppression of Acts of Nuclear Terrorism, opened for signature 13 April 2005, 2445 UNTS 89 (entered into force 7 July 2007)

Protocol of 2005 to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, opened for signature 14 October 2005, IMO Doc. LEG/CONF.15/21 (entered into force 28 July 2010)

Protocol of 2005 to the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf opened for signature 14 October 2005, IMO Doc. LEG/CONF.15/22 (entered into force 28 July 2010)

Bilateral agreements

Union of Soviet Socialist Republics-US: Joint Statement with Attached Uniform Interpretation of Rules of International Law Governing Innocent Passage (Union of Soviet Socialist Republics-US) (signed at Jackson Hole, Wyoming, 23 September 1989) 28 ILM 1444

Supplementary Arrangement Between the Government of the United States of America and the Government of the Republic of Panama to the Arrangement Between the Government of the United States of America and the Government of Panama for Support and Assistance from the United States Coast Guard for the National Maritime Service of the Ministry of Government and Justice Signed 5 February 2002, entered into force 5 February 2002

Agreement Between the Government of the United States of America and the Government of Belize Concerning Cooperation to Suppress the Proliferation of Weapons of Mass Destruction, Their Delivery Systems, and Related Materials By Sea Signed 4 August 2005 (entered into force 19 October 2005)

Agreement between the Government of the United States of America and the Government of the Republic of Croatia concerning cooperation to suppress the proliferation of weapons of mass destruction, their delivery systems, and related materials Signed 1 June 2005 (entered into force 5 March 2007)

Agreement between the Government of the United States of America and the Government of the Republic of Cyprus Concerning Cooperation to Suppress the Proliferation of Weapons of Mass Destruction, Their Delivery Systems, and Related Materials By Sea Signed 25 July 2005 (entered into force 12 January 2006)

Agreement between the Government of the United States of America and the Government of the Republic of Liberia Concerning Cooperation to Suppress the Proliferation of Weapons of Mass Destruction, Their Delivery Systems, and Related Materials By Sea Signed 11 February 2004 provisionally applied from 11 February 2004 (entered into force 8 December 2004)

Agreement between the Government of the United States of America and the Government Of Malta Concerning Cooperation To Suppress The Proliferation Of Weapons Of Mass

Destruction, Their Delivery Systems, And Related Materials By Sea Signed 15 March 2007
(entered into force 19 December 2007)

Agreement between the Government of the United States of America and the Government of the Republic of the Marshall Islands Concerning Cooperation to Suppress the Proliferation of Weapons of Mass Destruction, Their Delivery Systems, and Related Materials by Sea Signed 13 August 2004 provisionally applied from 13 August 2004 entered into force 24 November 2004

Agreement between the Government Of The United States Of America And The Government Of Mongolia Concerning Cooperation To Suppress The Proliferation Of Weapons Of Mass Destruction, Their Delivery Systems, And Related Materials By Sea Signed 23 October 2007 entered into force 20 February 2008

Amendment to the Supplementary Arrangement Between the Government of the United States of America and the Government of the Republic of Panama to the Arrangement Between the Government of the United States of America and the Government of Panama for Support and Assistance from the United States Coast Guard for the National Maritime Service of the Ministry of Government and Justice Signed 12 May 2004 provisionally applied from 12 May 2004 entered into force 1 December 2004

Agreement Between the Government of the Commonwealth of the Bahamas and the Government of the United States of America Concerning Cooperation to Suppress the Proliferation of Weapons of Mass Destruction, Their Delivery Systems, and Related Materials By Sea Signed 11 August 2008 (not yet in force)

Cases

SS Lotus Case (France v Turkey) [1927] PCIJ Ser A No 10 (7 September) 106

I'm Alone (Canada v. USA) (1935) 3 UN Reports of International Arbitral Awards 1609

Corfu Channel Case (UK v Albania) (Merits) [1949] ICJ Rep 4

The Red Crusader (Commission of Enquiry Denmark v United Kingdom) (1962) 35 ILR 485

North Sea Continental Shelf Cases (*Federal Republic of Germany v Denmark and Federal Republic of Germany v Netherlands*) [1969] ICJ Reports 3

Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America) (Merits) [1986] ICJ Reports 14

Legality of Threat or Use of Nuclear Weapons (Advisory Opinion) 1996 ICJ Reports 226

Case Concerning the Gabčíkovo-Nagymaros Project (Gabčíkovo-Nagymaros Project (Hungary/Slovakia), Judgment, 1997 ICJ Reports

Fisheries Jurisdiction Case (Spain v Canada) (Jurisdiction of the Court, Judgement) [1998] ICJ Rep 432

M/V "Saiga" (No 2) (Saint Vincent and the Grenadines v Guinea) ITLOS Case No 2(1999) 38 ILM 1323

Case concerning Oil Platforms (Islamic Republic of Iran v United States of America) (Merits) [2003] ICJ Reports 161

Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territories [2004] ICJ Reports 136

Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v Uganda) [2005] ICJ Reports 168

Guyana v Suriname (Award of the Arbitral Tribunal) (2008) 47 ILM 164

United Nations Documents

UN Security Council Resolutions

UNSC Res 487 (19 June 1981) UN Doc S/RES/487

UNSC Res 1267 (15 October 1999) UN Doc S/RES/1267

UNSC Res 1368 (12 September 2001) UN Doc S/RES/1368

UNSC Res 1373 (28 September 2001) UN Doc S/RES/1373

UNSC Res 1377 (12 November 2001) UN Doc S/RES/1377

UNSC Res 1390 (16 January 2002) UN Doc S/RES/1390

UNSC Res 1438 (14 October 2002) UN Doc S/RES/1438

UNSC Res 1440 (24 October 2002) UN Doc S/RES/1440

UNSC Res 1450 (13 December 2002) UN Doc S/RES/1450

UNSC Res 1452 (20 December 2002) UN Doc S/RES/1452

UNSC Res 1455 (17 January 2002³) UN Doc S/RES/1455

UNSC Res 1456 (20 January 2003) UN Doc S/RES/1456

UNSC Res 1465 (13 February 2003) UN Doc S/RES/1465

UNSC Res 1516 (20 November 2003) UN Doc S/RES/1516

UNSC Res 1526 (30 June 2004) UN Doc S/RES/1526

UNSC Res 1530 (11 March 2004) UN Doc S/RES/1530

UNSC Res 1535 (26 March 2004) UN Doc S/RES/1535

UNSC Res 1540 (28 April 2004) UN Doc S/RES/1540

UNSC Res 1566 (8 October 2004) UN Doc S/RES/1566

UNSC Res 1611 (7 July 2005) UN Doc S/RES/1611

UNSC Res 1617 (29 July 2005) UN Doc S/RES/1617

UNSC Res 1618 (4 August 2005) UN Doc S/RES/1618

UNSC Res 1735 (22 December 2006) UN Doc S/RES/1735

UNSC Res 1787 (10 December 2007) UN Doc S/RES/1787

UNSC Res 1805 (20 March 2008) UN Doc S/RES/1805

UNSC Res 1810 (25 April 2008) UN Doc S/RES/1810

UNSC Res 1816 (2 June 2008) UN Doc S/RES/1816

UNSC Res 1822 (30 June 2008) UN Doc S/RES/1822

UNSC Res 1846 (2 December 2008) UN Doc S/RES/1846

UNSC Res 1897 (30 November 2009) UN Doc S/RES/1897

UNSC Res 1904 (17 December 2009) UN Doc S/RES/1904

UNSC Res 1950 (23 November 2010) UN Doc S/RES/1950

UNSC Res 1963 (20 December 2010) UN Doc S/RES/1963

UNSC Res 1988 (17 June 2011) UN Doc S/RES/1988

UNSC Res 1989 (17 June 2011) UN Doc S/RES/1989

UNSC Res 2020 (22 November 2011) UN Doc S/RES/2020

UNSC Res 2077 (21 November 2012) UN Doc S/RES/2077

UNSC Res 2082 (17 December 2012) UN Doc S/RES/2082

UNSC Res 2083 (17 December 2012) UN Doc S/RES/2083

UNSC Res 2117 (26 September 2013) UN Doc S/RES/2117

UN Reports

UN Security Council 4568th meeting, UN Doc. S/PV.4568 (10 July 2002)

UN Security Council, 4950th meeting, UN Doc S/PV.4950 (22 April 2004)

UN Security Council 4772nd meeting, UN Doc. S/PV.4772 (12 June 2004)

United Nations *A More Secure World: Our Shared Responsibility* - Report of the Secretary-General High-level Panel on Threats, Challenges and Change GA 59th session, Agenda Item 55 UN Doc A/59/565 (2 December 2004)

United Nations *In Larger Freedom: Towards Development, Security and Human Rights For All* – Report of the Secretary-General GA 59th session, Agenda Item Agenda Items 45 and 55 UN Doc A/59/2005 (21 March 2005)

United Nations *Report of the Secretary-General's Panel of Inquiry on the 31 May 2010 Flotilla Incident*, September 2011

http://www.un.org/News/dh/infocus/middle_east/Gaza_Flotilla_Panel_Report.pdf

United Nations *Report of the Ad Hoc Committee established by General Assembly resolution 51/201 of 17 December 1996 Sixteenth Session* (8 to 12 April 2013) UN Doc A/68/37

United Nations 'Measures to Eliminate International Terrorism: Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996, <http://www.un.org/law/terrorism/> Last updated 15 April 2013

United Nations *Report of the Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996 Sixteenth Session* (8 to 12 April 2013) UN Doc A/68/37
United Nations 'Measures to Eliminate International Terrorism: Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996, <http://www.un.org/law/terrorism/> Last updated 15 April 2013, Accessed 1 October 2013

International Law Commission

International Law Commission, *Draft Articles on Responsibility of States for Internationally Wrongful Acts* UN Doc A/56/10 (2001), http://untreaty.un.org/ilc/texts/instruments/english/draft%20articles/9_6_2001.pdf.

International Law Commission, *Draft Articles on State Responsibility*, Article 33, UN Doc CN.4/SER.A/1996/Add.1 (part 2) (1996)

James Crawford *The International Law Commission's Articles on State Responsibility: Introduction, Text and Commentaries* (2002)

International Maritime Organisation

Reports of proceedings

IMO *Report of the Maritime Safety Committee on its Seventy-Ninth Session* IMO MSC 79th Session, Agenda Item 263 IMO Doc MSC 79/23 (15 December 2004)

IMO *Report of the Maritime Safety Committee on its Eightieth Session*, IMO MSC 80th Session, Agenda Item 24, IMO Doc MSC 80/24 (24 May 2005)

IMO Report of the Maritime Safety Committee on its Eighty-First Session IMO MSC 81st session, Agenda Item 25, IMO Doc MSC 81/25 (24 May 2006)

IMO Report of the Maritime Safety Committee on its Eighty-Second Session IMO MSC 82nd session, Agenda Item 24, IMO Doc MSC 82/24 (18 December 2006)

IMO Report of the Maritime Safety Committee on its Eighty-Third Session IMO MSC 83rd session, Agenda Item 28, IMO Doc MSC 83/28 (26 October 2007)

IMO Report of the Maritime Safety Committee on its Eighty-Sixth Session IMO MSC 86th Session, Agenda Item 26, IMO Doc MSC 86/26 (12 June 2009)

IMO Report of the Maritime Safety Committee on its Eighty-Seventh Session IMO MSC 87th Session, Agenda Item 26, IMO Doc MSC 87/26 (25 May 2010)

IMO Report of the Maritime Safety Committee on its Eighty-Sixth Session IMO MSC 86th Session, Agenda Item 26, IMO Doc MSC 88/26 (25 December 2010)

IMO Report of the Maritime Safety Committee on its Eighty-Ninth Session IMO MSC 89th session, Agenda Item 25 IMO Doc MSC 89/25 (27 May 2011)

IMO Report of the Maritime Safety Committee on its Ninetieth Session IMO MSC 90th session, Agenda Item 28, IMO Doc MSC 90/28 (31 May 2012)

IMO Report of the Maritime Safety Committee on its Ninety-First Session IMO MSC 91st session, Agenda Item 22 IMO Doc MSC 91/22 (17 December 2012)

IMO Report of the Maritime Safety Committee on its Ninety-Second Session IMO MSC 92nd session, Agenda Item 26 IMO Doc MSC 92/26 (30 June 2013)

Other IMO reports and documents

IMO Guidelines for the Onboard Operational Use of Shipborne Automatic Identification Systems (AIS), A 22/Res.917, 22nd Session, Agenda Item 9, IMO Doc A 22/Res.917 (25 January 2002),

IMO Consideration and Adoption of the International Ship and Port Facility Security (ISPS) Code Conference of Contracting Governments to the International Convention for the Safety of Life at Sea, 1974 Agenda Items 7 and 8, IMO Doc SOLAS/CONF.5/34 (17 December 2002) Annex 2, 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')

IMO Guidance Relating to the Implementation of SOLAS Chapter XI-2 and the ISPS Code, IMO Doc MSC/Circ.1097 (20 August 2003)

IMO Progress report on the implementation of the special measures to enhance maritime security detailed in SOLAS chapter XI-2 and the ISPS Code: Note by the Secretariat IMO MSC 79th Session, Agenda Item 5, IMO Doc MSC 79/5/1 Secretariat (24 September 2004)

IMO Measures to Enhance Maritime Security: Enhancement of security in co-operation with the World Customs Organization: Note by the Secretariat IMO MSC 81st session, Agenda Item 5, IMO Doc MSC 81/5/4 (3 February 2006)

IMO Measures to Enhance Maritime Security: Report on the Ministerial Conference on International Transport Security Tokyo, Japan, 12-13 January 2006: Submitted by Japan IMO MSC 81st session, Agenda Item 5, IMO Doc MSC 81/5/9 (10 February 2006)

IMO Measures to Enhance Maritime Security: The effective implementation of SOLAS Chapter XI-2 and the ISPS Code: Submitted by the International Confederation of Free Trade Unions IMO MSC 81st Session, Agenda Item 5, IMO Doc MSC 81/5/8 (14 February 2006)

IMO Measures to Enhance Maritime Security: Performance Standards for the ship security alert system: Submitted by Austria, Belgium, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, the United

Kingdom and by the European Commission IMO MSC 81st session, Agenda Item 5, IMO Doc MSC 81/5/11 (27 February 2006)

IMO Guidance on Voluntary Self-Assessment by Administrations and for Ship Security IMO Doc MSC.1/Circ.1193 (30 May 2006)

IMO Effective Implementation of SOLAS Chapter XI-2 and the ISPS Code IMO Doc MSC.1/Circ.1194 (30 May 2006) Annex (*Guidance on basic elements of national oversight programmes for SOLAS Chapter XI-2 and the ISPS Code*)

IMO Guidance on the provision of information for identifying ships when transmitting ship security alerts IMO Doc MSC.1/Circ.1190 (2 June 2006)

IMO Measures to Enhance Maritime Security: Improving security and facilitation provisions within IMO instruments taking into account the WCO SAFE Framework of Standards IMO MSC 82nd Session, Agenda Item 4, IMO Doc MSC 82/4/3 (4 October 2006)

IMO Measures to Enhance Maritime Security: Security guidance for leisure craft operating on the River Thames: Submitted by United Kingdom IMO MSC 82nd session, Agenda Item 4, IMO Doc MSC 82/INF.15 (10 October 2006)

IMO Measures to Enhance Maritime Security: Enhancement of the security of ships other than those already covered by SOLAS Chapter XI-2 and the ISPS Code: Submitted by the United Kingdom IMO MSC 82nd session, Agenda Item 4, IMO Doc MSC 82/4/6 (17 October 2006)

IMO Measures to Enhance Maritime Security: Enhancement of the security of ships other than those already covered by SOLAS Chapter XI-2 and the ISPS Code: Submitted by the United States IMO MSC 83rd session, Agenda Item 4, IMO Doc MSC 83/INF.17

IMO Measures to Enhance Maritime Security: The Harbour Craft Transponder System (HARTS) in the Port of Singapore: Submitted by Singapore IMO MSC 83rd session, Agenda Item 4, IMO Doc MSC 83/INF.11 (25 July 2007)

IMO Measures to Enhance Maritime Security: Enhancement of the security of ships other than those already covered by SOLAS Chapter XI-2 and the ISPS Code: Submitted by Australia MSC 83rd session, Agenda Item 4, IMO Doc MSC 83/4/4 (14 August 2007)

IMO, Development of Guidelines for Consideration of Requests for Safety Zones Larger than 500 metres Around Artificial Islands, Installations and Structures in the Exclusive Economic Zone: Submitted by the United States and Brazil, IMO MSC, 84th session, Agenda Item 22, IMO Doc MSC 84/22/4 (4 February 2008)

IMO Measures to Enhance Maritime Security: Report of the Correspondence Group on security arrangements for vessels which do not fall within the scope of SOLAS chapter XI-2 and the ISPS Code: Submitted by Japan, the United Kingdom and the United States IMO MSC 85th session, Agenda Item 4, IMO Doc MSC 85/4/1 (22 August 2008)

IMO Non-mandatory guidelines on security aspects of the operation of vessels which do not fall within the scope of SOLAS Chapter XI-2 and the ISPS Code IMO Doc MSC.1/Circ.1283 (22 December 2008)

IMO Measures to enhance maritime security: A brief report on how the ISPS Code has been implemented – Measures taken to enhance security policies and activities: Submitted by the Islamic Republic of Iran MSC 86th Session, Agenda Item 4, IMO Doc MSC 86/4/1 (11 March 2009)

IMO Report to the Maritime Safety Committee, IMO NAV, 55th session, Agenda Item 20, IMO Doc NAV 55/20 (27 - 31 July 2009)

IMO Measures to Enhance Maritime Security: Report of the Third Latin American Forum on Maritime and Port Security: Submitted by Colombia IMO MSC 87th Session, Agenda Item 4, IMO Doc MSC 87/4/1 (18 January 2010)

IMO Protection of Vital Shipping Lanes: Sub-regional meeting to conclude agreements on maritime security, piracy and armed robbery against ships for States from the Western Indian Ocean, Gulf of Aden and Red Sea areas: Note by the Secretary-General IMO Council 102nd Session, Agenda Item 14, IMO Doc C 102/14 (3 April 2009) Annex 'Code of Conduct

concerning the Repression of Piracy and Armed Robbery against Ships in the Western Indian Ocean and the Gulf of Aden’

IMO LRIT-related matters: Summary Audit Reports of the LRIT Data Centres: Note by the Secretariat IMO MSC 87th Session, Agenda Item 6, IMO Doc MSC 87/6/8 (16 April 2010)

IMO Guidance for the Application of Safety, Security and Environmental Protection Provisions to FPSOs and FSUs, IMO Doc MSC-MEPC.2/Circ 9 (25 May 2010)

IMO Summary audit reports of the International LRIT Data Exchange and LRIT Data Centres: Note by the Secretariat IMO MSC 88th Session, Agenda Item 6, IMO Doc MSC 88/INF.14 (21 October 2010)

IMO Measures to Enhance Maritime Security: Consideration of Periodical Survey to Ship Security Alert System (SSAS): Submitted by the Republic of Korea IMO MSC 89th Session, Agenda Item 4, IMO Doc MSC 89/4/2 (8 March 2011)

IMO LRIT-Related Matters: Report on the performance of the LRIT system from a port State tracking perspective: Submitted by Canada IMO MSC 89th Session, Agenda Item 6, IMO Doc MSC 89/6/7 (15 March 2011)

IMO Piracy and Armed Robbery Against Ships in Waters off the Coast of Somalia: Best Management Practices for Protection against Somalia-based Piracy IMO Doc MSC.1/Circ.1339 (14 September 2011)

International Chamber of Shipping and European Community Shipowners Associations *Private Armed Guards Flag State Law: Comparison of Flag State Laws on Armed Guards and Arms on Board* December 2011

https://www.bimco.org/en/News/2012/09/04_Anti-piracy_shipowner_stay_on_your_toes/~media/Security/Piracy/Private_Armed_Guards_Flag_State_Laws_June_2012.ashx

IMO Consideration of LRIT-related matters: Summary audit reports of the LRIT Data Centres: Submitted by the International Mobile Satellite Organisation, Sub-Committee on Radio

Communications and Search and Rescue 16th Session, Agenda Item 13, IMO Doc COMSAR 16/13/1 (9 December 2011)

IMO Measures to enhance maritime security: Australia's implementation of the ISPS Code
Submitted by Australia IMO MSC 90th Session, Agenda Item 4, IMO Doc MSC 90/4/1 (29 February 2012)

OFFICIAL POLICY STATEMENTS

Australian Government 'National Terrorism Public Alert System' (no date)
<http://www.nationalsecurity.gov.au/Securityandyourcommunity/Pages/NationalTerrorismPublicAlertSystem.aspx>; Accessed 1 October 2014

'Terrorist threat level history' United Kingdom MI5 Security Service: (no date)
<https://www.mi5.gov.uk/home/the-threats/terrorism/threat-levels.html#history>; Accessed 1 October 2014

The White House, *National Strategy to Combat Weapons of Mass Destruction*, Washington DC, December 2002

Final Report of the National Commission on Terrorist Attacks Upon the United States (United States Government, 27 May 2004)

Bureau of Non-proliferation, 'The Proliferation Security Initiative', Washington DC, 28 July 2004, available at <http://www.state.gov/t/isn/rls/other/34726.htm>

Fact Sheet, U.S. Department of State, Bureau of Non-proliferation, Proliferation Security Initiative Frequently Asked Questions 24 May 2004, revised 22 May 2008
www.state.gov/t/isn/rls/fs/105213.htm Accessed 2 January 2010

United States Government *National Security Strategy for Maritime Security* (Department of Homeland Security, 2005)

US State Department 'Proliferation Security Initiative 10th Anniversary High-Level Political Meeting' 28 May 2013 <http://www.state.gov/t/isn/c10390.htm> Accessed 1 October 2013

Director-General's speech: The 2013 Sir Zelman Cowen Oration, 1 October 2013' Australian Security Intelligence Organisation <http://www.asio.gov.au/Publications/Speeches-and-Statements/Speeches-and-Statements/DGs-Speech-October-1-2013.html>; Accessed 1 October 2014

Threat level from international terrorism increased from substantial to severe' United Kingdom Home Office, 29 August 2014 <https://www.gov.uk/government/news/threat-level-from-international-terrorism-increased>; Accessed 1 October 2014

'National terrorism public alert level raised to high' Prime Minister Media Release 12 September 2014 <http://www.pm.gov.au/media/2014-09-12/national-terrorism-public-alert-level-raised-high>; Accessed 1 October 2014

DATABASES

RAND Database of Worldwide Terrorism Incidents
http://smapp.rand.org/rwtid/search_form.php

National Consortium for the Study of Terrorism and Responses to Terrorism Global Terrorism Database <http://www.start.umd.edu/gtd/>

ICC-International Maritime Bureau *Report on Piracy and Armed Robbery Against Ships 1 January – 31 December 2005*

ICC-International Maritime Bureau *Report on Piracy and Armed Robbery Against Ships 1 January – 31 December 2006*

ICC-International Maritime Bureau *Report on Piracy and Armed Robbery Against Ships 1 January – 31 December 2007*

ICC-International Maritime Bureau *Report on Piracy and Armed Robbery Against Ships 1 January – 31 December 2008*

ICC-International Maritime Bureau *Report on Piracy and Armed Robbery Against Ships 1 January – 31 December 2009,*

ICC-International Maritime Bureau *Report on Piracy and Armed Robbery Against Ships 1 January – 31 December 2010*

ICC-International Maritime Bureau *Report on Piracy and Armed Robbery Against Ships 1 January – 31 December 2011*

ICC-International Maritime Bureau *Report on Piracy and Armed Robbery Against Ships 1 January – 31 December 2012*

CIA World Fact book - Country Comparisons: Merchant Marine (2010)
<https://www.cia.gov/library/publications/the-world-factbook/rankorder/2108rank.html?countryName=Panama&countryCode=pm®ionCode=cam&rank=1#pm>

SECONDARY SOURCES

Theses

Mikhail Kashubsky *Offshore Petroleum Security: Analysis of Offshore Security Threats, Target Attractiveness, and the International Legal Framework for the Protection and Security of Offshore Petroleum Installations* (PhD thesis, University of Wollongong, 2011)

Stephen Kelley *Better Lucky Than Good: Operation Earnest Will as Gunboat Diplomacy*
Master of Arts in National Security Affairs Thesis (Naval Postgraduate School, June 2007)

Books, Book chapters, and Journal articles

Max Abrahms 'Al Qaeda's Scorecard: A Progress Report on Al Qaeda's Objectives' (2006)
29 Studies in Conflict & Terrorism 509

Craig Allen *Maritime Counter-proliferation Operations and the Rule of Law* (Praeger Security International, 2007)

Craig Allen 'The International Supply Chain Security Regime and the Role of Competent International Organisations' in Myron Nordquist, Rudiger Wolfrum, John Norton Moore and Ronan Long (eds) *Legal Challenges in Maritime Security* (Martinus Nijhoff, 2008)

Craig Allen 'Cargoes of Doom: National Strategies of the U.S. to Combat the Illicit Transport of Weapons of Mass Destruction by Sea' in David Caron and Harry Scheiber (eds) *Oceans in the Nuclear Age: Legacies and Risks* (Martinus Nijhoff, 2010)

Graham Allison *Nuclear Terrorism: The Ultimate Preventable Catastrophe* (Times Books, 2004)

Masahiko Asada 'Security Council Resolution 1540 to Combat WMD Terrorism: Effectiveness and Legitimacy in International Legislation' (2009) 13 *Journal of Conflict & Security Law* 303

Ersel Aydinli 'Before Jihadists There Were Anarchists: A Failed Case of Transnational Violence' (2008) 31 *Studies in Conflict & Terrorism* 903

Rommel Banlaoi 'Maritime Terrorism in Southeast Asia: The Abu Sayyaf Threat' (Autumn 2005) 58(4) *Naval War College Review* 62

Sam Bateman and Anthony Bergin *Future Unknown: The Terrorist Threat to Australian Maritime Security* (Australian Strategic Policy Institute, 2005)

Sam Bateman *UNCLOS and its Limitations as the Foundation for a Regional Maritime Security Regime* Institute of Defence and Strategic Studies Working Paper No 111 April 2006)

Sam Bateman 'Maritime Terrorism: Issues for the Asia-Pacific Region' (October 2006) 2(3) Kokoda Foundation *Security Challenges* 77

Sam Bateman 'Regional maritime security: Threats and risk assessments' in Sam Bateman and Joshua Ho (eds) *Southeast Asia and the Rise of Chinese and Indian Naval Power* (Routledge, 2010)

Michael Becker 'The Shifting Public Order of the Oceans: Freedom of Navigation and the Interdiction of Ships at Sea' (2005) 46 *Harvard Journal of International Law* 131

Robert Beckman 'Legal Implications of the Proliferation Security Initiative' in Joshua Ho and Catherine Zara Raymond (eds) *The Best of Times, The Worst of Times: Maritime Security in the Asia Pacific* (Institute of Defence and Strategic Studies, World Scientific Publishing, 2005)

Robert Beckman 'International Responses to Combat Maritime Terrorism' in Victor Ramraj, Michael Hor and Kent Roach (eds) *Global Anti-Terrorism: Law and Policy* (Cambridge University Press, 2005)

Robert Beckman 'Submarine Cables – A Critically Important but Neglected Area of the Law of the Sea' Paper presented to the Indian Society Of International Law 7th International Conference on Legal Regimes of Sea, Air, Space and Antarctica 15-17 January 2010, New Delhi

Robert Beckman 'Maritime security and the cooperative mechanism for the Straits of Malacca and Singapore' in Sam Bateman and Joshua Ho (eds) *Southeast Asia and the Rise of Chinese and Indian Naval Power* (Routledge, 2010)

Randy Borum 'Counter-Terrorism Training Post-9/11' in Rohan Gunaratna (ed) *The Changing Face of Terrorism* (Marshall Cavendish, 2005)

Anna Bowden, Kaija Hurlburt, Eamon Aloyo, Charles Marts and Andrew Lee *The Economic Cost of Maritime Piracy* One Earth Future Working Paper, 2010)

John Boulden and Thomas Weiss *Terrorism and the UN: Before and After September 11* (Bloomington, Indiana University Press, 2004)

Derek Bowett *Self-Defence in International Law* (Manchester University Press, 1958)

John Bradford 'The Growing Prospects for Maritime Security Cooperation in Southeast Asia' (Summer 2005) 58(3) *Naval War College Review* 63

Ian Brownlie *Principles of Public International Law* (Oxford University Press 6th ed, 2003)

Lia Brynjar and Katja Skjolberg *Causes of Terrorism: An Expanded and Updated Review of the Literature* (Norwegian Defence Research Establishment, 2005)

Russel Buchan 'The International Law of Naval Blockade and Israel's Interception of the *Mavi Marmara*' (2011) 58 *Netherlands International Law Review* 209

Mike Buky 'Maritime Terrorism: The Threat from Small Vessels' (2007) 157 *Maritime Studies* 1

Jason Burke and Paddy Allen *The Five Ages of Al Qaeda* (Guardian, 2009)

John Burnett *Dangerous Waters: Modern Piracy and Terror on the High Seas* (Penguin, 2002)

Michael Byers 'Policing the High Seas: The Proliferation Security Initiative' (2004) 98 *American Journal of International Law* 526

Antonio Cassese and S Greenleaves *Terrorism, Politics and Law: The Achille Lauro Affair* (Cambridge: Polity Press, 1989)

Antonio Cassese *International Law* 2nd Edition (Oxford University Press: 2005)

Tanner Campbell and Rohan Gunaratna 'Maritime Terrorism, Piracy and Crime' in Rohan Gunaratna (ed) *Terrorism in the Asia-Pacific: Threat and Response* (Eastern University Press 2003)

Devon Chaffee 'Freedom or Force on the High Seas?: Arms Interdiction and International Law' (June 2004) 12 *Science for Democratic Action* 1

Gerard Chaliand and Arnaud Blin 'From 1968 to Radical Islam' in Gerard Chaliand and Arnaud Blin (eds) *The History of Terrorism: From Antiquity to Al Qaeda* (University of California Press, 2007)

Peter Chalk *The Maritime Dimension of International Security Terrorism, Piracy, and Challenges for the United States* (RAND Corporation, 2008)

Robin Churchill and Vaughan Lowe *The Law of the Sea* (Manchester University Press, 3rd ed, 1999)

David Claridge 'The Terrorism Threat to Trade and Commerce' in Rohan Gunaratna (ed) *Terrorism in the Asia-Pacific: Threat and Response* (Eastern Universities Press, 2003)

Rik Coolsaet and Teun Van de Velde 'Jihadi Terrorism: Perception and Reality in Perspective' in Rik Coolsaet (ed) *Jihadi Terrorism and the Radicalisation of Europe* (Ashgate Publishing, 2008)

Lee Cordner 'Offshore Oil and Gas Industry Security Risk Assessment: An Australian Case Study' in Rupert Herbert-Burns, Sam Bateman and Peter Lehr (eds) *Lloyds MIU Handbook of Maritime Security* (CRC Press, 2009)

Council for Security Cooperation in the Asia Pacific 'Safety and Security of Offshore Oil and Gas Installations' (Memorandum 16, Council for Security Cooperation in the Asia Pacific, January 2011)

Council for Security Cooperation in the Asia Pacific WMD Study Group *Handbook on Preventing the Proliferation of Weapons of Mass Destruction in the Asia-Pacific* (Council for Security Cooperation in the Asia-Pacific, 2013)

James Crawford *The International Law Commission's Articles on State Responsibility: Introduction, Text and Commentaries* (Cambridge University Press, 2002)

Martha Crenshaw 'New vs Old Terrorism: A Critical Appraisal' in Rik Coolsaet (ed) *Jihadi Terrorism and the Radicalisation of Europe* (Ashgate Publishing, 2008)

Aurel Croissant and Daniel Barlow 'Following the Money Trail: Terrorist Financing and Government Responses in Southeast Asia' (2007) 30 *Studies in Conflict & Terrorism* 131

Manni Crone and Martin Harrow 'Home-grown Terrorism in the West' (2011) 23 *Terrorism and Political Violence* 521

Tara Davenport 'Submarine Communications Cables and the Law of the Sea: Problems in Law and Practice' (2012) 43(3) *Ocean Development and International Law* 201

Yoram Dinstein *War Aggression and Self-Defence* (Cambridge University Press, 4th ed, 2005)

Louise Doswald-Beck (ed) *San Remo Manual On International Law Applicable To Armed Conflicts At Sea* (International Institute of Humanitarian Law, 1995)

Adam Dolnik and Keith Fitzgerald *Negotiating Hostage Crises with the New Terrorists* (Praeger Security International, 2008)

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

Barry Hart Dubner 'Human Rights and Environmental Disaster – Two Problems That Defy the “Norms” of the International Law of Sea Piracy’ (Spring 1997) *Syracuse Journal of International Law and Commerce* 1

Isabelle Duyvesteyn 'How “New” is the New Terrorism?' (2004) 27 *Studies in Conflict & Terrorism* 439

Charles Ferguson and William Potter *The Four Faces of Nuclear Terrorism* (Routledge, 2005)

David Fidler 'Weapons of Mass Destruction and International Law' *American Society of International Law Insights*, February 2003

Matthew Fitzgerald 'Seizing Weapons of Mass Destruction from Foreign-Flagged Ships on the High Seas under Article 51 of the UN Charter' (2009) 49 *Virginia Journal of International Law* 473

Tom Frame *Where Fate Calls: The HMAS Voyager Tragedy* (Hodder & Stoughton, 1992), and Tom Frame *The Cruel Legacy: The HMAS Voyager Tragedy* (Allen & Unwin, 2005)

David Freestone and Alex Oude Elferink 'Flexibility and Innovation in the Law of the Sea – Will the LOS Amendment Procedures Ever be Used?' in Alex Oude Elferink (ed) *Stability and Change in the Law of the Sea Convention* (Martinus Nijhoff, 2005)

John Fritelli *Port and Maritime Security: Background and Issues for Congress* (US Congressional Research Service Reports, 27 May 2005)

Robin Frost 'Nuclear Terrorism After 9/11' (2005) 45(378) *Adelphi Papers*

Boaz Ganor 'Defining Terrorism: Is One Man's Terrorist Another Man's Freedom Fighter?' (2002) 3(4) *Police Practice and Research* 287

Jack Garvey 'The International Institutional Imperative for Countering the Spread of Weapons of Mass Destruction: Assessing the Proliferation Security Initiative' (2005) 10 *Journal of Conflict & Security Law* 125

Robin Geis and Anna Petrig *Piracy and Armed Robbery at Sea: The Legal Framework for Counter-Piracy Operations in Somalia and the Gulf of Aden* (Oxford University Press, 2011)

Ben Golder and George Williams 'What is "Terrorism"? Problems of Legal Definition', in Victor Malleswari (ed) *Anti-Terrorism Laws: Global Scenario* (ICFAI Amicus Books, 2008)

Christine Gray 'The British Position with Regard to the Gulf Conflict (Iran–Iraq): Part 2' (1991) 40 *International and Comparative Law Quarterly* 464

Christine Gray *International Law and the Use of Force* (Oxford University Press, 3rd ed, 2008)

James Green 'The Oil Platforms Case: An Error in Judgement?' (2004) 9 *Journal of Conflict & Security Law* 357

Michael Greenberg, Peter Chalk and Henry Willis *Maritime Terrorism: Risk and Liability* (RAND Corporation: 2006)

Richard Grunawalt 'Freedom of Navigation in the Post-Cold War Era' in Donald Rothwell and Sam Bateman (eds) *Navigational Rights and Freedoms and the New Law of the Sea* (Martinus Nijhoff, 2000)

Douglas Guilfoyle 'The Proliferation Security Initiative: Interdicting Vessels in International Waters to Prevent the Spread of Weapons of Mass Destruction?' (2005) *Melbourne University Law Review* 733

Douglas Guilfoyle 'Maritime Interdiction of Weapons of Mass Destruction' (2007) 12 *Journal of Conflict and Security Law* 1

Douglas Guilfoyle *Shipping Interdiction and the Law of the Sea* (Cambridge University Press, 2009)

Rohan Gunaratna 'Al Qaeda's Origins, Threat and its Likely Future' in Rohan Gunaratna (ed) *Terrorism in the Asia-Pacific: Threat and Response* (Eastern Universities Press, 2003)

Rohan Gunaratna *Inside Al Qaeda: Global Network of Terror* (Columbia University Press, 2002)

Malvina Halberstam 'Terrorism on the High Seas: The Achille Lauro, Piracy and the IMO Convention on Maritime Safety' (1988) 82 *American Journal of International Law* 269

Hans Tino Hansen 'Distinctions in the Finer Shades of Gray: The Four Circles Model for Maritime Security Threat Assessment' in Rupert Herbert-Burns, Sam Bateman and Peter Lehr (eds) *Lloyds MIU Handbook of Maritime Security* (CRC Press, 2009)

Gregory Hartmann and Scott Truver *Weapons That Wait: Mine Warfare in the U.S. Navy* (Naval Institute Press, 1991)

Christina Hellmich and Amanda Redig 'The Question is When: The Ideology and the Reality of Bioterrorism' (2007) 30 *Studies in Conflict & Terrorism* 375

Rupert Herbert-Burns 'Terrorism in the Early 21st Century Maritime Domain' in Catherine Zara Raymond and Joshua Ho (eds) *The Best of Times, The Worst of Times* (World Scientific, 2004)

Rupert Herbert-Burns 'Tankers, Specialised Production Vessels and Offshore Terminals: Vulnerability and Security in the International Maritime Oil Sector' in Rupert Herbert-Burns, Sam Bateman and Peter Lehr (eds) *Lloyds MIU Handbook of Maritime Security* (CRC Press, 2009)

Hartmut Hesse 'Maritime Security in a Multilateral Context: IMO Activities to Enhance Maritime Security' (2003) 18(3) *International Journal of Marine and Coastal Law* 327

Hartmut Hesse and Nicolaos Charalambous 'New Security Measures for the International Shipping Community' (2004) 2(3) *WMU Journal of Maritime Affairs* 123

Rosslyn Higgins *Problems and Process: International Law and How We Use It* (Clarendon Press, 1995)

Sandra L. Hodgkinson, Edward Cook, Thomas Fichter, Christian Fleming, Jonathan Shapiro, Jon Mellis, Brandon Boutelle, Stephen Sarnoski, Gregory P. Noone 'Challenges to Maritime Interception Operations in the War on Terror: Bridging The Gap' (2007) 22 *American University International Law Review* 583

Bruce Hoffman *Inside Terrorism* Revised and Expanded Edition (New York: Columbia University Press, 2006)

Bruce Hoffman "Terrorism, Signalling and Suicide Attack" (July-August 2004) 27 *Studies in Conflict & Terrorism* 243

Bruce Hoffman 'The Myth of Grass-Roots Terrorism' (2008) 87(3) *Foreign Affairs* 133

Russell Howard 'The New Terrorism' in Russell Howard, Reid Sawyer and Natasha Bajema (eds) *Terrorism and Counter-Terrorism: Understanding the New Security Environment* (McGraw Hill, 3rd ed, 2009)

Russell Howard 'Pre-emptive Military Doctrine: No Other Choice' in Rohan Gunaratna (ed) *The Changing Face of Terrorism* (Marshall Cavendish, 2003)

Steven Hutchinson and Pat O'Malley 'A Crime-Terror Nexus?: Thinking on Some of the Links between Terrorism and Criminality' (2007) 30 *Studies in Conflict Terrorism* 1095

Rafiqul Islam *International Law: Current Concepts and Future Directions* (LexisNexis Butterworths, 2014)

Raphael Israeli 'Islamikaze and Their Significance' (1997) 9 *Terrorism and Political Violence* 96

Raphael Israeli *Islamikaze: Manifestations of Islamic Martyrology* (Frank Cass, 2003)

Devin Jesse 'Tactical Means, Strategic Ends: Al Qaeda's Use of Denial and Deception' (2006) 18 *Terrorism and Political Violence* 367

Jose Luis Jesus 'Protection of Foreign Ships against Piracy and Terrorism at Sea: Legal Aspects' (2003) 18 *International Journal of Marine and Coastal Law* 3

Steven Jones 'Implications and Effects of Maritime Security on the Operation and Management of Merchant Vessels' in Rupert Herbert-Burns, Sam Bateman and Peter Lehr (eds) *Lloyds MIU Handbook of Maritime Security* (CRC Press, 2009)

Steven Jones *Maritime Security: A Practical Guide* (The Nautical Institute, 2006)

Javier Jordan, Fernando Manas and Nicola Horsburgh 'Strengths and Weaknesses of Grassroots Jihadist Networks: The Madrid Bombings' (2008) 31 *Studies in Conflict & Terrorism* 17

Daniel Joyner 'The Proliferation Security Initiative: Non-proliferation, Counter-Proliferation and International Law' (2005) 30 *Yale Journal of International Law* 507

Efraim Karsh *The Iran-Iraq War 1980–1988* (Osprey, 2002)

Mikhail Kashubsky 'A Chronology of Attacks on and Unlawful Interferences with, Offshore Oil and Gas Installations, 1975 – 2010' (2011) 5(5-6) *Perspectives on Terrorism* 139

Mikhail Kashubsky and Anthony Morrison 'Security of offshore oil and gas facilities: Exclusion zones and ships' routing' (2013) 5(1) *Australian Journal of Maritime and Ocean Affairs*

Stuart Kaye 'The Proliferation Security Initiative in the Maritime Domain' in Yoram Dinstein, Francis Domb (ed), (2005) *Israeli Yearbook on Human Rights* 205

Stuart Kaye 'The Proliferation Security Initiative in the Maritime Domain' (2006) 81(141) *US Naval War College International Legal Studies Series* 141

Stuart Kaye 'Threats from the Global Commons: Problems of Jurisdiction and Enforcement (May 2007) 8 *Melbourne Journal of International Law* 185

Stuart Kaye 'International Measures to Protect Oil Platforms, Pipelines, and Submarine Cables from Attack' (2007) 31 *Tulane Maritime Law Journal* 377

Stuart Kaye 'Interdiction and Boarding of Vessels at Sea: New Developments and Old problems' in Rupert Herbert-Burns, Sam Bateman and Peter Lehr (eds) *Lloyd's MIU Handbook of Maritime Security* (CRC Press, 2009)

Stuart Kaye 'Security and Defence in Australia's Marine Domain' in Warwick Gullet, Clive Schofield and Joanna Vince (eds) *Marine Resources Management* (LexisNexis Butterworths, 2011)

Stuart Kaye and Lowell Bautista 'The Naval Protection of Shipping in the 21st Century: An Australian Perspective' (2011) 34 *Papers in Australian Maritime Affairs*

Aidan Kirby 'The London Bombers as Self-Starters: A Case Study in Indigenous Radicalisation and the Emergence of Autonomous Cliques' (2007) 30 *Studies in Conflict & Terrorism* 415

Natalie Klein 'The Right of Visit and the 2005 Protocol on the Suppression of Unlawful Acts against the Safety of Maritime Navigation' (2007) 35 *Denver Journal of International Law and Policy* 287

Natalie Klein, Joanna Mossop and Donald Rothwell (eds) *Maritime Security: International Law and Policy Perspectives from Australia and New Zealand* (Routledge, 2010)

Natalie Klein *Maritime Security and the Law of the Sea* Oxford Monographs in International Law (Oxford University Press, 2011)

Ersun Kurtulusthe ‘“New Terrorism” and its Critics’ (2011) 34 *Studies in Conflict & Terrorism* 476

Patricia Kwast ‘Maritime Interdiction of Weapons of Mass Destruction in an International Legal Perspective’ (2007) *Netherlands Yearbook of International Law* 163 – 241

Patricia Kwast ‘Maritime Law Enforcement and the Use of Force at Sea: Reflections on the Categorisation of Forcible Action at Sea in the Light of the Guyana/Suriname Award’ (2008) 13 *Journal of Conflict and Security Law* 49

Roberto Lavalle ‘A Novel, if Awkward Exercise in International Law Making: Security Council Resolution 1540’ (2004) 52 *Netherlands International Law Review* 413

Peter Lehr ‘Maritime Terrorism: Locations, Actors and Capabilities’ in Rupert Herbert-Burns, Sam Bateman and Peter Lehr (eds) *Lloyds MIU Handbook of Maritime Security* (CRC Press, 2009)

Marc Levinson *The Box: How the Shipping Container Made the World Smaller and the World Economy Bigger* (Princeton University Press, 2006)

Samuel Logan ‘The Proliferation Security Initiative: Navigating the Legal Challenges’ (2005) 14 *Journal of Transnational Law and Policy* 253

Akiva Lorenz *Al Qaeda’s Maritime Threat* (International Institute for Counter Terrorism, 15 April 2007)

Akiva Lorenz *The Threat of Maritime Terrorism to Israel* (International Institute for Counter Terrorism, 24 September 2007)

Vaughan Lowe ‘Self-Defence at Sea’ in William Butler (ed) *The Non-Use of Force in International Law* (Martinus Nijhoff, 1989)

Vaughan Lowe ‘Clear and Present Danger: Responses to Terrorism’ (2005) 54 *International and Comparative Law Quarterly* 185

Omar Malik *Enough of the Definition of Terrorism* (Royal Institute of International Affairs, December 2002)

Peter Martin 'Security in the Maritime Sector of the Liquefied Natural Gas Industry' in Rupert Herbert-Burns, Sam Bateman and Peter Lehr (eds) *Lloyds MIU Handbook of Maritime Security* (CRC Press, 2009)

Michael McNicholas *Maritime Security: An Introduction* (Butterworths Heinemann Homeland Security Series, 2008)

Ted McDorman 'Maritime Terrorism and the International Law of Boarding of Vessels at Sea: Assessing the New Developments in David Caron and Harry Scheiber (eds) *Oceans in the Nuclear Age: Legacies and Risks* (Martinus Nijhoff, 2010)

Rob McLaughlin, 'United Nations Mandated Naval Interdiction Operations in the Territorial Sea?' (2002) 51 *International and Comparative Law Quarterly* 249

Jonathon Medalia *Port and Maritime Security: Potential for Terrorist Nuclear Attack Using Oil Tankers* (US Congressional Research Service Reports: 7 December 2004)

Justin Mellor 'Missing the Boat: The Legal and Practical Problems of the Prevention of Maritime Terrorism' (2002) 18 *American University International Law Review* 341

Samuel Menefee 'Foreign Naval Interdiction in Cases of Piracy: Problems and Strategies' (1999) 14(3) *International Journal of Marine and Coastal Law* 353

Phillippe Migaux 'Roots of Islamic Radicalism' in Gerard Chaliand and Arnaud Blin (eds) *The History of Terrorism: From Antiquity to Al Qaeda* (University of California Press, 2007)

Phillippe Migaux 'Al Qaeda' in Gerard Chaliand and Arnaud Blin (eds) *The History of Terrorism: From Antiquity to Al Qaeda* (University of California Press, 2007)

Phillippe Migaux 'The Future of the Islamist Movement' in Gerard Chaliand and Arnaud Blin (eds) *The History of Terrorism: From Antiquity to Al Qaeda* (University of California Press, 2007)

John Mintz '15 Freighters Believed to be Linked to Al Qaeda' *Washington Post* 31 December 2002

Shaul Mishal and Maoz Rosenthal 'Al Qaeda as a Dune Organisation: Toward a Typology of Islamic Terrorist Organisations' (2005) 28 *Studies in Conflict & Terrorism* 275

John Mo 'Options to Combat Maritime Piracy in Southeast Asia' (2002) 33 *Ocean Development and International Law* 343

Rolf Mowatt-Larssen 'Al Qaeda's Pursuit of Weapons of Mass Destruction' *Foreign Policy* 25 January 2010

Cameron Moore 'Turning King Canute into Lord Neptune: Australia's New Offshore Protection Measures' (2006) 3(1) *University of New England Law Journal* 57

Sam Mullins 'Islamist Terrorism and Australia: An Empirical Examination of the "Home-Grown" Threat' (2011) 23 *Terrorism and Political Violence* 254

Martin Murphy *Contemporary Piracy and Maritime Terrorism* (2007) 47(388) *Adelphi Papers*

Martin Murphy *Small Boats, Weak States and Dirty Money: Piracy and Maritime Terrorism in the Modern World* (Hurst & Company, 2009)

Martin Murphy 'Lifeline or Pipedream? Origins, Purposes and Benefits of Automatic Identification Systems, Long Range Identification and Tracking, and maritime Domain Awareness' in Rupert Herbert-Burns, Sam Bateman and Peter Lehr (eds) *Lloyds MIU Handbook of Maritime Security* (CRC Press, 2009)

Malcolm Nance *Terrorist Recognition Handbook: A Practitioners Manual for Predicting and Identifying Terrorist Activities* (CRC Press, 2008)

Thomas Nichols *The Coming Age of Preventive War* (University of Pennsylvania Press, 2008)

Donna Nincic 'The Challenge of Maritime Terrorism: Threat Identification, WMD and Regime Response' (August 2005) 28 *The Journal of Strategic Studies* 619

John Noer *Chokepoints: Maritime Economic Concerns in the South China Sea* (National University Press, 1996)

Natalia Ochoa-Ruiz and Esther Salamanca-Aguado 'Exploring the Limits of International Law Relating to the Use of Force in Self-Defence' (2005) 16 *European Journal of International Law* 499

Chester G Oehme III 'Terrorists, Insurgents and Criminals – Growing Nexus?' (2008) 31 *Studies in Conflict & Terrorism* 81

Graham Gerard Ong '*Ships Can Be Dangerous Too*': *Coupling Piracy and Maritime Terrorism in Southeast Asia's Maritime Security Framework* (Institute for Southeast Asian Studies Working Paper: International Politics & Security Issues Series No. 1 (2004)

Organisation for Economic Cooperation and Development Maritime Transport Committee *Ownership and Control of Ships* (2003)

Robert Pape *Dying to Win: The Strategic Logic of Suicide Terrorism* (Random House, 2005)

Peter Parfomak and John Frittelli *Maritime Security: Potential Terrorist Attacks and Protection Priorities* (US Congressional Research Service Reports: 9 January 2007)

Elana Pavlova 'Terrorism After September 11: Regional and Global Implications' in Rohan Gunaratna (ed) *The Changing Face of Terrorism* (Marshall Cavendish, 2003)

Timothy Perry 'Blurring the Ocean Zones: The Effect of the Proliferation Security Initiative on the Customary International Law of the Sea' (2006) 37 *Ocean Development and International Law* 33

Dominic Raab 'Armed Attack' after the Oil Platforms Case' (2004) 17 *Leiden Journal of International Law* 719

David Rapaport 'The Four Waves of Modern Terrorism' in Audrey Cronin and James Ludes (eds) *Attacking Terrorism: Elements of a Grand Strategy* (Washington D.C Georgetown University Press, 2004)

Karen Rasler and William Thompson 'Looking for Waves in Terrorism' (2009) 21 *Terrorism and Political Violence* 28

Louise Richardson *What Terrorists Want* (John Murray, 2006)

Michael Richardson *A Time Bomb for Global Trade: Maritime Terrorism in an Age of Weapons of Mass Destruction* (Institute of Southeast Asian Studies, 2004)

Ashley Roach 'Container and Port Security: A Bilateral Perspective' (2003) 18 *International Journal of Marine and Coastal Law* 341

Ashley Roach 'PSI and SUA: An Update' in Myron Nordquist, Rudiger Wolfrum, John Norton Moore and Ronan Long (eds) *Legal Challenges in Maritime Security* (Martinus Nijhoff, 2008)

Kent Roach *The 9/11 Effect: Comparative Counter-Terrorism* (Cambridge University Press, 2011)

Kent Roach (ed) *Global Anti-Terrorism Law and Policy* 2nd edition (Cambridge University Press, 2012)

Michael Roberts 'Tamil Tiger "Martyrs": Regenerating Divine Potency?' (2005) 28 *Studies in Conflict & Terrorism* 493

Jessica Romero 'Prevention of Maritime Terrorism: The Container Security Initiative' (2003) 4 *Chicago Journal of International Law* 597

Natalino Ronzitti (ed) *Maritime Terrorism and International Law* (Boston: Martinus Nijhoff, 1988)

Natalino Ronzitti 'The Expanding Law of Self-Defence' (2006) 11 *Journal of Conflict and Security Law* 343

Donald Rothwell and Tim Stephens *The International Law of the Sea* (Hart Publishing, 2010)

Donald Rothwell 'The Proliferation Security Initiative: Amending the Convention on the Law of the Sea by Stealth?' in David Caron and Harry Scheiber (eds) *Oceans in the Nuclear Age: Legacies and Risks* (Martinus Nijhoff, 2010)

Donald Rothwell and Natalie Klein 'Maritime Security and the Law of the Sea' in Natalie Klein, Joanna Mossop and Donald Rothwell (eds) *Maritime Security: International Law and Policy Perspectives from Australia and New Zealand* (Routledge, 2010)

Royal Institute of International Affairs 'The Proliferation Security Initiative: Is it Legal? Are We More Secure?' Summary of a discussion at Chatham House, London, on 24 February 2005, available at <<http://www.chathamhouse.org.uk/>>

Martin Rudner 'Misuse of Passports: Identity Fraud, the Propensity to Travel and International Terrorism' (2008) 31 *Studies in Conflict & Terrorism* 95

Tom Ruys *Armed Attack and Article 51 of the United Nations Charter* Cambridge Studies in International and Comparative Law (Cambridge University Press, 2010)

Marc Sageman *Leaderless Jihad: Terror Networks in the Twenty-First Century* (University of Pennsylvania Press, 2008)

Ben Saul 'Definition of "terrorism in the UN Security Council: 1985 – 2004' (2005) 4 *Chinese Journal of International Law* 141

Ben Saul *Defining Terrorism in International Law* (Oxford University Press, 2006)

Alex Schmid and Albert Jongman *Political Terrorism: A New Guide to Actors, Authors, Concepts, Databases, Theories and Literature* (Transaction Books, 1988)

Alex Schmid (ed) *The Routledge Handbook on Terrorism Research* (Routledge, 2011)

Michael Schmitt *Counter-Terrorism and the Use of Force in International Law* (George C Marshall Center Papers, No. 5 (2002)

Yoram Schweitzer and Shaul Shay *The Globalisation of Terror: The Challenge of Al Qaida and the Response of the International Community* (The International Policy Institute for Counter-Terrorism, 2004)

Shirley Scott 'The LOS Convention as an International Regime: A Political Science Perspective' in Alex Oude Elferink (ed) *Stability and Change in the Law of the Sea Convention* (Martinus Nijhoff, 2005)

Shirley Scott "Whose Security is it and how much of it do we want? The US influence on the International Law against Maritime Terrorism" in Natalie Klein, Joanna Mossop and Donald Rothwell (eds) *Maritime Security: International Law and Policy Perspectives from Australia and New Zealand* (Routledge, 2010)

Ivan Shearer 'Problems of Jurisdiction and Law Enforcement Against Delinquent Vessels' (1986) 35 *International and Comparative Law Quarterly* 320

Paul Szaz 'The Security Council Starts Legislating' (2002) 96 *American Journal of International Law* 901

Tamara Renee Shie 'Ports in a Storm? The Nexus Between Counterterrorism, Counter-proliferation and Maritime Security' (2004) 4(4) *Southeast Asia Issues & Insights*

Mark Shulman *The Proliferation Security Initiative As A New Paradigm For Peace And Security* (Strategic Studies Institute, April 2006)

Daniel Simon and Steven Benjamin *Age of Sacred Terror: Radical Islam's War Against America* (Random House, 2003)

Joshua Sinai 'Future Trends in Worldwide Maritime Terrorism' (2004) 3(1) *The Quarterly Journal* 49

Yann-Huei Song 'The US-led Proliferation Security Initiative and UNCLOS: Legality, Implementation, and an Assessment' (2007) 38 *Ocean Development and International Law* 101

Alfred Soons 'Enforcing the Economic Embargo at Sea' in Vera Gowlland-Debbas, Mariano García Rubio, Hassiba Hadj-Sahraoui, (eds) *United Nations Sanctions and International Law* (Kluwer Law International, 2001)

Fabio Spadi 'Bolstering the Proliferation Security Initiative at Sea: A Comparative Analysis of Ship-boarding as a Bilateral and Multilateral Implementing Mechanism' (2006) 75 *Nordic Journal of International Law* 249

Ekaterina Stepanova *Terrorism in Asymmetrical Conflict: Ideological and Structural Aspects* Stockholm International Peace Research Institute Research Report No 23, 13 March 2008

Dale Stephens and Simon Bronitt 'Flying Under the Radar - The Use of Lethal Force Against Hijacked Aircraft: Recent Australian Developments' (2008) 7 *Oxford University Commonwealth Law Journal* 26

Jonathon Stevenson 'Counter-Terrorism: Containment and Beyond' (2006) 44(367) *Adelphi Papers*

Stefan Talmon 'The Security Council as World Legislature' (2005) 99 *American Journal of International Law* 175

Marc Terdman 'The Movement for the Emancipation of the Niger Delta (MEND): Al Qaeda's Unlikely Ally in Nigeria' (January 2007) 2(1) *Islam In Africa Newsletter*

Andrew Thomas and James Duncan (eds) *Annotated Supplement to the Commander's Handbook on the Law of Naval Operations* (Naval War College, 1999)

Thomas Timlen *The Use of SOLAS Ship Security Alert Systems* Institute for Defence and Strategic Studies Working Paper No. 154 5 March 2008

Chris Trelawny 'Maritime Security: Implementation of the ISPS Code' Paper presented at the 3rd Intermodal Africa 2005 Tanzania Exhibition and Conference – Dar es Salaam, 3 - 4 February 2005

Gillian Triggs *International Law: Contemporary Principles and Practices* (Oxford University Press, 2006)

Gillian Triggs *International Law: Contemporary Principles and Practices* 2nd Edition (LexisNexis Butterworths, 2011)

Martin Tsamenyi and Mary-Ann Palma 'Legal Considerations in the Implementation of Long-Range Identification and Tracking Systems for Vessels' (2007) 13 *Journal of International Maritime Law* 42

Martin Tsamenyi and Mary-Ann Palma 'Long-Range Identification and Tracking Systems for Vessels: Legal and Technical Issues' in Rupert Herbert-Burns, Sam Bateman and Peter Lehr (eds) *Lloyds MIU Handbook of Maritime Security* (CRC Press, 2009)

Craig Unger *House of Bush, House of Saud* (Scribner, 2004)

Carl Ungerer *Beyond bin Laden: Future Trends in Terrorism* (Australian Strategic Policy Institute, 2011)

Mark Valencia *The Proliferation Security Initiative: Making Waves in Asia* Adelphi Papers (International Institute for Strategic Studies, 2005)

Mark Valencia 'Is the PSI Really the Cornerstone of a New International Norm?' (2006) 59(4) *Naval War College Review* 121

Mark Valencia 'The Proliferation Security Initiative and Asia' in David Caron and Harry Scheiber (eds) *Oceans in the Nuclear Age: Legacies and Risks* (Martinus Nijhoff, 2010)

Martin van Creveld *The Rise and Decline of the State* (Cambridge University Press, 1999)

Ben Venzke and Aimee Ibrahim *The Al-Qaeda Threat: An Analytical Guide to Al-Qaeda's Tactics and Targets* (Tempest Publishing, 2003)

Wolf Heintschel von Heinegg 'The Proliferation Security Initiative: Security vs Freedom of Navigation?' (2005) 35 *Israel Yearbook on Human Rights* 18

Leonard Weinburg, Ami Pedahzur and Sivan Hirsch-Hoefler 'The Challenges of Conceptualizing Terrorism' (2004) 16 *Terrorism and Political Violence* 777

Leonard Weinberg and William Eubank 'An End to the Fourth Wave of Terrorism?' (2010) 33 *Studies in Conflict & Terrorism* 594

Phillip Wendel *State Responsibility for Interferences with the Freedom of Navigation in Public International Law* Hamburg Studies on Maritime Affairs (Springer, 2007)

Quintan Wiktorowicz 'A Genealogy of Radical Islam' in Russell Howard, Reid Sawyer and Natasha Bajema (eds) *Terrorism and Counter-Terrorism: Understanding the New Security Environment* (McGraw Hill, 3rd ed, 2009)

Paul Wilkinson *Terrorism versus Democracy: The Liberal State Response* Second Edition (Routledge, 2006)

Maria Wing 'Rethinking the Easy Way Out: Flags of Convenience in the Post-September 11th Era' (2004) 28 *Tulane Maritime Law Journal* 173

Rudiger Wolfrum 'Fighting Terrorism at Sea: Options and Limitations under International Law' in Myron Nordquist, Rudiger Wolfrum, John Norton Moore and Ronan Long (eds) *Legal Challenges in Maritime Security* (Martinus Nijhoff, 2008)

Christopher Young 'Balancing Maritime Security and Freedom of the High Seas: A Study of the Multilateral Negotiation Process in Action' (2005) 24 *University of Queensland Law Journal* 355

Norman Youngblood *The Development of Mine Warfare: A Most Murderous and Barbarous Conduct* (Greenwood: 2006)

Catherine Zara-Raymond *Maritime Terrorism in Southeast Asia: A Risk Assessment* (Institute of Defence and Strategic Studies Working Paper No. 74, March 2005)

Catherine Zara-Raymond 'Maritime Terrorism in Southeast Asia: Potential Scenarios' (6 April 2006) 4(7) *Terrorism Monitor* 1

United Nations Conference on Trade and Development *Review of Maritime Transport* (2010)

MEDIA REPORTS

Stephen Robinson 'Bombed US warship was defended by sailors with unloaded guns' *Daily Telegraph* 15 November 2000

Al Murtada found abandoned with discarded rifles" *Lloyd's List* 12 July 2002

Indian Coast Guard Seizes Lebanese Ship *South Asia News* July 2002

<http://southasia.insnews.org/headlines/2002/july/india.lebanese.ship.htm>

Noam Primak 'Weapons Found on Karine-A and 'Santorini' *War Online* 20 July 2002

http://www.waronline.org/en/analysis/pal_weapons.htm

Peter Sherwell and Mike Kearney 'Al Qaeda Terrorists Plan to Turn Tanker into a Floating Bomb' – *UK Telegraph* 12 September 2004

'Work Begins to Repair Severed Net' BBC News, 5 February 2008

www.news.bbc.co.uk/2/hi/technology/7228315.stm

'Repairs begin on Middle East Web cable' *The Associated Press* 5 February 2008

<http://web.archive.org/web/20080209142307/http://edition.cnn.com/2008/WORLD/africa/02/05/egypt.internet.ap/index.html>

Dylan Bowman and AAP 'Internet Problems Continue with Fourth Cable Break'

ArabianBusiness.com, 3 February 2008 <http://www.arabianbusiness.com/510132-internet-problems-continue-with-fourth-cable-break?ln=en>

'4th Undersea Cable Break Between Qatar and UAE' Mathaba News, 4 February 2008

<http://mathaba.net/news/?x=580660>

Flag Telecom '07-Feb-08 - Update on Submarine Cable Cut Repairs - Daily Bulletin' 7 February 2008

<http://web.archive.org/web/20080208124925/http://www.flagtelecom.com/index.cfm?channel=4328&NewsID=27493>

Saboteurs May Have Cut Mideast Telecom Cables: UN Agency' *Sydney Morning Herald*, 19 February 2008 <http://news.smh.com.au/technology/saboteurs-may-have-cut-mideast-telecom-cables-un-agency-20080219-1sv3.html>

Malcolm Fried and Lars Klemming 'Severed Cables in Mediterranean Disrupt Communication (Update 4)' *Bloomberg*, 19 December 2008 http://www.bloomberg.com/apps/news?pid=newsarchive&sid=ayPbWf_7117w&refer=europe

James Regan 'UDPATE 3-Undersea cable breaks cut Internet in Mideast, Asia' *Reuters* 20 December 2008 <http://www.reuters.com/article/2008/12/20/us-internet-idUSTRE4BJ0FV20081220>

Andrew Darby 'Japanese ship destroys whale protest boat Ady Gil' *The Age*, 6 January 2010 <http://www.theage.com.au/environment/whale-watch/japanese-ship-destroys-whale-protest-boat--ady-gil-20100106-ltp4.html>

Anthony DiPaola 'UAE Confirms Terror Attack on Japan Tanker in Persian Gulf Last Month' *Bloomberg* 7 August 2010 <http://www.bloomberg.com/news/2010-08-06/u-a-e-confirms-terror-attack-on-japan-tanker-in-persian-gulf-last-month.html>

Tracey Connor 'Bin Laden: Cole Poetic Justice' *New York Post* 2 March 2011 http://www.nypost.com/p/news/item_af8AlarmoUUffkHpb8YvvO

'Mid-air craziness: The lessons of 9/11' *The Economist* 15 May 2011 http://www.economist.com/blogs/gulliver/2011/05/mid-air_craziness

David Sanger 'US Said to Turn Back North Korea Missile Shipment' *New York Times* 12 June 2011 http://www.nytimes.com/2011/06/13/world/asia/13missile.html?_r=0

Barbara Starr 'U.S. Wanted to Board North Korean Merchant Vessel, Pentagon Says' *CNN – US* 13 June 2011 http://articles.cnn.com/2011-06-13/us/north.korea.ship_1_vessel-navy-ship-pentagon?_s=PM:US

Brian Ross and Matthew Bland 'Ten Years Later: Could We Prevent Another 9/11?' ABC News 6 September 2011 <http://abcnews.go.com/Blotter/ten-years-prevent-911/story?id=14457689>

'Defence Secretary Warns of LTTE Re-Emergence' News.LK 24 October 2011 <http://www.news.lk/news/sri-lanka/582-defence-secretary-warns-of-ltte-re-emergence>

'Possible Re-Emergence of the LTTE: Gotabhaya Rajapaksa' Times of Sri Lanka 19 February 2012 <http://www.timesofsrilanka.com/Politics/possible-re-emergence-of-the-ltte-gotabhaya-rajapaksa.html>

David Gardner Revealed: How bin Laden plotted to bring down Air Force One to kill Obama and replace him with 'totally unprepared' Biden' *Daily Mail* 3 May 2012 <http://www.dailymail.co.uk/news/article-2138851/Osama-bin-Laden-files-reveal-plot-bring-Air-Force-One-kill-Barack-Obama.html>

The Osama Bin Laden files: All documents and key findings' *The Telegraph* 14 March 2013 <http://www.telegraph.co.uk/news/worldnews/al-qaeda/9243419/The-Osama-Bin-Laden-files-all-documents-and-key-findings.html>

Nicholas Soi and Robyn Dixon 'Kenya says Nairobi mall siege is over, with 72 dead' *Los Angeles Times* 25 September 2013

Paul Bentley 'Horrific claims of torture emerge as soldiers reveal gory Kenyan mall massacre details' *Daily Mail* 27 September 2013

'Tony Abbott lifts terror alert level to high, but says no attack is imminent' *The Australian*, 12 September 2014 <http://www.theaustralian.com.au/national-affairs/tony-abbott-lifts-terror-alert-level-to-high-but-says-no-attack-is-imminent/story-fn59niix-1227056610235>; Accessed 1 October 2014

Appendix A: Designations of terrorist groups by the United Nations and by selected States as at 1 October 2013

This table summarises the groups designated as terrorist organisations by the United Nations, Australia, the United States, the United Kingdom and Canada as at 1 October 2013, showing the considerable variation in the designations of terrorist organisations even between these four very similar states.

Organisation	UN 1267 ¹	AUS ²	USA ³	UK ⁴	CANADA ⁵
Abdallah Azzam Brigades (AAB)			x		
Abu Nidal Organization (ANO)			x	x	x
Abu Sayyaf Group	x	x		x	
Afghan Support Committee (ASC)	x				
Al-Aqsa Martyrs Brigade (AAMB)			x		x
Al-Akhtar Trust International	x				
Al Furqan	x				
Al-Gama'at al-Islamiya (GI)				x	x
Al Ghurabaa				x	
Al-Haramain & Al Masjed Al-Aqsa Charity Foundation	x				
Al-Haramain Foundation (Indonesia)	x				
Al-Haramain Foundation (Pakistan)	x				
Al-Haramain Foundation (Union of the Comoros)	x				
Al-Haramain Foundation (United States of America)	x				
Al-Haramain Islamic Foundation (Bosnia and Herzegovina)	x				
Al-Haramain Islamic Foundation (Somalia)	x				
Al-Haramain: Afghanistan Branch	x				
Al-Haramain: Albania Branch	x				
Al-Haramain: Bangladesh Branch	x				
Al-Haramain: Ethiopia Branch	x				
Al-Haramain: The Netherlands Branch	x				
Al-Haramayn Foundation (Kenya)	x				

¹ 'The List established and maintained by the Committee pursuant to resolutions 1267 (1999) and 1989 (2011) with respect to individuals, groups, undertakings and other entities associated with Al-Qaida' Last updated on 20 September 2013 http://www.un.org/sc/committees/1267/aq_sanctions_list.shtml; Accessed 1 October 2013

² Australia Attorney-General's Department 'Listing of terrorist organisations' Last updated on 12 July 2013 <http://www.nationalsecurity.gov.au/agd/www/nationalsecurity.nsf/AllDocs/95FB057CA3DECF30CA256FAB001F7FBD>; Accessed 1 October 2013

³ United States of America State Department Bureau of Counter-Terrorism 'Foreign Terrorist Organisations' Last updated on 28 May 2013 <http://www.state.gov/j/ct/rls/other/des/123085.htm>; Accessed 1 October 2013

⁴ United Kingdom Home Office 'Proscribed Terrorist Organisations' Last updated on 19 July 2013 <https://www.gov.uk/government/publications/proscribed-terror-groups-or-organisations--2>; Accessed 1 October 2013

⁵ Public Safety Canada 'Currently listed entities' Last updated on 9 May 2013 <http://www.publicsafety.gc.ca/cnt/ntnl-scrtr/cntr-trrrsm/lstd-ntts/crrnt-lstd-ntts-eng.aspx>; Accessed 1 October 2013

Organisation	UN 1267 ¹	AUS ²	USA ³	UK ⁴	CANADA ⁵
Al-Haramayn Foundation (Tanzania)	x				
Al-Itihaad Al-Islamiya / AIAI	x			x	x
Al Jihad					x
Al-Qaida	x	x	x	x	x
Al-Qaida in Iraq	x	x	x		x
Al-Qaida in the Arabian Peninsula	x	x	x		x
Al-Qaida in the Islamic Maghreb (AQIM)	x	x	x		x
Al Rashid Trust	x				
Al-Shabaab		x	x	x	x
Ansar al-Islam	x	x	x	x	
Ansar al-Dine		x			
Ansar al-Sharia				x	
Ansar Al Sunna (AS)				x	
Ansar Eddine	x				
Ansarul Muslimina Fi Biladis Sudan				x	
Armed Islamic Group of Algeria (GIA)	x			x	x
Army of Islam (AOI)			x		
Asbat Al-Ansar	x		x	x	x
Aum Shinrikyo (AUM)			x		x
Autodefensas Unidas de Colombia (AUC)					x
Babbar Khalsa (BK)				x	x
Baluchistan Liberation Army (BLA)				x	
Basque Fatherland and Liberty (ETA)			x	x	x
Benevolence International Foundation	x				
Boko Haram				x	
Communist Party of the Philippines/New People's Army			x		
Continuity Irish Republican Army (CIRA)			x	x	
Cumann na mBan			x		
Djamat Houmat Daawa Salafia (DHDS)	x				
Eastern Turkistan Islamic Movement	x				
Egyptian Islamic Jihad	x			x	
Emarat Kavkaz	x				
Fianna na hEireann				x	
Gama'a al-Islamiyya (Islamic Group) (IG)			x		
Global Relief Foundation (GRF)	x				
Groupe Islamique Combattant Marocain (GICM)				x	
Gulbuddin Hekmatyar				x	
Hamas			x		
Hamas (Harakat Al-Muqawama Al-Islamiya) (Islamic Resistance Movement)					x
Hamas's Izz al-Din al-Qassam Brigades		x		x	
Haqqani Network (HQN)			x		x
Harakat Ul-Mujahidin / HUM	x		x	x	x
Harakat-ul Jihad Islami	x		x	x	
Harakat ul-Jihad-i-Islami/Bangladesh (HUJI-B)		x	x	x	
Hezb-E Islami Gulbuddin (HIG)				x	x
Hizballah			x		x
Hizballah External Security Organisation		x		x	
Indian Mujahadeen (IM)			x	x	

Organisation	UN 1267 ¹	AUS ²	USA ³	UK ⁴	CANADA ⁵
International Islamic Relief Organization, Indonesia, Branch Office	x				
International Islamic Relief Organization, Philippines, Branch Office	x				
International Sikh Youth Federation (ISYF)				x	x
Irish National Liberation Army				x	
Irish People's Liberation Organisation				x	
Irish Republican Army				x	
Islamic Army of Aden	x			x	x
Islamic International Brigade (IIB)	x				
Islamic Jihad Group	x				
Islamic Jihad Union (IJU)			x		
Islamic Movement Of Uzbekistan	x	x	x	x	x
Islamic Revolutionary Guard Corps' Qods Force					x
Jabhat al-Nusra		x			
Jaish-i-Mohammed	x	x	x	x	x
Jammat-ul Mujahideen Bangladesh (JMB)				x	
Jam'yah Ta'awun Al-Islamia	x				
Jemaah Islamiyah	x	x	x	x	x
Jemmad Anshorut Tauhid	x		x		
Jundallah			x		
Kahane Chai (Kach)			x		x
Kata'ib Hizballah (KH)			x		
Khuddam Ul-Islam and Jamaat Ul-Furquan				x	
Kurdistan Workers Party (PKK)		x	x	x	x
Lajnat Al Daawa Al Islamiya (LDI)	x				
Lashkar i Jhangvi (LJ)	x	x	x	x	x
Lashkar-E-Tayyiba	x	x	x	x	x
Liberation Tigers of Tamil Eelam (LTTE)			x	x	x
Libyan Islamic Fighting Group	x		x	x	
Loyalist Volunteer Force				x	
Makhtab al-Khidamat	x				
Moroccan Islamic Combatant Group	x		x		
Movement for Unity and Jihad in West Africa	x				
National Liberation Army (ELN)			x		x
Orange Volunteers				x	
Palestine Liberation Front (PLF)			x		x
Palestinian Islamic Jihad		x	x	x	x
PFLP-General Command (PFLP-GC)			x		x
Popular Front for the Liberation of Palestine (PFLP)			x		x
Rabita Trust	x				
Rajah Solaiman Movement	x				
Real Irish Republican Army (RIRA)			x		
Red Hand Commando				x	
Red Hand Defenders				x	
Revival of Islamic Heritage Society	x				
Revolutionary Armed Forces of Colombia (FARC)			x		x
Revolutionary Nuclei					
Revolutionary Organization 17 November (17N)			x	x	
Revolutionary People's Liberation Party/Front			x	x	

Organisation	UN 1267 ¹	AUS ²	USA ³	UK ⁴	CANADA ⁵
Revolutionary Struggle (RS)			x		
Riyadus-Salikhin Reconnaissance and Sabotage Battalion of Chechen Martyrs (RSRSBCM)	x				
Salafist Group for Call and Combat (GSPC)				x	
Sanabel Relief Agency Limited	x				
Saor Eire				x	
Saved Sect or Saviour Sect				x	
Shining Path (SL)			x		x
Special Purpose Islamic Regiment (SPIR)	x				
Taibah International-Bosnia Offices	x				
Taliban					x
Tehrik Nefaz-e Shari'at Muhammadi (TNSM)				x	
Tehrik-e Taliban Pakistan (TTP)	x		x	x	x
Teyre Azadiye Kurdistan (TAK)				x	
Tunisian Combatant Group	x				
Ulster Defence Association				x	
Ulster Freedom Fighters				x	
Ulster Volunteer Force				x	
Ummah Tameer E-Nau (UTN)	x				
United Self Defense Forces of Colombia (AUC)			x		
Vanguards of Conquest (VOC)					x
Wafa Humanitarian Organization	x				
World Tamil Movement (WTM)					x

Appendix B: Terrorist Groups: Attacks and Fatalities 1968 - 2011

Based on a review of attacks by the 2,222 terrorist groups listed in the Global Terrorism Database maintained by National Consortium for the Study of Terrorism and Responses to Terrorism based at the University of Maryland, with [2.5.1] discussing this database, this Appendix summarises the total number of recorded attacks by each group, the years in which each group committed attacks and the total fatalities resulting from all attacks by the group. It excludes attacks where the perpetrators were listed as 'Unknown'. Complete details of the statistics summarised below are held on file by the author.

GROUP	DATES ACTIVE	TOTAL ATTACKS	TOTAL FATALITIES
1st of May Group	1989 - 1992	16	2
14 K Triad	1998	4	0
14 March Coalition	2007	1	5
14th of December Command	1990	3	0
15th of September Liberation Legion	1980	1	0
16 January Organization for the Liberation of Tripoli	1989	24	1
1920 Revolution Brigades	2004	2	15
19th of July Christian Resistance Brigade	1980 - 1984	1	0
1st of May Group	1970 - 1971	4	0
2 April Group	1983	6	0
20 December Movement (M-20)	1990 - 1992	16	1
22nd of May 1948	1988	1	0
23 May Democratic Alliance (Algeria)	2009	3	0
23rd of September Communist League	1977 - 1980	44	16
28 February Armed Group	1980	1	0
28 May Armenian Organization	1977	2	5
28s	2000	1	0
28th of December Group	1977	2	0
2nd of June Movement	1971 - 1981	14	4
31 January People's Front (FP-31)	1981 - 1982	17	0
4 August National Organization	1982	2	0
7 April Libyan Organization	1985	3	0
8 March Coalition	2008	1	5
9th of February Group	1988 - 1989	21	11
9 May People's Liberation Force	1989	4	0
Abd al-Krim Commandos	1979	2	0
Abdullah Azzam Brigades	2004 - 2011	6	131
Abstentionist Brigades	1978	2	0
Abu Baker Martyr Group	1979	1	0
Abu Hafs al-Masri Brigades	2003 - 2005	11	191
Abu Hassan	1980	1	2
Abu Musa Group	1987	1	0
Abu Nidal Organization (ANO)	1987 - 1998	51	28
Abu Sayyaf Group (ASG)	1994 - 2011	205	578

GROUP	DATES ACTIVE	TOTAL ATTACKS	TOTAL FATALITIES
Achik National Volunteer Council (ANVC)	2001 - 2011	3	17
Achwan-I-Mushbani	1991	1	1
Actiefront Nationalistisch Nederland	1992	2	0
Action Directe	1985 - 1992	54	4
Action Front for the Liberation of the Baltic Countries	1977	2	0
Action Front Nationalist Librium	1992	1	0
Action Group for Communism	1978	1	0
Action Group for the Destruction of the Police State	1991	1	2
Action Struggle Against the World	1985	1	0
Active Espirit de Corps of the Argentina Army	1987	1	0
Adan Abyan Islamic Army (AAIA)	1999 - 2003	3	3
Adivasi National Liberation Army (ANLA)	2007 - 2011	6	6
Afar Revolutionary Democratic Unity Front	2007	1	0
AFB	1978	1	0
Africa Marine Commando	2011	5	7
African National Congress (South Africa)	1976 - 1996	606	624
Afrikaner Resistance Movement (AWB)	1988 - 1994	6	6
AGEL	1976	1	0
Aghwar "Fire War" Group	1981	1	0
Agudat Israel Party	1992	1	0
Ahlu-sunah Wal-jamea (Somalia)	2008 - 2009	4	25
Ahmad Jibril	1978	1	28
Ahrar Al-Jalil (Free People of the Galilee)	2008 - 2010	4	8
Aibed Er-Rahman katibet	2007	1	0
Air and Azawak Liberation Front	1992	3	3
Akali Dal Party	1982 - 1985	2	5
Al Barq	2002	1	5
Al Borkan Liberation Organization	1984	2	1
Al Faran	1995	2	1
Al Hadid	1994	2	0
Al Jihad	1994 - 1995	3	1
Al Jihad	1981 - 1985	10	30
Al Nasirin (India)	2009	1	0
Al Zulfikar	1981 - 1992	8	17
Al-Adl Wal Ihsane	1991 - 1996	5	3
al-Ahwaz Arab People's Democratic Front	2005 - 2006	4	18
Al-Aqsa Martyrs Brigade	2000 - 2010	164	310
Al-Arifeen	2002 - 2005	4	5
Al-Badr	1999 - 2008	4	9
al-Da'wah Party	1980 - 1981	2	43
Al-Fajr	2007	1	1
Al-Faruo Battalion	1988	4	0
al-Fatah	1971 - 2009	64	110
Al-Fatihin Army (AFA)	2008	1	0
al-Gama'at al-Islamiyya (IG)	1981 - 1997	260	500
Al-Hamas Mujahideen	2001	1	0
Al-Haramayn Brigades	2003 - 2004	3	10
al-Intiqami al-Pakistani	2002	2	9
Al-Ittihaad al-Islami (AIAI)	1992 - 2005	5	23
al-Jub Tribe	2009	1	0

GROUP	DATES ACTIVE	TOTAL ATTACKS	TOTAL FATALITIES
Al-Khobar	2007 - 2010	5	11
Al-Madina	2002 - 2008	5	4
Al-Mansoorian	2002 - 2007	19	105
al-Marabitun Revolutionary Committee	1986	1	0
Al-Mujahedin Brigades (Palestine)	2008	1	0
al-Nadir	2002	1	5
Al-Nasireen Group	2005	2	8
Al-Nawaz	1999	1	2
Al-Qa'ida in Lebanon	2006	1	0
Al-Qa'ida Network for Southwestern Khulna Division	2006	2	0
Al-Qa'ida	1998 - 2011	124	4,636
Al-Qa'ida in Iraq	2004 - 2011	187	2,123
Al-Qa'ida in the Arabian Peninsula (AQAP)	2004 - 2011	131	642
Al-Qa'ida in the Lands of the Islamic Maghreb	2004 - 2011	145	555
Al-Qa'ida in Yemen	2004 - 2010	12	49
Al-Qa'ida Organization for Jihad in Sweden	2005	1	0
Al-Qassam Brigades	2007	1	0
Al-Sa'iqa	1984 - 1988	2	1
Al-Sadr Brigades	1984	3	0
Al-Shabaab	2007 - 2011	312	871
Al-Shabaab al-Mu'minin	2005 - 2010	5	6
Al-Shuda Brigade	2003	1	8
Al-Sunna wal Jamma	2004	1	3
Al-Umar Mujahideen	1991 - 2002	10	24
Albanian Liberation Army	2001	1	0
Albanian National Army (ANA)	2001 - 2003	5	2
Albatros Commando	1994	1	0
Alcubar group	2007	1	1
Alejo Calatayu	1987 - 1990	2	0
Alex Boncayao Brigade (ABB)	1994 - 2008	11	7
Alexander Villalon (YADO)	1986	1	0
Alexandros Grigoropoulos Anarchist Attack Group	2009	1	0
Alfa 83	1984	1	?
Alfaro Vive	1983 - 1991	27	18
Algeisk Wolves	1995	3	1
Algerian Moujahideen for Moslems	1992	1	0
All Burma Students' Democratic Front (ABSDF)	1991 - 2009	5	1
All Ethiopian Unity Party (AEUP)	2005	1	0
All for the Fatherland Movement	1989	1	0
All India Anna Dravida Munetra Kazgan Party	1991 - 2009	3	9
All India Sikh Students Federation (AISSF)	1983 - 1986	5	1
All Kamatapur Liberation Force	2008	1	0
All Karanataka Youth Council	1996	1	0
All Nepal Free Nationalist Students Union	1991	1	0
All Nepal National Free Student Union-Revolutionary	2002	1	0
All Tripura Tiger Force (ATTF)	1992 - 2002	13	95
All-Party Students Union	1995	1	1
Allah's Tigers	1989 - 1992	2	1
Allende Lives Commando	1991	1	0
Alliance of Revolutionary Cuban Organizations	1980	1	0

GROUP	DATES ACTIVE	TOTAL ATTACKS	TOTAL FATALITIES
Allied Democratic Forces (ADF)	1997 - 2010	39	294
Alpha-66 (Cuban counterrevolutionary)	1984	1	1
Amal	1980 - 2008	27	24
Amazonas Liberation Front	1983	1	0
America Battalion	1986 - 1988	8	83
American Anticomunist Association (AAA)	1978	1	0
American Indian Movement	1973 - 1975	6	2
Americans for a Competent Federal Judicial System	1989	6	2
Americans for Justice	1974	2	0
Amr Bil Maroof Wa Nahi Anil Munkir	2007 - 2010	3	0
Ana Maria Martinly August 22 Brigade	1984	1	1
Ananda Marga	1978	1	0
Anarchio Scene	1984	1	0
Anarchist Action (CA / United States)	2009	1	0
Anarchist Faction	2000	2	0
Anarchist Solidarity	1989	2	0
Anarchist Struggle	2000	1	0
Anarchists Attack Team	2000	1	0
Anarkista Jorge Banos Front	2010	1	0
Anbar Salvation Council	2007	1	1
Andres Castro United Front	1997 - 1999	2	1
Angels	1985	1	30
Angolan Defense Force	1985	1	62
Angry Brigade (Italy)	1999	2	0
Animal Defense League	1988	1	0
Animal Liberation Front (ALF)	1984 - 2011	116	0
Animal Rights Militia	1982 - 2010	3	0
Anonima Sequestri	1997	1	0
Anonymous Underground Movement (MCA)	2004	1	0
Ansar Al Sunnah (Palestine)	2009 - 2011	5	3
Ansar al-Din	2004	1	0
Ansar al-Islam	2002 - 2009	26	116
Ansar al-Jihad	2004	1	0
Ansar al-Sunna	2004 - 2011	18	165
Ansar al-Tahwid wal Sunna	2006	1	0
Ansar Allah	1994	1	21
Ansar Sarallah	1999	1	0
Ansar Wa Mohajir (Pakistan)	2008	2	1
Ansarul Islam (Pakistan)	2008 - 2010	2	38
Anti Communist Action Alliance	1989	1	0
Anti Communist Patriotic Front	1980	2	3
Anti Communist Vigilante Patrol	1988	1	1
Anti Imperialist Patriotic Union	1989	1	1
Anti Imperialist Students Council	1978	1	0
Anti Imperialistic Communist Revolutionaries	1978	2	0
Anti-American Arab Liberation Front	1986	1	3
Anti-Apostate Movement Alliance (AGAP)	2007	1	0
Anti-Armenian Organization	1984	2	0
Anti-Capitalist Action	1999	1	0
Anti-Capitalist Brigades	1988	1	1

GROUP	DATES ACTIVE	TOTAL ATTACKS	TOTAL FATALITIES
Anti-Capitalist Commando	1988	1	0
Anti-Castro Command	1976 - 1977	3	0
Anti-Communist Command (KAK)	2000	1	0
Anti-Communist Commando of the South	1980	4	1
Anti-Communist Viets Organization	1981	1	1
Anti-Communist Vigilante Group	1989	4	142
Anti-Establishment Nucleus	1995	2	0
Anti-Fascist Territorial Group	1980 - 1981	2	0
Anti-Imperialist Cell (AIZ)	1995	3	0
Anti-Imperialist Commando	1999	1	0
Anti-Imperialist Fighters for a Free Palestine	1978	1	0
Anti-Imperialist International Brigades	1986 - 1987	1	0
Anti-Imperialist Territorial Nuclei (NTA)	2001 - 2003	2	0
Anti-Nuclear Society for a Silent Counter-Offensive	1996	1	0
Anti-Racist Guerrilla Nuclei	1999	1	0
Anti-State Action	1999	3	0
Anti-State Justice	2006	5	0
Anti-State Proletarian Nuclei	1999	1	0
Anti-terrorism ETA (ATE)	1975 - 1978	8	1
Anti-terrorist Liberation Group (GAL)	1983 - 1989	20	19
Anti-Zionist Commandos	1976	3	3
Anti-Zionist Movement	1999	2	0
Antifascist Action	1994	1	0
Antonia Martinez Student Commandos (AMSC)	1982	1	0
Antonio	1987	1	2
Anyu-Nya II Militia	1988	1	0
April 6th Liberation Movement	1980	31	1
Aqmur	2010	1	0
Arab Commando Cells	1986	1	3
Arab Communist Organization	1974	10	1
Arab Democratic Party	1987	4	0
Arab Liberation Army	1980	1	1
Arab Liberation Front (ALF)	1979 - 1980	4	9
Arab Revenge Organization	1984	1	0
Arab Revolution/Liberation Vanguard Organization	1981	6	5
Arab Revolutionary Army	1978	8	0
Arab Revolutionary Cells	1986	3	4
Arab Revolutionary Front	1986	1	0
Arab Socialist Baath Party	1985	2	1
Arab Socialist Union Members	1982	1	0
Arab Steadfastness Front	1981	1	3
Arab Struggle	1986	1	3
Arab Unionist Nationalist Organization	1985	1	1
Arabian Peninsula Freeman	1989	1	1
Arakan Rohingya Islamic Front	1991	1	8
Arauco Malleco Coordinating Group (CAM) - Chile	2009	2	0
Arbav Martyrs of Khuzestan	2005	1	8
Argentina Libre (Free Argentina)	1983	1	0
Argentine Anti-Communist Alliance	1974	1	2
Argentine Anticommunist Alliance (AAA)	1975 - 1978	18	53

GROUP	DATES ACTIVE	TOTAL ATTACKS	TOTAL FATALITIES
Argentine Liberation Front (FAL)	1970 - 1974	7	1
Argentine National Organization Movement	1970 - 1975	2	0
Argentine Youths for Sovereignty	1978	1	0
Aric Union Association	2006	1	0
Ariska Brodraskapet (Aryan Brotherhood)	1999	1	0
Armata Corsa	2000 - 2001	3	0
Armata di Liberazione Naziunale (ALN)	1999	7	0
Armed Action Force (FADA)	1979	1	1
Armed Anti-Imperialist Movement	1978	1	0
Armed Brigades	1977	1	0
Armed Commandos for Liberation	1986	1	0
Armed Commandos Fighting Army of Mario Zichieri	1977	2	0
Armed Commandos of Liberation	1970 - 1971	13	5
Armed Commandos of Student Self Defense	1982	1	0
Armed Communist Commando	1977	1	0
Armed Communist Formations	1978	5	0
Armed Communist Front	1986	1	0
Armed Communist Nucleus	1977	4	0
Armed Communist Struggle	1976 - 1977	3	0
Armed Falange	1991 - 1992	6	0
Armed Fight for Communism	1977	4	0
Armed Fight for Workers Power	1978	1	0
Armed Fighting Nucleus For Communism	1977	1	0
Armed Forces for a Federal Republic (FARF)	1995	1	0
Armed Forces for Liberation of East Timor	1992 - 1995	2	60
Armed Forces of National Resistance (FARN)	1976 - 1979	41	18
Armed Forces of Popular Resistance (FARP)	1979 - 1986	10	0
Armed Forces of the Chechen Republic of Ichkeria	2001 - 2005	12	102
Armed Forces Revolutionary Council (AFRC)	1998 - 1999	3	106
Armed Group for the Liberation of Guadeloupe	1980	6	1
Armed Groups for Communism	1977	1	0
Armed Groups of Organised Proletariat	1980	1	1
Armed Islamic Group (GIA)	1992 - 2007	224	1,366
Armed Islamic Movement	1992	1	2
Armed Nuclei for Communism	1978	2	0
Armed Nuclei for Territorial Counterpower	1978	3	3
Armed Nucleus for Popular Autonomy	1975 - 1978	6	1
Armed Nucleus of Communist Workers	1977	1	0
Armed People's Units	1989	1	0
Armed Proletarian Formations	1978	1	0
Armed Proletarian Group	1978	1	0
Armed Proletarian Groups for Communism	1978	4	0
Armed Proletarian Nuclei (NAP)	1973 - 1978	30	7
Armed Proletarian Patrols	1977	1	0
Armed Proletarian Power	1977 - 1983	6	1
Armed Proletarian Squads	1978 - 1979	6	0
Armed Proletariat Fighting Squad	1979	1	0
Armed Radical Groups for Communism	1977	1	0
Armed Renaissance Group of Ahvaz	2005	1	8
Armed Revolutionary Action (Greece)	2010	4	0

GROUP	DATES ACTIVE	TOTAL ATTACKS	TOTAL FATALITIES
Armed Revolutionary Groups	1977	1	0
Armed Revolutionary Independence Movement	1970 - 1977	31	2
Armed Revolutionary Nuclei (NAR)	1978 - 1988	21	101
Armed Squads for Communism	1977 - 1979	3	0
Armed Struggle Cells	1989	1	0
Armed Struggle for Communism	1977	4	0
Armed Struggle for Proletarian Power	1977	1	0
Armed Struggle Organization	1983	1	1
Armed Vanguard of a Second Mohammed Army	2003	1	24
Armed Womens Nuclei	1978	1	0
Armed Workers Nuclei	1978	1	0
Armed Workers Squads	1977 - 1978	4	0
Armenian Organization for Armed Struggle	1980	1	0
Armenian Red Army	1982	1	0
Armenian Revolutionary Army	1985	1	1
Armenian Secret Army for the Liberation of Armenia	1981 - 1988	188	62
Army for Freeing Scotland	1975	3	0
Army of God	1982 - 1998	24	3
Army of Islam	2006 - 2011	3	25
Army of State Liberators	2008	1	0
Army of the Republic of Ilirida	2002	2	0
Arnoldo Camu Command	1989	1	0
Arsonists for Social Cohesion	1998	3	0
Artigas Guard Commando	1993	1	0
Artigas-Giachino Command	1983	1	0
Artisans' Cooperative of Fire And Related Products	2005	2	0
Arya	1977 - 1984	2	18
Aryan Brotherhood	1978	2	0
Aryan Nation	1986 - 1999	6	0
Aryan Republican Army	1994 - 1995	16	0
Asa'ib Ahl al-Haqq	2007 - 2010	11	4
Asbat al-Ansar	1995, 2010	2	3
Asif Raza Commandos	2002	1	5
Association for the Enhancement of Justice of Great Japan	1992	1	0
Association of Demobilized Armed Forces	1995	3	0
Association of Mobil Spill Affected Communities	1999	1	0
Association of Students and Pupils in Mali (AEEM)	1994	1	0
Association Totalement Anti-Guerre (ATAG)	2001	1	0
ATALA	1978	1	1
Athens and Thessaloniki Arsonist Nuclei	2007	8	0
Attack Teams for the Dissolution of the Nation (Greece)	2009	3	0
Aum Shinri Kyo	1990 - 1995	8	20
Autonomen	1987 - 1991	2	2
Autonomous Anarchist Groups	1979	1	0
Autonomous Anti-Capitalist Commandos (CAA)	1980 - 1985	10	1
Autonomous Decorators	2000	1	0
Autonomous Group for Armed Action	1979	1	0
Autonomous Collective Against Zionist Presence in France	1979	1	0

GROUP	DATES ACTIVE	TOTAL ATTACKS	TOTAL FATALITIES
Autonomous Manuel Rodriguez Patriotic Front	1991	3	0
Autonomous Resistance	1981 - 1983	3	0
Autonomous Revolutionary Brigade	1980	1	1
Autonomy (Greece)	1982	1	0
Autonomy (Italy)	1980	11	0
Autonomy Front	1983	2	0
Avenge the Arab Nation	1991	1	0
Avengers of Peiper Group	1977	1	0
Avengers of the Infants	2002 - 2003	2	0
Awami League	1981 - 2011	20	15
Azadejan (Liberation)	1981	1	0
Azania People's Organization (AZAPO)	1990 - 1994	5	12
Ba'adi (on my own behalf)	1990	1	1
Baader-Meinhof Group	1970 - 1977	55	9
Babbar Khalsa	2007	1	6
Babbar Khalsa International (BKI)	1988 - 1995	9	74
Baby Liberation Army	2000	1	0
Badr Brigades	2005	1	2
Bahujan Samaj Party	1996	2	2
Baloch Liberation Army	2005 - 2011	62	138
Baloch Liberation Front	2009 - 2011	9	17
Baloch Republican Army (BRA)	2007 - 2011	28	33
Balochistan Liberation United Front (BLUF)	2009 - 2010	8	10
Baluchi Militant Defense Army	2010	1	0
Baluchistan National Army	2004	1	11
Bande des Rats (the rat pack) Ukranian Group	1981	1	0
Bangladesh Communist Party	1991	1	3
Bangladesh National Socialist Party	1992	1	0
Bangladesh Nationalist Party (BNP)	1990 - 1997	32	10
Bangladesh Road Transport Workers Federation	1992	2	0
Bangladesh Sarbahara Party	1986 - 1996	5	46
Bangsamoro National Liberation Army	2009	1	0
Bani Hilal Tribe	1996	1	0
Banner of Islam	2006	1	0
Barisan Revolusi Nasional (BRN)	2002 - 2007	5	7
Barzani Guerrillas	1979	1	0
Basic People's Congresses	1992	1	0
Basque Battalion	1980	1	2
Basque Country Autonomous Self-Defense Group	1981	1	1
Basque Fatherland and Freedom (ETA)	1970 - 2011	2,027	818
Basque Justice	1979	1	0
Basque Rectitudes	1977	6	0
Basque Refugee Support Group	1984	0	0
Bavarian Liberation Army	1995	3	0
BAY Bombers	1971	1	0
Beaver 55	1970	3	0
Begumcans Cell	1978	1	0
Beirut Martyrs Battalion	1988 - 1989	7	2
Beirut Martyrs Forces Organization	1987	2	0
Beja Congress	1996 - 2001	4	1

GROUP	DATES ACTIVE	TOTAL ATTACKS	TOTAL FATALITIES
Belarusian Liberation Army	1995 - 1997	2	0
Beli Orlovi (White Eagles)	1999	1	1
Bengali Tiger Force (BTF)	1999	1	2
Bersatu	2006	1	1
Bharatiya Janata Party	1992 - 1994	2	0
Bhinderanwale Tiger Force of Khalistan (BTHK)	1988 - 1992	9	50
Bhisan Himali Bag	2009	1	0
Bhumi Uchched Pratirodh Committee (BUPC)	2007	1	3
Bihar People's Party (Hindu militants)	1994	1	1
Bini-Oru	2003	1	1
Black Afro Militant Movement	1970 - 1971	4	1
Black and Red Anarchist and Anti-Authoritarians Initiative	2009	1	0
Black Banner Brigade	2004	1	0
Black Berets	1991	3	7
Black Brigade	1985	3	29
Black Brigade (United States)	1981	1	0
Black Cells	1971 - 1976	2	0
Black December	1973	2	2
Black Eagles	2009	1	0
Black Flag (Bandera Negra)	1986 - 1987	2	17
Black Forest Command	1989	1	0
Black Friday	1988	1	0
Black Hand	1983	2	19
Black Hand (Colombia)	1988 - 1991	6	32
Black Lebanon	1982	2	1
Black Liberation Army	1970 - 1984	37	19
Black Liberation Force	1983	1	0
Black Liberation Front	1988	3	0
Black Malian Group	1992	1	4
Black Mambas	1996	1	0
Black March	1979	2	0
Black Order	1974	6	24
Black Panther Group (Palestinian)	1986 - 1995	17	16
Black Panthers	1970 - 1972	25	7
Black Revolutionary Assault Team	1971	3	0
Black September	1971 - 1976	51	77
Black September II	1984 - 1988	9	3
Black Star	2000	7	0
Black Tigers	1990	1	1
Black War	1986 - 1988	2	0
Black Wednesday	1979	3	0
Black Widows	2007 - 2009	13	56
Bloque Anti-Guerrillero de Oriente (BAGO)	1980	1	14
Blue Archer Group	1981	1	1
Bodo Liberation Tigers (BLT)	1996 - 2008	1	78
Bodo People's Front (BPF)	2009	1	1
Boer Republikeinse Leer	1992	1	0
Boere Aanvals Troepe (BAT)	1997	3	0
Boko Haram	2009 - 2011	150	687

GROUP	DATES ACTIVE	TOTAL ATTACKS	TOTAL FATALITIES
Bolivarian Army of Liberation	1992	1	0
Bolivian Luminous Path	1983	2	0
Bolivian Socialist Falange	1980 - 1983	8	0
Boricua Revolutionary Front	1982	1	0
Boricuan Armed Anti-Imperialist Commandos	1982	1	0
Bougainville Revolutionary Army (BRA)	1989 - 1997	29	46
Boz-Ok (Grey Arrow)	1992	1	1
Brazilian Anti-Communist Alliance (AAB)	1976	4	0
Brazilian Democratic Mobilization Party (PMBD)	1986	1	0
Breton Liberation Front (FLB)	1974 - 2000	30	5
Brigadas Rojas	1978	1	0
Brigades of Iman Hassan-al-Basri	2005	1	3
Broad Commando of National Liberation	1978	1	0
Broad Front	1978	1	0
Brother Julian	1985	1	0
Brunswijk Jungle Commando	1988 - 1992	41	7
Budget for the Popular Prep or Death	1981	1	0
Bunda Dia Kongo (BDK)	2007	1	12
Burma Communist Party	1988 - 1989	2	18
Bzers	1992	1	0
Cali Narcotics Cartel	1989 - 1992	3	3
Cambodian Freedom Fighters (CFF)	2000	2	8
Cambodian National Front for National Salvation	1978	1	1
Cambodian People's Party (CPP)	1997	4	48
Canary Islands Independence Movement	1975 - 1980	34	0
Cannibal Army	2003	4	0
Caribbean Revolutionary Alliance (ARC)	1983 - 1985	25	1
Carlos Echeverria commando group	1981	2	0
Caribbean Revolutionary Independence Army	1985	1	0
Catalan Liberation Front (FAC)	1971 - 1979	26	2
Catalonian Resistance	1980	1	0
Catholic Reaction Force	1983 - 2001	3	3
Caucasus Emirate	2008 - 2011	18	55
Cell for Internationalism	1995	1	0
Cells for Solidarity Against Authority	1989	1	0
Central African National Liberation Movement	1981	1	3
Central American Movement of Solidarity (MOSCA)	1995	2	0
Central American Revolutionary Workers Party (PRTC)	1979	1	2
Charles Martel Group	1975 - 1981	3	0
Charlot Jacquelin Militant Front	1995	1	0
Che Guevara Brigade	1976 - 1990	14	0
Che Guevara Guerrillas	1997	5	0
Chechen Lone Wolf Group	1996	2	23
Chicano Liberation Front	1970 - 1975	31	2
Children of November	1996 - 1999	2	0
Chilean Anti-Communist Alliance (ACHA)	1984 - 1988	6	1
Chilean Committee of Support for Peruvian Revolution	1992	1	0
Chin National Army	2002	1	0
Chondaehyop (Radical Student Coalition)	1990	1	0
Christ Chaos	1977 - 1978	3	0

GROUP	DATES ACTIVE	TOTAL ATTACKS	TOTAL FATALITIES
Christian Group for the Respect for Life	1982	1	0
Christian Liberation Army	1991	2	0
Chukakuha (Middle Core Faction)	1978 - 2000	61	2
Cinchoneros Popular Liberation Movement	1981 - 1994	24	8
Citizen's Rights Protection Volunteers	2009	2	3
Citizens Volunteer Force	1989	1	3
Civic Guard	1983	1	1
Civil Association for Peace in Colombia, Asocipaz	2001	1	9
Civil Cooperation Bureau	1990	1	0
Clandestini Corsi	1999	2	0
Cleansing Hand (La Mano Que Limpia)	1990	1	2
Coalition for Unity and Democracy (CUD)	2006	4	0
Coalition of National Brigades	1973	1	0
Coalition to Save the Preserves (CSP)	2000 - 2001	8	0
Colombia Without Guerrillas	1994	4	6
Colombian Patriotic Resistance	1999	3	0
Colombian Revolution	1990	1	6
Colonel Karuna Faction	2004 - 2007	10	36
Column 88	1978	4	0
Comando Bautista B	1996	1	0
Comando Independiente Revolucionario	1992	1	0
Comando Malvinas Argentinas	2003	1	0
Comando Vermelho (Red Command)	1992	1	0
Combat 18	1999 - 2000	3	0
Combat Brigades	1977	1	1
Combat Nucleus of Communist Unity	1977	1	0
Combatant Communist Front	1978	1	0
Combatant Communist Union Red Brigades	1987	1	1
Combatant Nucleus for Communism	1978	1	0
Combatent Communists	1977	1	0
Comite Argentino de Lucha Anti-Imperialista	1972	4	0
Comite d'Action Viticole	1999	3	0
Comite de Liberation et de Detournements d'Ordinateurs	1983	1	0
Command for National Sovereignty	1991	1	0
Commander Gonzalo Southern Group	1986	1	0
Commander Luciano Varela Antiguerilla Group	1997	1	11
Commando 15th October	1979	1	0
Commando 27 September	1975	1	0
Commando Adolph Hitler	1977	6	0
Commando Delta	1981	2	1
Commando Heinz Neumann	1976	1	1
Commando Internacionalista Simon Bolivar	1986	1	0
Commandos Against Self Destruction of the Universe	1976	1	0
Commandos for A Popular alternative	1995	4	38
Commandos for the Defense of Western Civilization	1978	1	0
Commandos of France	1986	3	0
Committee for a National Drive for Peace and Democracy	1992	1	19
Committee for Direct Action Against War	1991	2	0

GROUP	DATES ACTIVE	TOTAL ATTACKS	TOTAL FATALITIES
Committee for the Defense of Italian Workers in France	1977	1	0
Committee for the Elimination of Killer Collaborators	1992	1	1
Committee for the Safeguard of the Islamic Revolution	1977 - 1980	2	1
Committee of action against bull fights	1977	1	0
Committee of Coordination	1995	4	6
Committee of Solidarity with Arab and Middle East Political Prisoners (CSPPA)	1986	10	4
Commune 1	1970	1	0
Communist Anti-Imperialistic Revolutionaries	1978	1	0
Communist Anti-Nuclear Front	1980	5	0
Communist Armed Nucleus	1977	1	0
Communist Attack Brigades	1978	1	0
Communist Attack Units	1980	1	0
Communist Brigade Dante Dimani	1976	1	0
Communist Brigades	1977	1	0
Communist Combat Unit	1977	2	0
Communist Combattant Cells (CCC) (Belgium)	1984 - 1985	21	3
Communist Fighters Association	1978	1	0
Communist Fighters Group	1977	1	0
Communist Fighting Corunim- Maria Anna Maria	1977	1	0
Communist Fighting Detachments	1978	1	0
Communist Fighting Front	1979	1	0
Communist Fighting Nuclei	1977	2	0
Communist Fighting Unit	1976 - 1980	11	0
Communist Front for Counterpower	1982	2	0
Communist Group of Proletarian Internationalism	1981	3	0
Communist Guerilla Nuclei	1991	1	0
Communist Hunters Command (CCC)	1979 - 1980	3	0
Communist Nuclear	1981	1	1
Communist Nuclei of Counter Power	1979	1	0
Communist Party of India	1989 - 2010	4	2
Communist Party of India - Maoist	2004 - 2011	1,418	1,892
Communist Party of India- Marxist	1991 - 2001	2	0
Communist Party of India- Marxist-Leninist	1999 - 2011	8	20
Communist Party of Malaysia- Marxist-Leninist	1975	2	0
Communist Party of Nepal- Maoist (CPN-M)	1997 - 2008	23	654
Communist Party of Nepal- Unified Marxist-Leninist	1997 - 2009	4	2
Communist Party of Thailand	1979 - 1981	3	6
Communist Patrols for Counter Power	1980	2	0
Communist Progress	1977	2	0
Communist Territorial Nuclei	1979 - 1980	5	1
Communist Territorial Unit	1979	1	0
Communist Trade Union Workers	1992	1	1
Communist Warrior's Union	1990	1	0
Communists Fighting Imperialism and Armaments	1984	2	0
Comrades in Arms	1971	1	0
Comrades Organized in Partisan Nuclei	1980	1	0
Comuneros	1987	1	0
Condor	1974 - 1978	3	0
Confederation of Iranian Students/National Union	1977	1	0

GROUP	DATES ACTIVE	TOTAL ATTACKS	TOTAL FATALITIES
Congolese Armed Patriotic Group	1982	1	15
Congolese Liberation Party (PLC)	1988	1	28
Congolese National Movement- Lumumba (MNCL)	1984	2	2
Congolese Patriotic Resistance-Patriotic Armed Forces	2009	1	1
Congolese Rally for Democracy (RCD)	2002	1	0
Congress of Kabardian People	1992	1	0
Congress Party Activists	1994 - 1995	3	3
Conqueror Army	2008	2	0
Conscientious Arsonists (CA)	1998	5	0
Conspiracy of Cells of Fire	2008 - 2011	45	0
Continental Revolutionary Army	1975	2	0
Continuing Struggle	1989	1	0
Continuity Irish Republican Army (CIRA)	1977 - 2009	26	6
Continuous Struggle	1976	1	0
Convention of Liberal Reformers (CLR)	1997	1	4
Convention of Patriots for Justice and Peace	2009 - 2011	2	36
Coordination for Revolutionary Action	1979	16	0
Coordination of Anti-atomic Power Plant Saboteurs	1983	1	0
Coordination of the United Revolutionary Organization	1976 - 1977	13	75
Coordination, Offensive, Use, Interruptions, and Cut	1992	1	0
Corsican Farmers' Front	1994	1	0
Corsican National Liberation Front (FLNC)	1974 - 2011	574	13
Corsican National Liberation Front- Historic Channel	1991 - 1999	128	0
Corsican Revolutionary Brigade	1983	3	0
Costa Rican Peoples' Army (EPC)	1984	1	0
Council for Popular Justice	1994	2	0
Council for the Destruction of Order	2009	1	0
Counterrevolutionary Solidarity (SC)	1983	1	0
Covenant, Sword and the Arm of the Lord (CSA)	1983	4	1
Crazy Brabant Killers	1985	1	7
Croatian Freedom Fighters	1976 - 1980	5	1
Croatian Liberation Army	1980	1	0
Croatian Revolutionary Cell-Bruno Busic Dept	1981	1	0
CSS Movement	1999	1	0
Cuban Action	1970 - 1975	13	0
Cuban C-4 Movement	1974	1	0
Cuncolta Naziunalista	1995	1	2
Cyprus Turkish People's Movement	1990 - 1991	7	0
Dagestani Shari'ah Jamaat	2005 - 2010	5	13
Dainihon Yokuko Doshikai	1979	1	0
Dark Harvest	1981	2	0
David's Sword	1994	1	1
Dawn Forces	1990	1	2
Death Squad of Organization Zero (Organizacion Cero)	1979	1	6
Death to Bazuqueros	1989 - 1990	6	0
Death to Drug Traffickers	1988	1	2
Death to Kidnappers (MAS)	1982 - 1984	18	43
Death to Rustlers	1997	3	21
Death to the Demobilized Militias	1994	1	1
Deccan Mujahideen	2008	8	184

GROUP	DATES ACTIVE	TOTAL ATTACKS	TOTAL FATALITIES
December 13 Independent Group	1990	3	0
Defenders of the Fatherland	1984	2	0
Delta Group	1977 - 1978	3	2
Democratic Front for Renewal (FDR)	1995 - 1996	2	19
Democratic Front for the Liberation of Palestine (DFLP)	1974 - 2011	49	68
Democratic Front for the Liberation of Rwanda (FDLR)	2007 - 2010	30	234
Democratic Iraqi Opposition of Germany	2002	1	0
Democratic Karen Buddhist Army (DKBA)	1995 - 2001	21	49
Democratic Movement for Liberation of Eritrean Kunamas	2007	2	0
Democratic Party	1981	1	0
Democratic Party of Talal Arslan	2008	1	2
Democratic Progressive Party	1992	1	0
Democratic Revolutionary Alliance (ARDE)	1982 - 1991	141	1,801
Democratic Revolutionary Front (FDR)	1980 - 1982	5	22
Democratic Revolutionary Party	1990 - 1997	12	10
Deniers of Holidays	2009	1	0
Dev Genc	1990	1	0
Dev Sol	1979 - 1996	253	175
Dev Yol	1980 - 1982	4	0
Devrimci Halk Kurtulus Cephesi (DHKP/C)	1994 - 2009	15	10
Dignity Command	1994	1	0
Dignity for Colombia	1995 - 1996	4	3
Dima Halao Daoga (DHD)	1999 - 2010	26	37
Direct Action Against Drugs (DADD)	1995 - 1996	4	4
Dishmish Regiment	1984	43	6
Diyala Salvation Council	2007	1	15
Do-or-Die Corps - Abolition of Anti-Public Taxation Systems	1990	1	0
Dominican Popular Movement (MPD)	1970 - 1974	2	0
Down with Lubbers	1986	2	0
Draa El Mizan Seriat	2002	2	5
Dukhta-ran-e-Millat	1995	1	1
Dynamic Youth Forum	2010	2	0
Eagles of the Palestinian Revolution	1979 - 1989	9	3
Earth First!	1989 - 1994	3	0
Earth Liberation Front (ELF)	1995 - 2011	78	0
Earth Night Action Group	1990	1	0
East Asia Anti Japanese Armed Front	1975 - 1976	12	2
East Coast Conspiracy to Save Lives	1970	2	0
East Side Action Committee	1979	1	0
East Turkistan Liberation Organization	1999	1	1
Eastern Turkistan Islamic Movement (ETIM)	2008	4	9
Ecology and Antinuclear Revolutionary Party (CRAE)	1979	1	0
Ed'daoua Es'salafia Lilqadha	2002	1	5
Eelam People's Revolutionary Liberation Front (EPRLF)	1986 - 1989	7	60
Egbema National Front	2003	1	0
Egbesu Youths of the Bayelsa	1999	2	44
Egypt's Revolution	1985 - 1987	3	2
Egyptian Revolutionary Organization	1980	1	0

GROUP	DATES ACTIVE	TOTAL ATTACKS	TOTAL FATALITIES
Egyptian Tawhid and Jihad	2004 - 2006	4	147
Ein Tyrol (One Tyrol)	1988	5	0
Ejercito de Liberacion Nacional (Bolivia)	1970 - 1991	3	0
Ejercito Revolucionaria del Pueblo (ERP) (Argentina)	1970 - 1991	85	19
Ejercito Revolucionario Guevarista	2000	1	0
El Mico Rebel Gray	1994	1	2
El Movimiento Revolucionario Independinista	1986	1	0
El-Feth katibat	2006	1	0
Elements Police Cobra Squadron	1991	1	4
Emilio Recabarren Commando	1985	1	0
Enedra (Greece)	2008	1	0
Enraged Revolutionaries	2003	1	0
Environmental Life Force	1977	2	0
Enyele Militia	2010	1	0
Eritrean Liberation Front	1970 - 1992	21	32
Eritrean Peoples Liberation Front	1989 - 1990	4	2
Erotic Anti-authority Cells	2000	1	0
Ethiopian People's Revolutionary Party	1979 - 1992	5	241
Etnocacerista Movement	2005	1	4
Eva Peron Organization	1990	2	0
Evan Mecham Eco-Terrorist International Conspiracy	1987 - 1989	5	0
Evangelical Christians	1995	1	8
Extraparliamentary Opposition (APO)	1970	6	0
Extreme Left	1981	1	0
Extreme Right Commando Brigade	1980	1	6
FACDM	1985	1	0
Face to Face (Face-a-Face)	2002	1	0
Faithful Resistance	1994	1	5
Falange	1977	1	0
Falangist Security Group	1977	1	0
Falangist Vanguard	1978	1	0
Fanmi Lavalas	2002	1	0
Farabundo Marti National Liberation Front (FMLN)	1978 - 1994	3,357	8,508
Farighan	1992	3	0
Farm Animal Revenge Militia (FARM)	1994	2	0
Farmer's Movement of the Philippines (KMP)	2008	1	1
Farzandan-e-Millat	2005	1	0
Fatah al Islam	2007 - 2008	2	3
Fatah Hawks	1994 - 2001	5	5
Fatah Uprising	1986 - 1990	6	1
Father of the Poor	1989	1	0
Fatherland	1999	1	0
Fatherland and Liberty Nationalist Front	1999	1	0
Fatherland for the Poor	1992	1	0
February 27 Revolutionary Armed Forces	1992	1	0
February 28 Popular League (El Salvador)	1979 - 1980	15	41
Fedayeen Imam Mahdi	2003	1	5
Fedayeen Khalq (People's Commandos)	1987	7	0
Fedayeen of the Imperial Iranian Monarchy	1984	1	0
Federation of Students and Scholars of Cote d'Ivoire	1992 - 2000	2	0

GROUP	DATES ACTIVE	TOTAL ATTACKS	TOTAL FATALITIES
Feliciano Argueta Front	1986	1	0
Fight Against Authority	1999	1	0
Fighters for Communism	1977	2	0
Fighters for the Liberation of the Turkish People	1979	1	1
Fighters of the People	1980	1	0
Fighting Communist Front	1977	1	0
Fighting Communist Unit	1979	1	0
Fighting Communists	1979	1	0
Fighting Ecologist Movement	1985	1	0
Fighting For Freedom Coalition (FFFC-Ottawa)	2010	1	0
Fighting Guerrilla Formation	1996 - 1998	5	0
Fighting Guerrillas of May	1998	2	0
Fighting Nucleus for Communism	1977	1	0
Fighting Popular Rally	1977	7	0
Fighting Proletarian Front	1989	1	0
Fighting Proletarian Squads	1977	13	0
Fighting Women	1978	1	0
Fighting Workers for Communism	1977	1	0
Filipino Soldiers for the Country	1997	1	3
Fire Group	1979	3	0
First Capital Command (PCC)	2006	1	0
First May Movement	1990	1	2
First of October Antifascist Resistance Group (GRAPO)	1975 - 2000	210	86
Flower City Conspiracy	1970	1	0
Flying Eagles (Vigilante Group)	1989	1	24
Forbid the Evil Group (Moslem Militants)	1992	3	0
Forbidden Blockade (Greece)	2008	1	0
Force 17	1984 - 1990	17	11
Forces for the Defense of Democracy (FDD)	2003	1	4
Forces for the Unification of the Central African Republic	2008	1	0
Forces of the Free Arab	1989	1	0
Forces of the Struggling Ranks	1980 - 1981	4	0
Forest Brothers	1998 - 2009	3	10
Former Interior Ministry Officers	1994	3	0
Forqan Group	1979 - 1981	18	17
Forum for the Restoration of Democracy-Kenya	1992 - 1997	2	1
Fourth Reich Skinheads	1992	1	0
France's Honour	1989	1	0
Francia	1979	8	0
Francisco Villa People's Front	1994 - 1995	2	1
Fred Hampton Unit of the People's Forces	1976	2	0
Free Aceh Movement (GAM)	1997 - 2005	113	128
Free All Political Prisoners in Holland	1992	1	0
Free Democratic People's Government of Laos	2003	1	0
Free Fatherland	1984 - 1985	2	2
Free Fatherland Youth Guerrilla Army	1991	1	0
Free Galician People's Guerrilla Army	1987 - 1990	47	4
Free Lebanon	1979	1	0
Free Nasserite Revolutionaries	1982	2	26

GROUP	DATES ACTIVE	TOTAL ATTACKS	TOTAL FATALITIES
Free Papua Movement	1990 - 2011	18	23
Free Revolutionaries Movement-The Giants	1980	1	5
Free Syrian Army	2011	2	10
Freedom Eagles of Africa	2009	2	0
Freedom Party	1987 - 1989	3	4
French Armed Islamic Front	2004	1	0
French Liberation Front	1980	1	0
Friendly Company	1999	1	0
Friends of Freedom	2010	2	0
Front de Liberation du Quebec (FLQ)	1970	2	1
Front for Armenian Liberation	1973	1	0
Front for the Liberation of Cabinda	1992	2	0
Front for the Liberation of Lebanon from Foreigners	1980 - 1983	15	238
Front For the Liberation of the Azores	1977 - 1978	8	0
Front for the Liberation of the Enclave of Cabinda	1977 - 2010	21	22
Front for the Liberation of the French Somali Coast	1975 - 1976	3	1
Front for the National Liberation of Puerto Rico	1978	3	0
Front for the Restoration of Unity and Democracy	1991 - 1992	5	236
Front Line Armed Nuclei (FLAN)	1982	1	0
Front of French National Liberation	1978	1	0
Front of Resistance and National Liberation of Albanians	1991	1	0
Fronte Paesanu Corsu di Liberazione (FPCL)	1975	1	0
Fuerza Nueva	1978 - 1982	5	1
Fuerzas Armadas de Liberacion Nacional (FALN)	1970 - 1982	123	7
Fuerzas Armadas Revolucionarias del Pueblo (FARP)	2000 - 2001	3	0
Fuerzas Autonómicas y Destructivas León Czolgosc	2006	1	0
Fuerzas Populares Jose Leonardo Chirinos	1992	1	0
Furious Rebellion	1994	1	0
Future movement (Lebanon)	2008	2	2
GAC	1970 - 1974	7	0
Ganda Koi	1994	1	0
Gangs of Conscience	2008 - 2009	2	0
Garo National Liberation Army	2010 - 2011	24	17
Gay Liberation Front	1977	2	0
Gazteriak	1999	1	0
Generation of Arab Fury	1989	2	1
George Jackson Brigade	1975 - 1977	19	1
Gholam Yahya Akbar	2009	1	0
Gilad Shalhevet Brigades	2001	1	3
Global Intifada	2005 - 2009	2	0
GN-95	1996	1	0
God our Father Cult	1990	1	5
God's Army	2000	2	6
God's Oppressed Army	1992	2	0
Gono Bahini (GB)	2009	2	4
GP II	1981	1	0
Gracchus Babeuf	1989 - 1991	5	0
Great Eastern Islamic Raiders Front (IBDA-C)	1994 - 2003	34	38
Great Japan Patriotic Party	1992	1	0

GROUP	DATES ACTIVE	TOTAL ATTACKS	TOTAL FATALITIES
Greek Anarchists' Union	1992	2	0
Greek Anti-Dictatorial Youth (EAN)	1973	1	0
Greek Bulgarian Armenian Front	1986	1	1
Greek National Socialist Organization	1977 - 1978	3	1
Greek Popular Resistance	1979	1	0
Green Rennet	1999	1	0
Grey Wolves	1981 - 1998	8	1
Group for a Strong Revolutionary Movement	1991	1	0
Group for Martyred Isam as-Sartawi	1983	2	0
Group of Guerilla Combatants Jose Maria Morelos y Pavon	2000	1	0
Group Yuri Choukewitch	1980	1	0
Grozny Jamaat	2002	1	17
Grupo Armado de Liberacion Argentina (GALA)	1983	1	0
Grupo de Combatientes Populares	1997	1	0
Grupo Estrella	1980 - 1982	4	0
Grupo Libertad	1992	1	0
Gruppe Haw Weg Den Scheiss	1984 - 1985	2	0
Guadalcanal Liberation Army	1999	1	2
Guadalcanal Liberation Front (GLF)	2002	1	1
Guadeloupe Liberation Army	1980 - 1983	7	1
Guardians of the Islamic Revolution	1987	2	2
Guards of the Fighting Proletariat	1979	1	0
Guardsmen of Islam	1980 - 1984	2	3
Guatemalan Communist Party	1980 - 1983	2	13
Guatemalan Labor Party (PGT)	1978 - 1990	22	11
Guatemalan National Revolutionary Unity (URNG)	1983 - 1996	131	115
Guerilla Party of the Galician Poor	1991	3	0
Guerrilla Army of the Poor (EGP)	1975 - 1994	157	579
Guerrilla Column 29 September	1982	1	0
Guerrilla Command Force 97	1997	1	0
Guerrilla Commando of the people	1981	1	0
Guerrilla Forces for Liberation	1987	7	0
Guerrilla Movement of the Poor (MGP)	1991	0	0
Guerrillas of Christ the King	1977 - 1979	2	0
Gugama Youth Federation	2008	1	0
Gulf Cartel	2008	1	8
Gurkha National Liberation Front (GNLF)	1987 - 1989	59	42
Gutierrez Gomez Resistance Group	1984	2	0
H-World/Heavenly Group	1995	1	3
Habi's Er'roub seriat	2001	1	7
Haika	2001	1	0
Hamas (Islamic Resistance Movement)	1989 - 2008	292	784
Hamawand Tribe	1992	1	14
Hanchongryun	1996	1	0
Haqqani Network	2011	10	153
Harakat ul-Mujahidin (HuM)	1999 - 2004	5	21
Harakat ul-Mujahidin Al-Almi	2002	1	3
Harakat-i-Inqilahi-i-Islami	1992	1	1
Harkat ul Ansar	1994 - 2000	14	36

GROUP	DATES ACTIVE	TOTAL ATTACKS	TOTAL FATALITIES
Harkatul Jihad-e-Islami	1999 - 2011	21	285
Hasmoneans (Jewish Settler Group)	1992	1	0
Hatikvah Leumi or National Hope	1980	1	0
Hector Rio De Brigade	1983	1	4
Hells Angels	1999	1	0
Heroes of Canto Grande	1992	1	0
Hezb-e Wahdat-e Islami-yi Afghanistan	1992	5	5
Hill Students Council	1992	1	0
Hiroyuki Jo	1995	1	1
Hizb al-Tahrir al-Islami (HT)	2004 - 2007	6	7
Hizb-I-Islami	1988 - 2010	30	57
Hizballah	1982 - 2008	366	1,189
Hizballah Palestine	1992	2	3
Hizbul al Islam (Somalia)	2008 - 2010	27	38
Hizbul Mujahideen (HM)	1990 - 2011	84	352
Hmar People's Convention-Democracy (HPC-D)	2008	1	0
Hofstad Network	2004	1	1
Holders of the Black Banners	2004	1	0
Holy Spirit Movement	1988 - 1990	7	80
Homeland and Freedom Group	1985	1	0
Honour of the Police	1979	1	1
Hoodie Wearers	2009	1	0
Hotaru (Firefly)	1988	1	0
Hubay Qah Group	1990	1	0
Human Rights Defence Committee	1994	1	0
Human Rights Renewal Movement	1999	1	0
Huria Kristen Batak Protestan (HKBP)	1995	4	1
Hynniewtre National Liberation Council (HNLC)	2008	1	1
Iberian Anarchist Federation	1978	3	4
Iberian Liberation Movement (MIL)	1972 - 1974	10	1
Iconoclasts	2000	1	0
Idealist Association	1978	3	1
Idriss Miskine Group	1984	1	0
Ikhwan Jammu and Kashmir	1996	2	5
Ikhwan-ul-Muslimeen	1991	3	0
Illuminating Paths of Solidarity	2009	6	0
Imam Hussein Brigade	2005	1	1
Imperial Iranian Patriotic Organization	1981	1	0
Independent Armed Revolutionary Commandos (CRIA)	1976 - 1977	18	0
Independent Nasserite Movement	1982 - 1986	2	0
Independent Peasants Union	1978	5	1
Indian Mujahideen	2008 - 2011	13	64
Indian Tigers	1996	1	0
Indigenous People's Federal Army (IPFA)	2001	1	0
Indipendenza	1992	10	0
Informal Anarchist Federation	2003 - 2011	23	0
Inkatha Freedom Party (IFP)	1986 - 1996	49	331
Institutional Revolutionary Party (PRI)	1997	14	100
Insurgency Commune	1987	1	1
Internal Front	1984	1	0

GROUP	DATES ACTIVE	TOTAL ATTACKS	TOTAL FATALITIES
International Anti-Communist Intelligence Service	1978	1	1
International Committee Against Nazism	1979	5	0
International Communist Brigade	1978	1	0
International Communist Group	1984	2	0
International Justice Group (Gama'a al-Adela al-Alamiya)	1995	1	1
International movement of the proletariat(leftist)	1980	1	0
International Proletarian Groups	1981	1	0
International Revolutionary Action Group (GARI)	1973 - 1977	25	0
International Revolutionary Solidarity	1975 - 1988	6	0
International Solidarity	2000	1	0
Internationalist Cells	1988	3	0
Intifada Martyrs	2000	1	2
Into the Blue Commando of the Revolutionary Cells	1986	2	0
Iparretarrak (IK)	1980 - 2005	57	2
Iranian Revolution Organization	1981	1	1
Iraq's Jihadist Leagues	2008 - 2009	3	0
Iraqi Democratic Front	1982	2	0
Iraqi Islamic Vanguard for National Salvation (IIVNS)	1994 - 1999	2	1
Iraqi Liberation Army	1981	1	41
Iraqi Mujahideen	1980 - 1983	9	24
Iraqi National Congress (INC)	1994	2	0
Iraqi Revolutionary Forces	1992	4	4
Iraqi Strugglers' Movement	1980	1	0
Irish National Liberation Army (INLA)	1975 - 2007	123	105
Irish People's Liberation Organization (IPLO)	1986 - 1992	21	16
Irish Republican Army (IRA)	1970 - 2011	2,674	1,792
Isatabu Freedom Movement (IFM)	2000	1	0
Islam Liberation Front	1992 - 1994	7	4
Islambouli Brigades of al-Qa'ida	2004	5	120
Islamic Action Organization	1984	1	0
Islamic Arab Front of Azawad (FIAA)	1994	2	60
Islamic Army in Iraq (al-Jaish al-Islami fi al-Iraq)	2004 - 2009	9	24
Islamic Brotherhood	1991	1	0
Islamic Cause Organization	1983	2	0
Islamic Companies	2006	1	5
Islamic Courts Union (ICU)	2005 - 2008	12	8
Islamic Defenders' Front (FPI)	2006	1	0
Islamic Fateh	2003	1	1
Islamic Front	2002 - 2005	2	14
Islamic Front for the Liberation of Bahrain	1996	1	0
Islamic Front for the Liberation of Palestine (IFLP)	1990	1	0
Islamic Golden Army	1992	1	0
Islamic Holy Star	1987	1	0
Islamic International Peacekeeping Brigade (IIPB)	2002	1	129
Islamic Jihad Beit-al Maqdis Group	1990	1	0
Islamic Jihad Brigades	2005	1	0
Islamic Jihad Front	2005	1	4
Islamic Jihad Group (IJG)	2004	3	7
Islamic Jihad Organization (Yemen)	1997 - 1998	2	3

GROUP	DATES ACTIVE	TOTAL ATTACKS	TOTAL FATALITIES
Islamic Jihad Union (Uzbekistan)	2009 - 2011	3	23
Islamic Legion	1990	1	14
Islamic Liberation Organization	1986	1	0
Islamic Movement for Change	1996	1	15
Islamic Movement of Martyrs	1996	1	1
Islamic Movement of Uzbekistan (IMU)	2000 - 2010	6	12
Islamic Movement Organization	1990 - 1992	2	1
Islamic Party (Somalia)	2009 - 2010	2	3
Islamic Party of Kenya (IPK)	1992	3	0
Islamic Renewal Movement	1995	1	0
Islamic Revenge Organization	1991 - 1992	1	1
Islamic Revival Movement	1995	1	2
Islamic Revolutionary Command	1991	1	0
Islamic Salvation Front (FIS)	1991 - 1994	153	210
Islamic Salvation Front (Palestine)	1995	1	0
Islamic State of Iraq (ISI)	2007 - 2011	187	1,921
Islamic Struggle Front	1990	1	0
Islamic Swords of Justice in the Land of Ribat	2006	1	0
Islamic Tendency	2006	1	2
Islamic Unification Movement	1985	1	21
Issa and Gurgura Liberation Front	1991	1	100
Issui Kai	1991	1	0
Italian Combatents for Alto Adige	1980	1	0
Italian Extreme Nationalist Organization	1979	1	0
Italian Social Movement (MSI)	1976 - 1979	17	10
Ittehad-i-Islami	1991 - 1994	2	0
Ivorian Popular Front	1992	1	0
Jacinto Araujo Internationalist Rebel Insurrectionist Brigade	2010	1	0
Jacques de Molay Group	1987	1	0
Jadid Al-Qa'idah Bangladesh (JAQB)	2007	3	0
Jagrata Towhidi Janata (Rising Faithfuls)	1996	1	0
Jaime Bateman Cayon Group (JBC)	1994 - 1999	6	1
Jaish al-Ta'ifa al-Mansura	2004 - 2005	2	4
Jaish Al-Umma (Army of the Nation)	2008	1	0
Jaish-e-Mohammad (Iraq)	2006	1	0
Jaish-e-Mohammad (JeM)	2000 - 2006	32	108
Jama'atul Mujahideen Bangladesh (JMB)	2003 - 2010	20	38
Jamaa Al-Islamiya Al-Alamiya (World Islamist Group)	2004	2	36
Jamaat-al-Fuqra	1983 - 1990	5	1
Jamaat-E-Islami (Bangladesh)	1991 - 2010	14	27
Jamaat-E-Islami (India/Pakistan)	1992 - 2011	11	12
Jamaica Labor Party	1980 - 1997	2	10
Jamiat ul-Mujahedin (JuM)	1996 - 2011	18	97
Jamiat-e Islami-yi Afghanistan	1992 - 1994	3	5
Jammu and Kashmir Islamic Front	1995 - 1996	3	21
Jammu and Kashmir Liberation Front	1984 - 1996	55	53
Janatantrik Terai Mukti Morcha (JTMM)	2006 - 2011	60	29
January 22nd Group	1979 - 1981	2	1
Japan National Youth Alliance	1992	1	0

GROUP	DATES ACTIVE	TOTAL ATTACKS	TOTAL FATALITIES
Japan Socialist Youth League Revolutionary Association	1986	1	3
Japanese Independence Patriotic Party	1987	1	1
Japanese Red Army (JRA)	1970 - 1988	9	33
Jarnail Khalsa	1985	1	2
Jarra	1999	1	0
Jarrari	1992	1	0
Javier Heraud Revolutionary Commando	1985	1	0
Jaysh al-Muslimin (Army of the Muslims)	2004	1	0
Jemaah Islamiya (JI)	2000 - 2009	79	346
Jenin Martyrs Brigades	2004	1	0
Jerusalem Groups Hebrew (Qvutzot Yerushalayim)	2002	1	3
Jewish Action Movement	1979	5	0
Jewish Armed Resistance	1971 - 1982	18	2
Jewish Combat Organization	1979	1	0
Jewish Committee of Concern	1978	3	0
Jewish Defenders	1981	1	0
Jewish Defense League (JDL)	1970 - 1986	81	4
Jewish Defense Organization	1988	1	0
Jewish Direct Action	1984	1	0
Jewish Fighting Organization (Eyal)	1995	1	1
Jewish Resistance Assault Team	1972	1	0
Jewish Terror	1983	10	0
Jharkhand Liberation Tigers (JLT)	2008 - 2011	5	8
Jharkhand Tribal Forces	1992	2	0
Jihad Brigades	1987	1	0
Jihad Islamic League Front	1997	1	2
Jihad Martyr's Companies in Iraq	2004	1	8
Jihadi Movement of the Sunna People of Iran	2008	1	12
Jonathan Jackson Brigade	1970	1	4
Jordanian Islamic Resistance	1997 - 2000	2	0
Jordanian Masses Organization	1980	0	0
Jordanian National Liberation Movement	1972	1	0
Jordanian Revolutionary and Military Committee	1983	2	0
Jorge Eliecer Gaitan Nationalist Movement	1988 - 1989	2	0
Jorge Martinez Association of Combatants	1991	1	0
Jose Benito Escobar Workers Federation	1992	1	0
Juan Antonio Lavallega Command	1992	1	0
Juan Rayo Guerilla Group	1982	1	0
Juarez Cartel (Carrillo-Fuentes / Mexico)	2008	1	0
July 14 Movement	1979	1	0
July 20th Brigade	2005	2	0
Junaid Jihadist Battalion	2005	1	0
Jund al-Sahabah Group	2006	1	31
Jund al-Sham for Tawhid and Jihad	2006 - 2008	7	6
Jund Al-Tawid	2010	1	0
Jundallah	2006 - 2010	16	190
June 16 Organization	1989	1	0
Just Punishment Brigades	2007	1	1
Justice and Equality Movement (JEM)	2006 - 2011	12	251
Justice and Liberty Warriors	1990	1	0

GROUP	DATES ACTIVE	TOTAL ATTACKS	TOTAL FATALITIES
Justice Army for Defenseless Peoples	1997	1	4
Justice Commandos for the Armenian Genocide	1975 - 1986	48	34
Justice Guerrillas	1974	1	0
Justice Party	1979	1	1
Kabataang Makabayan (KM)	1970	1	0
Kach	1988 - 2005	12	11
Kachin Independence Army (KIA)	1988 - 1992	13	57
Kahane Chai	1992 - 1994	2	0
Kaitseliit Paramilitary Group	1992	1	0
Kamal Boulander Group	1997	1	2
Kamal Udwan Unit of Palestinians	1981	1	1
Kampuchean Peoples National Liberation Army	1989	1	3
Kamtapur Liberation Organization (KLO)	2004 - 2009	2	6
Kanak Socialist National Liberation Front	1984 - 1988	5	4
Kanakas	1984	2	1
Kanglei Yawol Kanna Lup (KYKL)	2001 - 2010	9	21
Kangleipak Communist Party (KCP)	2006 - 2011	30	6
Karabulak Gang	2010	1	2
Karbi Longri National Liberation Front (KLNLF)	2007	2	4
Karbi Longri North Cachar Liberation Front (KLNLF)	2006 - 2009	16	24
Karbi National Volunteers (KNV)	2000	2	10
Karen National Union	1979 - 2010	79	215
Karenni National Progressive Party	1991 - 2005	5	27
Karnataka State Farmers Association	1996	1	0
Kashmir Freedom Force	2003	1	0
Kashmiri Hizballah	1991 - 1994	3	3
Kata'ib al-Khoul	2006 - 2008	2	2
Katsina Muslim Society	1991	1	0
Katsuhisa Omori	1984	2	0
Kawal ng Pilipinas (Soldier of the Philippines)	2006	1	0
Kentavros	1977	1	0
Kenya African National Union (KANU)	1992 - 1997	5	5
Keshet	1988 - 1989	7	0
Khalid ibn Walid	1985	1	23
Khalid ibn Walid Brigade	2004	1	0
Khalistan Commando Force	1987 - 1995	20	118
Khalistan Liberation Force	1986 - 1999	15	125
Khalistan Zindabad (Long Live Khalistan)	1994	2	10
Khasi Students Union	1992	2	1
Khatm-e-Nabuwat (KeN)	2010	2	1
Khmer Rouge	1978 - 1999	160	361
Khmer Serei Guerrillas	1980	1	1
Khristos Kasimis	1977 - 1986	5	0
Khun Sa Guerrillas	1995	5	3
King Street	1994	1	0
Kirat Janabadi Workers Party	2008 - 2011	5	0
Kisan Indian Organization	1986	7	8
Kisar Liberation Movement	1986	1	0
Koetoh Reh	1984	1	0
Kokang	2009	1	34

GROUP	DATES ACTIVE	TOTAL ATTACKS	TOTAL FATALITIES
Kolla Benjo Cruz Command	1992	2	0
Komando Jihad (Indonesian)	1981	1	4
Korean Youth League	1974	1	1
Kosovo Liberation Army (KLA)	1996 - 2008	27	44
Krause Group	1974	2	0
Ku Klux Klan	1970 - 2008	23	7
Kuki Liberation Army (KLA)	2003 - 2011	4	0
Kuki National Army (KNA)	2007 - 2009	3	6
Kuki National Front (KNF)	2003 - 2008	2	1
Kuki Revolutionary Army (KRA)	2002 - 2011	2	11
Kurdish Democratic Party-Iran (KDP)	1989 - 1990	4	15
Kurdish Democratic Party-Iraq (KDP)	1976 - 1998	11	64
Kurdish Islamic Unity Party	1995	1	2
Kurdistan Free Life Party	2008 - 2011	9	46
Kurdistan Freedom Hawks (TAK)	2004 - 2006	13	1
Kurdistan National Union	1987	2	0
Kurdistan Workers' Party (PKK)	1984 - 2011	1,225	3,595
La Paz peasants federation	1984	1	0
Laiq Chanio Group of Dacoit Bandits	1992	1	1
Landless Peasants' Movement (MST)	1991 - 1997	7	5
Lashkar-e-Balochistan	2009 - 2010	2	0
Lashkar-e-Fidayan-e-Islam	2003	1	0
Lashkar-e-Islam (Pakistan)	2008 - 2011	34	52
Lashkar-e-Jhangvi	1996 - 2011	37	569
Lashkar-e-Omar	2001 - 2002	2	28
Lashkar-e-Taiba (LeT)	1999 - 2011	118	1,002
Lashkari-e-Adam (Army of Adam)	1991	1	0
Laskar Jihad	2002	1	2
Last Alternative Guerrilla Front	1996	1	0
Last Generation	2000	1	0
Latin America Anti-Communist Army (LAACA)	1974 - 1978	4	0
Latin American Anti-Fascist Command	1987	3	0
Latvian Republic Volunteer Troops	1992	1	0
Lavalas Supporters	1995	1	2
League for National Democracy	1989	1	2
League of Communists	1982	2	0
League of French Fighters Against Jewish Occupation	1979	1	0
League of the 18	1975	1	0
Lebanese Arab Army	1982	1	0
Lebanese Armed Revolutionary Faction (LARF)	1981 - 1985	8	3
Lebanese Free Will Movement	1978	1	4
Lebanese Liberation Front	1986 - 1988	7	7
Lebanese National Resistance Front	1983 - 1991	28	71
Lebanese Secret Army	1987	1	1
Lebanese Socialist Revolutionary Organization	1973 - 1974	4	4
Lesotho Liberation Army (LLA)	1979 - 1988	12	19
Libardo Moratoro Front	1992	1	0
Liberation Army for Presevo, Medvedja and Bujanovac	2001	2	0
Liberation Battalion	1987	1	1
Liberation Commando Rudolf Hess	1986	1	0

GROUP	DATES ACTIVE	TOTAL ATTACKS	TOTAL FATALITIES
Liberation Front of Southern Sudan	1983	1	0
Liberation Front of the Senegalese People	1988	1	0
Liberation Hawks	1987	1	1
Liberation Tigers of Tamil Eelam (LTTE)	1975 - 2010	1,600	10,838
Liberation Youth Coordinating Board	1991	1	0
Liberia Peace Council	1995	1	1
Liberians United for Reconciliation and Democracy	2002 - 2003	3	0
Libyan People's Bureau	1985	1	1
Liga Agraria Campesina	1980	1	0
Likud Political Party	1992 - 1996	3	0
Lithuanian Land Guard	1992	1	0
Lolita Lebron Puerto Rican Liberation Command	1977	1	0
Lord's Resistance Army (LRA)	1994 - 2011	211	2,049
Lorenzo Zelaya Revolutionary Front (LZRF)	1980 - 1988	40	20
Los Barriales	1985	1	0
Loyalist Action Force	2003	1	0
Loyalist Volunteer Forces (LVF)	1997 - 2000	26	10
Luis Boitel Commandos	1977	9	0
LW	2008	1	0
M-19 (Movement of April 19)	1997	564	1,402
M-19 Splinter	1995	1	0
M-5	1984	2	0
M-7	1974	2	0
M12J	1974	1	0
Maccabee Squad and the Shield of David	1994	2	0
Macetos (Paramilitary Group)	1995	1	7
Macheteros	1978 - 1998	37	6
Madhesh Rastra Janatantrik Revolutionary - Nepal	2009 - 2011	3	3
Madhesi Liberation Front	2008	1	3
Madhesi Mukti Tigers (MMT)	2008 - 2011	6	0
Madhesi People's Rights Forum (MPRF)	2007 - 2011	3	5
Madhesi Virus Killers	2008	1	0
Mahan Madhesh Janakantri Party (MMJP)- Nepal	2009 - 2011	4	0
Mahaz-e-Inquilab	2005	3	60
Mahaz-e-Milli Islami Afghanistan	1991	1	2
Mahdaviyat	1999	1	1
Mahdi Army	2004 - 2009	20	60
Mahidi	1999	1	1
Mahir Cayan Suicide Group	1975	1	0
Major Muhammad Zuhryn Group	1986	1	0
Malaysian Communist Party	1980 - 1988	2	3
Manatari Brotherhood	1994	1	1
Mandela Soccer Club	1989	1	1
Mano Blanca	1978 - 1988	5	0
MANO-D	1970	1	1
Manuel Ascencio Padilla Group	1992	1	0
Manuel Gonzales Patriotic Front	1990	2	0
Manuel Jose Arce Commando	1988	6	1
Manuel Rodriguez Patriotic Front (FPMR)	1984 - 1997	830	93
Maoist Communist Center (MCC)	1986 - 2009	32	214

GROUP	DATES ACTIVE	TOTAL ATTACKS	TOTAL FATALITIES
Maoist Communist Party (MKP)	2004	1	1
Maoist Farm Laborers Struggle Committee (MXSS)	1994	1	6
Mariano Moreno National Liberation Commando	2005	31	0
Martyr Abu Ja'far Group	1980 - 1982	2	76
Martyr Ahmad Alishuay B Group	1989	1	0
Martyr Ali Nasir group	1981	1	2
Martyr Riyad Taha Group	1989	1	0
Martyr Sami al-Ghul Brigades	2006	1	0
Martyrs Halim Group	1984	1	0
Martyrs of Baalbek	1984	1	0
Martyrs of La Talanguera	1981	2	0
Martyrs of Saad Sayel	1983	1	0
Martyrs of Tell Al-Zaltar	1985	1	0
Martyrs revenge organization	1979	1	0
Maruseido (Marxist Youth League)	1974	2	0
Marxist Peoples Fedayeen of Iran	1986	1	0
Marxist Resistance Movement	1978	1	0
Marxist-Leninist Armed Propaganda Unit	1977 - 1980	6	8
Masad Agents	1986	1	2
Masada, Action and Defense Movement	1972	1	0
Maskini Liberation Front	1975	3	27
Massive escape	1997	1	0
Matan Abdulle	1999	1	5
Maximiliano Gomez Revolutionary Brigade	1987 - 1988	14	7
Maximiliano Hernandez Martinez Brigade	1980 - 1992	7	17
May 15th Group	1998	1	0
May 15 Organization for the Liberation of Palestine	1981 - 1984	3	0
May 19 Communist Order	1976 - 1985	18	1
May 36th Group	1991	1	0
May 98th Group	1998	2	0
Mazdoor Kisan Sangram Samiti (MKSS)	1999	1	4
Medellin Drug Cartel	1991 - 1992	3	19
Meibion Glyndwr	1988 - 1990	31	0
Meinhof-Puig-Antich Group	1975	5	0
Merille Militia	2010	2	4
Mesopotamian Army (MEZOR)	1994	1	0
Mexican Revolutionary Movement	1992	1	0
Miguel Angel Cabrera Command	1978	1	1
Miguel d'Escoto Brockman Community Movement	1991	1	0
Mikhail Kaltezas Anarchist Organization	1990	1	0
Milicias Rodriguistas	1990	4	0
Militant Argentine Patriots	1984	1	0
Militant Forces Against Huntingdon	2009	1	0
Militant Movement for Madagascan Socialism	1992	1	8
Militant Organization of Russian Nationalists	2008	1	1
Militant Zionist Resistance Movement	1980	1	0
Militants of the National Action Party	1992	1	0
Military Council for the True Liberation of Albania	1976	1	0
Military Liberation Front of Colombia	1975	1	0
MILPAS Contrás	1981	1	1

GROUP	DATES ACTIVE	TOTAL ATTACKS	TOTAL FATALITIES
Minority Unity Forum	1994	1	1
Minutemen American Defense	2009	1	2
Miskito Indian Organization	1985 - 1994	4	13
Misurasata Indian Organization	1983 - 1986	34	270
Mizo National Front	1979 - 1982	14	24
MLA	1984	1	0
Mlada Bosna	2008	1	0
MNR of the Left	1982	1	0
Mohajir National Movement	1991 - 1995	9	31
Mong Thai Army (MTA)	1991 - 1995	2	13
Mongolian Mukti Morcha	2009	1	1
Montoneros (Argentina)	1970 - 1991	117	212
Montoneros Patria Libre	1986 - 1989	5	0
Morazanist Front for the Liberation of Honduras	1983 - 1990	7	31
Moro Islamic Liberation Front (MILF)	1986 - 2011	334	715
Moro National Liberation Front (MNLF)	1975 - 2009	186	296
Moro National Liberation Front Splinter group	1992	1	1
Moslem Janbaz Force	1990	3	4
Moslem Liberation Front	1979	1	1
Motherland Party	1994	1	1
Movement for Actualization of Biafra	2001 - 2006	2	2
Movement for Cuban Justice (Pragmatistas)	1975	1	1
Movement for Democracy and Development (MDD)	1995	1	0
Movement for Democracy and Justice in Chad (MDJT)	1999 - 2002	2	77
Movement for Democratic Change (MDC)	2002 - 2006	3	0
Movement for Dignity and Sovereignty	1994	1	0
Movement for Rebuilding Fatah	1983	1	1
Movement for Self-Determination	1995	1	1
Movement for the Actualization of Biafra	2007	1	14
Movement for the Emancipation of the Niger Delta	2006 - 2010	67	256
Movement for the Protection of Jerusalem	1991	1	0
Movement for the Supremacy of Reason	1989	1	0
Movement for Triqui Unification and Struggle	1991	1	4
Movement of Democratic Forces of Casamance	1988 - 2010	63	163
Movement of Islamic Action of Iraq	1982	2	1
Movement of Niger People for Justice (MNJ)	2007 - 2008	8	35
Movement of the Islamic State (MEI)	1994	1	11
Movement of the Revolutionary Left (MIR) (Bolivia)	1979	1	0
Movement of the Revolutionary Left (MIR) (Chile)	1976 - 1994	306	45
Movement of the Revolutionary Left (MIR) (Peru)	1975 - 1988	25	2
Movement of the Revolutionary Left (MIR) (Venezuela)	1971 - 1973	2	0
Movement of the Third Reich	1981	1	1
Mozambique Liberation Front (FRELIMO)	1988 - 1992	2	50
Mozambique National Resistance Movement (MNR)	1979 - 1991	199	2,443
Muhammed Shuqayr Group	1989	1	0
Mujahedeen Army	2004 - 2006	2	3
Mujahedeen Brigades	2004	1	0
Mujahedeen Corps in Iraq	2004 - 2009	2	2
Mujahedeen Shura Council	2005 - 2006	8	67
Mujahedin Kompak	2001	1	0

GROUP	DATES ACTIVE	TOTAL ATTACKS	TOTAL FATALITIES
Mujahideen Islam Pattani	2002 - 2004	4	8
Mujahideen Kashmir	1990	6	3
Mujahideen Youth Movement (MYM)	2007 - 2009	24	57
Mujahideen-I-Khalq (MK)	1972 - 2001	111	521
Mujahidin Ambon	2005	1	0
Munadil al-Jumalyi Brigade	2008	1	0
Musa Sudi Yalahow Militia	2001	1	0
Muslim Brotherhood	1979 - 1992	89	220
Muslim Commando (Iraqi revolutionary brothers)	1982	1	0
Muslim Mujahideen	1996	1	5
Muslim United Army (MUA)	2003	1	0
Muslims Against Global Oppression (MAGO)	1998	1	1
Mustafa Aktas Fighting Unit	1986	1	0
Mutahida Majlis-e-Amal	2006	2	0
Mutassim Bellah Brigade	2004	1	0
Muttahida Qami Movement (MQM)	1990 - 2002	169	227
Mwakenya Dissident Movement	1989	2	4
Naga People's Council (NPC)	2008	1	0
Naga Students Federation	1994	2	0
Nahzat e Eslami	1991	1	0
Najib Watan Party Faction	1992	1	0
Nara Red Army	1990	1	0
National Accord Movement	1995	1	0
National Alliance (Chad)	2008	3	0
National Anti Communist Commando	1984 - 1987	3	2
National Anti-Corruption Front (FNA)	2005	1	0
National Army for the Liberation of Uganda (NALU)	1999	1	1
National Awami Party	1975	1	1
National Bolshevik Party	2000	1	0
National Committee Against Independence (CNCI)	1984 - 1988	2	0
National Committee to Combat Fascism	1970	2	1
National Congress for the Defense of the People	2008	5	0
National Council for Defense of Democracy (NCDD)	1996 - 2003	24	65
National Council of Maubere Resistance	1996	1	9
National Defense Youth Corps	1978	1	0
National Democratic Alliance (NDA)	1995	1	0
National Democratic Alliance of Sudan	1999	1	0
National Democratic Front of Bodoland (NDFB)	1992 - 2011	86	351
National Democratic Front of Liberia	1992	1	0
National Democratic Party	1994	2	3
National Development Party (NDP)	1997	1	0
National Front (Greece)	1985	1	0
National Front Against Tigers (NFAT)	2000 - 2001	3	0
National Front for the Liberation of Belgium	1983	1	1
National Front for the Liberation of Cuba (FLNC)	1972 - 1976	22	2
National Front for the Salvation of Libya	1984	4	17
National Front Security Service	1992	1	0
National Independent Committee for Political Prisoners	1980	2	0
National Integration Front (FIN)	1972 - 1975	4	0
National League for Democracy (Burma / Myanmar)	2010	1	0

GROUP	DATES ACTIVE	TOTAL ATTACKS	TOTAL FATALITIES
National Liberation Alliance of Sa Kao	2006	1	0
National Liberation Army (Ecuador)	1989	2	0
National Liberation Army (El Salvador)	1980	1	0
National Liberation Army (Nepal)	2008	1	0
National Liberation Army (NLA) (Macedonia)	2001	35	17
National Liberation Army (Peru)	1989 - 1990	2	6
National Liberation Army of Colombia (ELN)	1970 - 2011	1,315	1,700
National Liberation Front (FNL) (Burundi)	2008 - 2010	26	27
National Liberation Front of Chad	1974	1	0
National Liberation Front of Tripura (NLFT)	1992 - 2011	40	207
National Liberation Movement Party	1980	1	1
National Liberation People's Front (FPLN)	1994	1	0
National Liberation Union	1989	2	0
National Movement Against the Mahgreb Invasion	1988	1	1
National Movement of Iranian Resistance	1984	1	2
National Organization of Cypriot Fighters (EOKA)	1975 - 1999	6	3
National Patriotic Front of Liberia (NPFL)	1990 - 1994	16	196
National People's Movement Coordination Committee	1996	3	0
National People's Party (Rashtriya Janata Dal - RJD)	2000	1	0
National Redemption Front	2006	1	0
National Renewal Party	1996	1	0
National Republican Alliance Party	1985	1	6
National Republican Democracy Movement	1992	1	0
National Resistance Movement (NRM)	1984 - 1985	4	228
National Revolution	1985	3	0
National Revolutionary Command (Umar al-Mukhtar)	1986	3	0
National Revolutionary Front	1989	1	2
National Salvation Forces Organization	1981	1	1
National Socialist Civic Workers Movement	1988	2	21
National Socialist Council of Nagaland	1984 - 1997	16	136
National Socialist Council of Nagaland-Isak-Muivah	2008 - 2011	34	28
National Socialist Council of Nagaland-Khaplang	2008 - 2011	16	13
National Socialist Liberation Front	1975	1	0
National Union for the Total Independence of Angola	1978 - 2002	421	2,562
National United Front for an Independent, Neutral, Peaceful, and Cooperative Cambodia	1996	2	0
National United Front of Democracy Against Dictatorship	2009	1	0
National Youth Resistance Organization	1973	1	0
National Youth Service of Zimbabwe	2002	1	0
Nationalist Integrationist Front (FNI)	2005	1	1
Nationalist Intervention Group	1975	3	0
Nationalist Patriotic Alliance (APN)	1984	4	0
National Socialist Front (NSF)	1999	1	0
Nazi Boerestat Party	1990	1	0
Nepal Defense Army	2008 - 2009	5	5
Nepal People's Army	2007	1	2
Nepali Congress Party (NC)	1997	1	3
Nestor Paz Zamora Commission (CNPZ)	1990	3	1
New Armenian Resistance	1978 - 1983	12	2

GROUP	DATES ACTIVE	TOTAL ATTACKS	TOTAL FATALITIES
New Indigenous Army	1994	1	0
New Jewish Defense League	1978	4	0
New Order	1977 - 1984	2	15
New Order- France	1975 - 1977	4	0
New Partisans Movement	1977	2	0
New Patriotic Party (NPP)	1992 - 1996	2	1
New People's Army (NPA)	1970 - 2011	1,329	3,417
New Revolutionary Alternative (NRA)	1999	1	0
New Revolutionary Popular Struggle (NELA)	2002	1	0
New Ugandan Army	1986	1	1
New World Liberation Front (NWLF)	1970 - 1978	87	1
New Year's Gang	1970	4	1
Nicaraguan Democratic Anti-Communist Movement	1981	1	0
Nicaraguan Democratic Force (FDN)	1983 - 1987	889	7,268
Nicaraguan Resistance	1987 - 1990	231	588
Nicaraguan Revolutionary Armed Force	1983 - 1984	2	0
Niger Delta Freedom Fighters (NDDF)	2008	1	0
Niger Delta Liberation Force (NDLF)-Nigeria	2010	3	0
Niger Delta Patriotic Force	2008	1	0
Niger Delta People's Volunteer Force (NDPVF)	2005 - 2009	4	0
Niger Delta Vigilante (NDV)	2006 - 2008	3	19
Nihilists Faction	1996 - 2009	2	0
Ninth of June Organization	1981	8	0
Nobles of Jordan	2001	1	1
Nordisk Rikspartiet (Nordic National Party)	1991	1	0
Northern Diriangen Front (FND)	1997	3	0
Northern Epirus Liberation Front (MAVI)	1983	1	0
Northern Terror Front	1985 - 1986	3	0
November 10 (Bolivia)	1983	1	0
November 17 Revolutionary Organization (N17RO)	1975 - 2001	114	26
November 21 Organization	1984	5	0
Nuclear Liberation Front	1987	1	0
Nuclei Communist Combattants	1994	1	0
Nucleus of Fighting Communists	1992	1	0
Nucleus of the Armed Struggle	1977	1	0
Number Unobtainable Registered Society	1995	1	0
NVF	2009 - 2011	4	14
OAS-MRP	1988	6	0
October 11 Group	1992	1	0
October Third Movement	1980	1	0
October 1980 Group	1980 - 1981	3	0
Odua Peoples' Congress (OPC)	2000 - 2001	2	0
Official Irish Republican Army (OIRA)	1971 - 1979	41	48
Ogaden National Liberation Front (ONLF)	2007 - 2009	6	134
Oglaigh na hEireann	2008 - 2010	2	0
Okinawa Liberation League	1975	1	0
Omar Bin Khattab Group	2005	1	0
Omar Torrijos Commando for Latin American Dignity	1988 - 1990	2	0
Omega-7	1975 - 1983	57	4
Opposition Jatiya Samajtantrik Del Party	1994	1	0

GROUP	DATES ACTIVE	TOTAL ATTACKS	TOTAL FATALITIES
OPR-33	1972	1	0
Orange Volunteers (OV)	1998 - 2005	11	0
Orde Boerevoik	1990	1	0
Organizacion Democratica Nacionalista (ORDEN)	1980	2	9
Organization 544	1996	1	0
Organization Alliance of Cuban Intransigence	1988	1	0
Organization for Preventing Spread of Nuclear Weapons	1981	2	0
Organization for Purging the Majlis (Parliament)	1980	1	0
Organization for the Defense of Detainees Rights	1991	1	0
Organization for Liberating France of Jewish Occupation	1980	1	0
Organization for the oppressed in Egypt's Prisons	1990	1	11
Organization for Zionist Retribution	1990	1	0
Organization of Anti-Fascist Students	1976	1	0
Organization of Arab Fedayeen Cells	1988	1	0
Organization of Avenging Palestinian Youth	1979	1	0
Organization of Mauritanian Nationalists	1984	1	1
Organization of Metropolitan Proletariat	1989	1	0
Organization of Mujahadin of Islam	1989	1	1
Organization of Soldiers of the Levant	2005	1	2
Organization of the Sons of Occupied Territories	1974 - 1979	2	0
Organization of Volunteers for Puerto Rican Revolution	1978 - 1986	24	1
Organized Comrades for Feminist Counter-Power	1979 - 1981	3	0
Organized Comrads for Communism	1979	1	1
Organized Proletarian Communists	1977 - 1978	3	0
Orly Organization	1981 - 1983	9	1
Oromo Liberation Front	1992	11	282
Otpor	1978 - 2000	4	4
P.R.E.	1981	1	0
Pacific Popular Front	1995	1	0
Pacifist and Ecologist Committee	1982	2	0
Pakistan Muslim League (PML)	1997	1	5
Pakistani People's Party (PPP)	1990 - 1997	7	5
Palestine Liberation Front (PLF)	1979 - 1990	7	13
Palestine Liberation Organization (PLO)	1970 - 1985	179	182
Palestinian Islamic Jihad (PIJ)	1990 - 2011	187	299
Palestinian Islamic Revolutionary Army	1996	1	4
Palestinian Liberation Command	1991	1	0
Palestinian Revolution Forces	1986	6	0
Pan Africanist Congress (PAC)	1979 - 1992	5	6
Pan-Turkish Organization	1985	1	0
Panama Defense Force	1992	3	0
Panthic Committee	1991	1	0
Paraguayan People's Army (EPP)	2010 - 2011	7	3
Parbatya Chattagram Jana Sanghati Samity - Bangladesh	2009	1	0
Partisan Sharpshooters	1998	1	0
Party for Democracy anti-nuclear-test protesters	1995	1	0
Party for the Liberation of the Hutu People	1992 - 2008	39	233
Party of National Conciliation	1980	1	1

GROUP	DATES ACTIVE	TOTAL ATTACKS	TOTAL FATALITIES
Party Unity	1997	1	0
Patria Nueva (New Country)	1980 - 1981	3	1
Patria y Libertad (Fatherland and Liberty)	1986	1	0
Patriotic Command San Jose	1984	1	0
Patriotic Liberation Front	1990	5	0
Patriotic Liberation Front (FPL)	1979	1	0
Patriotic Morazanista Front (FPM)	1988 - 1995	27	10
Patriotic Moroccan Front	1979	1	0
Patriotic Resistance Army (ERP)	1990	1	0
Patriotic Resistance Front in Ituri (FRPI)	2005	1	1
Patriotic Union of Kurdistan (PUK)	1981 - 1997	7	128
Pattani United Liberation Organization (PULO)	1977 - 2006	31	29
Paupa New Guinea Troops	1994	1	0
Peace Conquerors	1985	1	0
Peasant Self-Defense Group (ACCU)	1995 - 1998	27	302
Pedro Albizu Campos Revolutionary Forces	1988 - 1990	7	0
Pedro Leon Arboleda (PLA)	1977 - 1980	7	0
Pemuda Pancasila	1999	1	0
Pentagon Kidnap Group	2002	1	3
People Against Gangsterism and Drugs (PAGAD)	1999 - 2000	9	2
People's Alliance	1995 - 1996	2	0
People's Armed Revolutionary Branch	1978	1	0
People's Army (Myanmar)	1979	6	25
People's Army (Nicaragua)	1979	1	1
People's Army's Pioneers	2001	1	0
People's Combatants' Group	2000	1	0
People's Command	1986	1	0
People's Committee against Police Atrocities	2009 - 2011	28	14
People's Democratic Army	1992	4	0
People's Democratic Party (PDP)	2001 - 2006	2	1
People's Democratic Struggle Movement	2010	1	0
People's Fatherland Movement	1992	8	0
People's Guerrilla Front	1992	1	8
People's Guerrilla Movement	1991	1	0
People's Information Group	1991	1	0
People's Liberation Army	1990	1	2
People's Liberation Army (India)	1979 - 1997	12	29
People's Liberation Army (Mexico)	1974	1	1
People's Liberation Army (Northern Ireland)	1975	1	1
People's Liberation Army (PLA)	1999 - 2010	6	12
People's Liberation Army (United States)	1972	1	0
People's Liberation Force	1991	1	0
People's Liberation Forces (FPL)	1976 - 1980	167	124
People's Liberation Front (JVP)	1990	434	891
People's Liberation Front of India	2008 - 2011	13	12
People's Liberation Front of Niger	1985	1	3
People's Liberation Movement	1981	3	0
People's Liberation Organization of Tamil Eelam	1988 - 1999	4	15
People's Military Organization (OMP)	1979	1	3
People's Militia of Dagestan	1997	2	0

GROUP	DATES ACTIVE	TOTAL ATTACKS	TOTAL FATALITIES
People's National Liberation Movement	1994	1	0
People's Rebellion	1991	1	0
People's Resistance Organized Army	1974	1	2
People's Revolutionary Army (ERP)	1997 - 2005	9	1
People's Revolutionary Army (ERP) (El Salvador)	1974 - 1979	65	48
People's Revolutionary Army (ERP) (Mexico)	1998 - 2007	4	3
People's Revolutionary Command (CRP)	1978 - 1986	10	0
People's Revolutionary Militias (MRP)	1983 - 1984	2	3
People's Revolutionary Organization	1992 - 1996	14	1
People's Revolutionary Organization- Colombia (ORP)	1983 - 1984	2	3
People's Revolutionary Party (PRP)	1975	1	0
People's Revolutionary Party of Kangleipak (PREPAK)	2003 - 2010	10	1
People's Revolutionary Union	1980	1	0
People's Revoultionary Party	1971	1	0
People's Sovereignty Party (PDR)	1999	1	0
People's Tamil Organization	2006	2	6
People's Temple	1978	1	5
People's United Democratic Movement (PUDEMO)	2006	1	0
People's United Liberation Front (PULF)	2008 - 2011	7	5
People's War Group (PWG)	1989 - 1993	93	392
Peoples' Brigade For A Healthy Genetic Future	1981	1	0
Peronist Armed Forces (FAP)	1970 - 1974	9	6
Personnel of the National Information Center	1979	1	0
Peru's Anti-Terrorist Command	1991	1	17
Peruvian Anti-Communist Alliance (AAP)	1978	1	0
Pessach Group	1981	2	0
Peykar	1982	1	0
Phalange	1978 - 1992	4	5
Plowshares	1983	1	0
Policarpa Salauarpieta (Women's Command)	1979	1	0
Polisario Front	1976 - 1987	19	220
Polish Revolutionary Home Army	1982	1	0
Political Military Organization of Paraguay	1976	1	0
Politico-Military Revolutionary Command	1978	1	0
Poor People's Party	1985 - 1990	2	0
Popular Anti-Communist Militias	1980	3	3
Popular Army for the Restoration of Democracy	2007	1	1
Popular Army Vanguard- Battalions of Return	2001	2	1
Popular Democratic Movement (MPD)	1992	1	0
Popular Forces of April 25	1980 - 1986	47	10
Popular Front for Justice in the Congo	2009	5	1
Popular Front for the Liberation of Palestine (PFLP)	1970 - 2011	146	186
Popular Front for the Liberation of Palestine, Gen Cmd	1970 - 2008	6	156
Popular Front for the Liberation of the Sahara	1994	1	40
Popular Leberation Front Urban Commando	1994	1	0
Popular Liberation Army (EPL)	1973 - 2005	261	524
Popular Liberation Army (Puerto Rico)	1991	4	0
Popular Liberation Front	1981	1	0
Popular Liberation Resistance Force	1989	6	0
Popular Movement for the Liberation of Angola	1989 - 1996	9	54

GROUP	DATES ACTIVE	TOTAL ATTACKS	TOTAL FATALITIES
Popular Movement for the Liberation of Cabinda	1979	2	18
Popular Rage	1990	4	0
Popular Resistance (Laiki Antistasi)	2002	2	0
Popular Resistance Army (PRA)	1981	1	5
Popular Resistance Committees	2000 - 2011	50	28
Popular Resistance Front (FPR)	1989	1	25
Popular Resistance Sabotage Group	1974	2	0
Popular Revolutionary Action	2003	1	0
Popular Revolutionary Army	1996 - 1997	17	20
Popular Revolutionary Bloc (BPR)	1978 - 1982	38	39
Popular Revolutionary Commandos	1991	2	0
Popular Revolutionary Movement (Colombia)	1977	1	0
Popular Revolutionary Movement (Italy)	1979	2	0
Popular Revolutionary Resistance Group	1972	1	0
Popular Revolutionary Vanguard (VPR)	1970 - 1976	5	2
Popular Will (Greece)	2008 -2010	3	0
Porattom	2002	1	0
PORE	1977	1	0
Portuguese Anti-Communist Movement	1976	1	2
Portuguese Liberation Army	1975	1	0
Posse Comitatus	1983	1	2
Poverty Brigade	1986	1	0
Praveen Dalam	2003	1	1
Presidential Movement (MP) Militiamen	1994	1	2
Prima Linea	1977 - 1981	58	16
Prisoner Gourgen Yanikian Group	1975	1	0
Prisoner's Action Force	1980	1	0
Progressive Socialist Party (PSP)	2008	2	0
Proletarian Action Group	1973 - 1985	2	0
Proletarian Armed Squads	1977	1	0
Proletarian Combatants for Communism	1978	2	0
Proletarian communist commandos	1980	1	0
Proletarian Division - Army of Communist Liberation	1979	1	0
Proletarian Fighting Brigades	1977	1	0
Proletarian Fighting Patrol	1979	7	0
Proletarian Initiative and Offensive for W. Europe	1985	1	0
Proletarian Nuclei for Communism	2003 - 2004	2	0
Proletarian Nucleus	1978	1	0
Proletarian Patrols	1977 - 1980	10	1
Proletarian Resistance Movement	1976	1	0
Proletarian Revolutionary Action Front (FRAP)	1985	2	0
Proletarian Internationalism	1976	1	0
Protectors of Islam Brigade	2005	1	0
Protestant Action Group	1974 - 1975	5	6
Provisional Coordinating Committee - Defense of Labor	1982	4	0
Puerto Rican Armed Resistance	1980 - 1981	5	1
Puerto Rican Liberation Front	1971	2	0
Puerto Rican Resistance Movement	1970 - 1971	3	0
Puerto Rican Revolutionary Movement	1972	5	0
Puka Inti Maoist Communist Party	1994	2	0

GROUP	DATES ACTIVE	TOTAL ATTACKS	TOTAL FATALITIES
Punitive Leftist Front	1992	5	1
Purbo Banglar Communist Party	1995 - 2011	19	46
Quartermoon society	1970 - 1971	2	0
Quintin Lame	1985 - 1989	15	58
Rabbi Rahane Group	1982	1	0
Rabid Brothers of Giuliani	2002	1	0
Radical Communist Armed Nucleus	1977	1	0
Rahanwein Resistance Army (RRA)	1997	6	84
Rajah Solaiman Revolutionary Movement	2005	3	9
Rajneeshees	1984	4	0
Rally of Democratic Forces (RAFD)	2006	1	0
Ramzi Nahra Martyr Organization	2002	1	0
Ranbir Sena	1996 - 2009	15	95
Rashtriya Swayamsevak Sangh	2003 - 2009	3	1
Rastriya Janashakti Party (RJP)	2008	1	1
Raul Sendic International Brigade	1974	1	1
Real Irish Republican Army (RIRA)	1998 - 2011	41	33
Real Ulster Freedom Fighters (UFF) - Northern Ireland	2010	3	0
Rebel Armed Forces of Guatemala (FAR)	1970 - 1989	36	43
Rebellious Group Lambros Foundas	2010	1	1
Red Army Faction (RAF)	1978 - 1991	68	19
Red Army for the Liberation of Catalonia	1987	2	1
Red Brigades	1974 - 2002	221	79
Red Brigades Fighting Communist Party (BR-PCC)	1983 - 2003	7	4
Red Brigades Fighting Communist Union (BR-UCC)	1986	1	0
Red Cell	1973 - 1978	5	0
Red Commandos	1992	1	1
Red Dawn Front (Frente Amanecer Rojo)	1992	2	0
Red Flag	1974	1	1
Red Flag (Venezuela)	1972 - 1996	25	47
Red Flying Squad	1978 - 1980	3	1
Red Guard	1978	3	0
Red Guerilla Family	1975 - 1976	4	0
Red Guerrilla	1977 - 1979	7	0
Red Hand Commandos	1972 - 1995	10	10
Red Hand Defenders (RHD)	1999 - 2003	19	6
Red June	1980	1	0
Red June of 14 June	1973	1	0
Red Line	1999	1	0
Red Patriots Group	1984	1	0
Red Resistance Front	1978	1	0
Red Revolutionary Front	1985 - 1986	2	0
Red Sea Afar Democratic Organization (RSADO)	2008 - 2010	3	21
Red Tribune	1978	1	0
Reform of the Armed Forces Movement	1989 - 1991	9	0
Regulators	1971	1	0
Republic of New Afrika	1972 - 1973	2	10
Republic of Texas	1997	1	0
Republican Action Force	1975 - 1977	6	24
Republican Anticlerical Group	1997	1	0

GROUP	DATES ACTIVE	TOTAL ATTACKS	TOTAL FATALITIES
Republican People's Party	1979	1	1
Resistance Cell	2004	1	0
Resistance Movement	1990	1	0
Resistance Movement of the Union of Revolt Workers	1990	1	0
Resistance, Liberation and Independence Organisation	1972	1	0
Resistenza	1990 - 1996	73	0
Resistenza Corsa	2003	4	0
Revenge of the Trees	2000	1	0
Revolted Persons of the Polytech School	1996	1	0
Revolutionaries of the Streets	2000	1	0
Revolutionary Action	1977	7	0
Revolutionary Action Front	1977	2	0
Revolutionary Action Groups	1980	1	0
Revolutionary Action of Liberation	2006 - 2007	4	0
Revolutionary Action Organization Arab Resistance Front	1990	2	0
Revolutionary Action Party	1970	2	0
Revolutionary Anarchist Armed Terrorist Movement	1978	1	0
Revolutionary Anti-Capitalist Initiative	1981	2	0
Revolutionary Anti-Racist Action	1990 - 1991	3	0
Revolutionary Arab Youth Organization	1974	1	0
Revolutionary Armed Forces (FAR)	1983 - 1986	2	31
Revolutionary Armed Forces for Liberation of Colombia	1984	1	0
Revolutionary Armed Forces of Colombia (FARC)	1975 - 2011	1,984	5,032
Revolutionary Armed Forces of Nicaragua (FARN)	1981 - 1983	6	100
Revolutionary Armed Forces- Argentina (FAR-A)	1970 - 1973	5	2
Revolutionary Armed Organization	1988	3	0
Revolutionary Army	1978	1	0
Revolutionary Autonomous Group	1985	1	0
Revolutionary Bolivariano Movement 200	1992 - 1996	2	0
Revolutionary Cells	1973 - 1992	59	1
Revolutionary Cells (Argentina)	2009 - 2010	2	0
Revolutionary Cells-Animal Liberation Brigade	2003 - 2007	2	0
Revolutionary Christians of the Cedars	1985	1	44
Revolutionary Combat Brigades	1997	1	0
Revolutionary Commandos of Solidarity	1977	3	0
Revolutionary Commandos of the People (CRP)	1977 - 1980	10	2
Revolutionary Committee for Counter Force	1980	1	0
Revolutionary Committee of Mozambique (COREMO)	1971	1	1
Revolutionary Communist Armed Nuclei	1981	1	0
Revolutionary Communist League (LCR) (Spain)	1971 - 1973	9	0
Revolutionary Communist Party	1978	2	0
Revolutionary Communist Youth Brigade (RCYB)	1981	1	0
Revolutionary Continuity	2010	1	0
Revolutionary Coordination of the Masses	1980	1	0
Revolutionary Eelam Organization (EROS)	1986 - 1988	1	1
Revolutionary Fighting Group 80	1980	1	0
Revolutionary Flames	1990	1	0
Revolutionary Force	2002	1	0
Revolutionary Force 26	1970	2	0

GROUP	DATES ACTIVE	TOTAL ATTACKS	TOTAL FATALITIES
Revolutionary Force 9	1970	3	0
Revolutionary Force Seven	1970	5	0
Revolutionary Forces for the Liberation of Iraq	1980	1	0
Revolutionary Front for an Independent East Timor	1989 - 2007	12	112
Revolutionary Front Hatian Advancement and Progress	1994	4	39
Revolutionary Front for National Liberation	1983	6	0
Revolutionary Headquarters (Turkey)	2009	1	3
Revolutionary Internationalist Solidarity	1975	3	0
Revolutionary Labor Commandos	1982	1	0
Revolutionary Labor Organization	1990	1	0
Revolutionary Leninist Brigades	2000	1	0
Revolutionary Liberation Action (Epanastatiki Apelevtherotiki Drasi) - Greece	2009 - 2010	3	0
Revolutionary Liberation Cells	1986	1	25
Revolutionary Militant Left organization	1985	1	0
Revolutionary Military Council	1997	1	0
Revolutionary Movement	1989	1	0
Revolutionary Movement of People in Arms	1989	1	1
Revolutionary Nationalist Movement	1980	1	0
Revolutionary Nuclei	1996 - 2009	13	1
Revolutionary Organization of People in Arms (ORPA)	1979 - 1990	117	287
Revolutionary Organization of Socialist Moslems	1984 - 1985	5	2
Revolutionary Patriotic Anti-Fascist Front (FRAP)	1973 - 1978	49	7
Revolutionary People's Struggle (ELA)	1976 - 1995	90	2
Revolutionary Peoples Army	1973	2	0
Revolutionary Perspective	2001 - 2011	3	0
Revolutionary Popular Left	1980 - 1996	7	0
Revolutionary Proletarian Army	1997	1	1
Revolutionary Proletarian Initiative Nuclei (NIPR)	2000 - 2001	2	0
Revolutionary Road	1979	1	1
Revolutionary Security Apparatus	1992	2	4
Revolutionary Solidarity	1983 - 1990	4	1
Revolutionary Struggle	1997 - 2010	23	1
Revolutionary Student Brigade	1980	1	0
Revolutionary Student Front	1973	3	1
Revolutionary Student Movement (MER)	1979	1	0
Revolutionary United Front (RUF)	1994 - 2000	57	507
Revolutionary United Front Movement	1989	1	0
Revolutionary Vanguard	1974 - 1975	2	0
Revolutionary Violence Units	2001	1	0
Revolutionary Voice of the People (VPR)	1995	2	0
Revolutionary Worker Clandestine Union Peoples Party	1990 - 1991	3	2
Revolutionary Workers Party	1977 - 1985	10	4
Revolutionary Workers Party of Bolivia (PRTB)	1978 - 1980	3	0
Revolutionary Workers' Council (Kakurokyo)	1978 - 2003	24	7
Rezi Rezai International Brigades	1976	1	0
Ricardo Franco Front (Dissident FARC)	1984 - 1988	63	69
RIF Popular Front	1979	1	0
Right Wing National Youth Front	1980	1	0
Rightist supporters of Democratic Alliance	1980	1	0

GROUP	DATES ACTIVE	TOTAL ATTACKS	TOTAL FATALITIES
Rival Bangladesh Chhatra League Faction	1995	1	1
Riyadus-Salikhin Reconnaissance and Sabotage Battalion of Chechen Martyrs	2002 - 2011	10	497
Rizvon Sadirov Group	1997	2	1
Roberto Santucho Revolutionary Group	1976	1	0
Robin Food	1998 - 1999	4	0
Robin Garcia Student Front	1982	1	0
Rodrigo Franco Command	1988 - 1991	15	10
Rohingya Solidarity Organization	1992	1	0
Roque Dalton Commando	1981	1	0
ROSADO-SOTO Command	1979	1	0
Rote Zora	1977 - 1995	2	0
Ruminahui Front	1983	1	0
Runda Kumpulan Kecil (RKK)	2008 - 2011	24	13
RVA	1974	1	0
Rwanda Patriotic Front (RPF)	1992 - 1995	11	153
Rwenzururu Rebels	1990	2	11
RYF	1971	3	0
S. O. S. France	1986	1	4
Sabaot Land Defense Force (SLDF)	2007 - 2008	4	19
Saffron Tigers	1985	1	2
Sagrado Corazon Fanatic Group	1985	1	4
Saharan Revolutionary Armed Front (FARS)	1997	3	32
Saif-ul-Muslimeen	2003	1	0
SAIOA	1973	1	0
Salafi Abu-Bakr al-Siddiq Army	2006 - 2010	2	3
Salafi Daawa Group	2004	1	1
Salafia Jihadia	2003	5	43
Salafist Group for Preaching and Fighting (GSPC)	1998 - 2007	214	594
Salah al-Din Squad	1986	1	0
Sammilito Sangskritik Jote (Alliance of Cultural Forums)	1994	1	0
Samyukta Janatantrik Terai Mukti Morcha	2008 - 2011	11	2
Sandinist People's Army (EPS)	1983 - 1985	4	1
Sandinista National Liberation Front (FSLN)	1970 -	209	228
Sandval (union) Movement	1994	1	0
Sanidila Secessionist Movement	1977 - 1978	2	0
Saor Eire (Irish Republican Group)	1970 - 1971	2	2
Sardinian Autonomy Movement	2002	1	0
Saudi Hizballah	1996	1	19
Save Kashmir Movement	2002 - 2004	3	10
Save Our Israel Land	1976	3	0
Save Uganda Movement	1979	3	0
Scheutzen group	1984	1	2
Schiedam Youth Front	1986	1	0
Scottish National Liberation Army	1983 - 2002	7	0
Scottish Socialist Republican League	1981	2	0
Sea Shepherd Conservation Society	1986	1	0
Seattle Liberation Front	1970	1	0
Secret Anti-Communist Army (ESA)	1978 - 1989	19	11
Secret Army Organization	1972	3	0

GROUP	DATES ACTIVE	TOTAL ATTACKS	TOTAL FATALITIES
Secret Cuban Government	1971 - 1973	8	0
Secret Organization of al-Qa'ida in Europe	2005	4	56
Secret Organization Zero	1974 - 1975	2	2
Sect of Revolutionaries (Greece)	2009 - 2010	3	2
Seiji Kesha Kokuyukai	1990	1	0
Seikijuku	1990 - 1991	3	0
Sekihotai	1988 - 1990	2	0
Self Defense Forces	1996	1	0
Self-Defense Against All Authority	1980	1	0
Senki ("Battle Flag")	1983 - 1986	8	0
September 11th Group	2001 - 2003	4	0
September 11 Commandos	1986 - 1990	3	4
September 17 Organization	1984	1	0
Serb Radical Party	2000	1	0
Servants of Islam Organization	1992	1	0
SFT	1970	1	0
Shahid Khalsa Force	1997	2	1
Shahin (Falcon)	1992	1	0
Sham 'unite	1980	1	1
Shan State Army	1989 - 2008	6	16
Shan State Progressive Party	1979	11	34
Shan United Revolutionary Army	2003	5	12
Shanti Bahini - Peace Force	1986 - 1997	99	436
Sharivad 17 Tal-Al-Za'atar(Sept 17 Tal-Al-Za'atar)	1979	1	0
Sharp Sword Organization	1984	1	0
Shaykh Hassan Khalid Forces	1989	1	0
Shaykh Subhi Al-Salih Forces	1988 - 1989	18	4
Shield of Islam Brigade	2010	2	0
Shining Path (SL)	1979 - 2010	4,518	11,665
Shinwari Tribe	1996	1	15
Shonkonjuku Group	1991	1	0
Siah KAL	1970	1	0
Sicarii	1989	4	1
Simon Bolivar Guerrilla Coordinating Board (CGSB)	1986 - 2003	206	379
Sindho Desh Liberation Army (SDLA)	2010 - 2011	6	0
Sipah-e-Sahaba/Pakistan (SSP)	1990 - 2006	18	55
Sipah-I-Mohammed	1996 - 2004	2	41
Sirri Powz	2007	1	0
Sisters in Arms	2010	1	0
Sixth of March Group	1975	1	0
SKIF Detachment	1999	2	0
Social Christian Party (PSC)	1996	1	0
Social Resistance	1988 - 1990	9	0
Socialist Chhatra League	1994	1	1
Socialist Labor Party of Lebanon	1976	1	3
Socialist Patients' Collective (SPK)	1970 - 1975	3	3
Socialist Recovery Movement	1992	1	0
Socialist Revolutionary Brigade	1989	1	0
Socialist-Nationalist Front (SNF)	1988	1	0
Soldiers of the Algerian Opposition	1975	3	0

GROUP	DATES ACTIVE	TOTAL ATTACKS	TOTAL FATALITIES
Soldiers of Truth	1988 - 1989	7	0
Solidarist Resistance Movement	1977	2	0
Solidarity with imprisoned members of Action Directe	2006	2	0
Somali Islamic Front	2008 - 2009	3	1
Somali National Alliance	1992 - 1994	2	0
Somali National Movement	1988 - 1991	6	31
Somali Patriotic Movement	1991	1	0
Somali Salvation Democratic Front (SSDF)	1983	1	0
Somali Salvation Front (SSF)	1981	8	0
Sons of Liberty	1971	2	0
Sons of the Gestapo	1995	1	1
Sons of the South	1984	1	0
Sons of the South (Shiite Muslim Group)	1980	1	0
South African Liberation Support Cadre (SALSC)	1981	3	0
South Lebanon Army	1991	1	0
South Londonderry Volunteers (SLV)	2001	1	0
South-West Africa People's Organization (SWAPO)	1975 - 1988	63	92
South Sudan Liberation Army	2011	3	20
Southern Mobility Movement (Yemen)	2010	11	9
Southern Nucleus of Communist Counterpower	1978	1	0
Southern Sierra Peasant Organization	1994 - 1995	2	0
Sovereign Panama Patriotic Front	1992	1	0
Spanish Armed Group	1979 - 1980	4	1
Spanish Basque Battalion (BBE) (rightist)	1978 - 1982	11	13
Spanish Falange	1980	1	1
Spanish International Communist Party	1979	1	0
Spanish National Action	1979	5	2
Special Purpose Islamic Regiment (SPIR)	2001 - 2002	3	143
Squadrons of Terror (Katibat El Ahoual)	2000	2	7
St. Kitts Nevis Labor Party	1995	1	0
State Council of Indian and Peasant Organization	1995	1	2
Stop the War Coalition	1970	1	0
Struggle Against Misery and Exploitation of Peasants	1989	2	2
Student Front of the People	1981	4	4
Student Revolutionary Front (FER)	1980	1	0
Students for a Democratic Society	1971	1	0
Students for a Democratic Society (SDS) (German)	1970	1	0
Students Islamic Movement of India (SIMI)	2001 - 2010	15	104
Sudan Alliance Forces	1996 - 1997	3	24
Sudan Liberation Movement	2007 - 2010	8	17
Sudan People's Liberation Army (SPLA)	1996 - 2011	42	187
Sudanese Alliance Forces	1996	1	15
Sudanese People's Liberation Forces	1988 - 1989	5	32
Sudtiroler Volkspartei-south tyrol people's party	1988	4	0
Suicide Squad	1986	3	0
Sungu	2007	1	5
Sunni Supporters	2006 - 2011	3	79
Support for Refugees (Appui aux Refugies)	1979	1	0
Support of Ocalan-The Hawks of Thrace	1999	1	0
Supporters of leftist Gana-Oikya Front	1992	1	2

GROUP	DATES ACTIVE	TOTAL ATTACKS	TOTAL FATALITIES
Supporters of Right and Freedom	1986	1	0
Supreme Command for Jihad and Liberation	2009	2	0
Supreme Council for Islamic Revolution in Iraq (SCIRI)	1992 - 2005	10	31
Supreme Islamic Council	1986	1	1
Suriname Liberation Front	1994	1	0
Survivors of Golfech	1981 - 1982	7	0
Survivors of Hama	1989	1	0
Swatantra Nepal Dal	2010	1	0
Swaziland Youth Congress (Swayoco)	2003	1	0
Sword of Islam	1999	1	1
Symbionese Liberation Army (SLA)	1973 - 1975	7	2
Sympathizers of Al-Qa`ida Organization	2002	4	0
Syndicalist Action Groups	1978	2	0
Syrian Battle Front	1983	1	0
Syrian Mujahideen	1987	1	1
Syrian Social Nationalist Party	1979 - 2008	7	22
Syrian Terror	1981	1	0
SYS	1986	2	33
Taihikai (Great Sadness)	1994	1	0
Taikosha, right wing group	1991	1	0
Takfir wal-Hijra (Excommunication and Exodus)	2000 - 2005	5	49
Taliban	1995 - 2011	2,049	5,673
Tamil Eelam Liberation Organization (TELO)	1984 - 1989	9	158
Tamil Liberation Army	1997	2	0
Tamil Makkal Viduthalai Pulikal (TMVP)	2008	2	3
Tamil Nadu Liberation Army	1995	2	0
Tanyus Shanin Armed Unit	1987	1	2
Tanzim	2001 - 2005	5	4
Tawhid and Jihad	2004 - 2011	19	159
Tayeb Al-Afghani's Islamist Group	1991	1	15
Tehreek-e-Jehad-e-Islami	2003	1	3
Tehreek-e-Nafaz-e-Shariat-e-Mohammadi (TNSM)	2007 - 2008	2	1
Tehrik al-Mojahedin	1997 - 2003	2	2
Tehrik-e-Galba Islam	2009 - 2010	2	2
Tehrik-e-Tuhafaz (Pakistan)	2010	2	0
Tehrik-i-Taliban Pakistan (TTP)	2007 - 2011	208	1,636
Temple Mount Faithful Movement	1991	1	0
Terai Army	2007 - 2009	9	8
Terai Cobra	2008	2	1
Terai Janatantrik Madhes Party	2010	1	1
Terai Janatantrik Party	2010	1	0
Terai Rastriya Mukti Sena (TRMS)	2009	1	0
Terra Lliure	1991 - 1992	62	1
Territorial Anti-Fascist Patrols	1980	1	0
Territorial Armed Groups for Communism	1980	1	0
Territorial Cells for Boycotting the Elections	1979	1	0
Territorial Communist Command	1979	1	0
Territorial Communist Units	1977	1	0
Territorial Patrols of Anti-Fascist Vigilance	1980	1	0
Territorial Resistance Army	1979	3	0

GROUP	DATES ACTIVE	TOTAL ATTACKS	TOTAL FATALITIES
Terror Against Terror	1983 - 1984	7	0
Terrorists Guerrilla Group	2010	1	0
Tharuhat Joint Struggle Committee (TJSC)	2009	2	0
The al-Aqsa-Group	1982	1	0
The Aref Boluki Dynamite group	1983	1	0
The Armed Secret Organization	1981	1	0
The Black Sun	2009	1	0
The Call of Jesus Christ	1986	1	0
The Eradication of Evil	1982	2	0
The Extraditables	1988 - 1999	110	182
The Front for the Liberation of the Cabinda Enclave	1999 - 2002	2	21
The Great Serpent	1979	1	3
The Husayn Ubayyat Martyrs' Brigades	2000	1	0
The Illegal Fisherman of the Night	1986	1	0
The Inevitables	2003	1	0
The Islamic Movement	1994	1	0
The Islamic Revolution to Liberate Palestine	2000	1	2
The Jean Marc Rouillan Armed and Heartless Columns	2008	1	0
The Jewish Execution with Silence	1979	1	0
The Joint Revolutionary Council	2006 - 2010	7	14
The Justice Department	1999 - 2010	15	0
The Mukti Bahini	1981	1	6
The Nation's Army	2008	1	0
The Northern Alliance of Afghanistan	1999	4	4
The Order (Silent Brotherhood)	1983 - 1984	8	1
The Order II (Bruder Schweigen Strike Force II)	1986	2	0
The Ordinary Men	1985	1	0
The Organization for the Return of Legality	1996	1	0
The Scorpion	1975	2	0
The Unit of the Chemical Weapons Martyrs	1989	1	6
The United Revolutionary Front of Bhutan	2008	2	5
The United Southern Front	1981	1	0
The War That Was Never Declared	2003	1	0
The World United Formosans for Independence (WUFI)	1970	1	0
Thomas Muenzer Wild Band	1991	1	0
Three Stars Autonomous Commando	1981	1	0
Thunder of Zion	1981	1	0
Tigers	1998	1	1
Tigray Peoples Liberation Front (TPLF)	1976 - 1990	10	317
Tonino Micciche Workers Nucleus	1977	1	0
Tontons Macoutes	1991	1	0
Tony El Pelou Band	1971	2	0
Tribal Battlefront	1977 - 1978	6	0
Tribal Thumb	1975	1	2
Trinitarians	1978	1	3
Tripoli Martyrs Battalion	1989	2	0
Tripura National Volunteers (TNV)	1984 - 1988	29	149
Tritiya Prastuti Committee (India)	2009 - 2011	9	3
Tulawie Clan	1995	1	6
Tunisian Armed Resistance	1980	1	41

GROUP	DATES ACTIVE	TOTAL ATTACKS	TOTAL FATALITIES
Tupac Amaru Revolutionary Movement (MRTA)	1984 - 1997	561	560
Tupac Katari Guerrilla Army (EGTK)	1991 - 1992	22	5
Tupamaro Revolutionary Movement	1999 - 2001	4	0
Tupamaros (Uruguay)	1970 -1971	41	4
Turkestan Islamic Party	2008	2	3
Turkish Communist Party/Marxist (TKP-ML)	1990 - 2003	29	19
Turkish Communist Workers Party	1991 - 1992	3	2
Turkish Hizballah	1992 - 2001	6	9
Turkish Islamic Commandos	1990	1	2
Turkish Islamic Jihad	1991	2	1
Turkish Marxist Workers Party	1987	1	0
Turkish National Intelligence Organization	1994	1	1
Turkish People's Liberation Army	1971 - 1980	69	17
Turkish People's Liberation Front (TPLF)(THKP-C)	1970 - 1991	36	27
Turkish Revenge Brigade	1996	1	1
Turks of Western Thrace	1994	1	0
Tyrolean Defense League	1979	1	0
Uganda Democratic Christian Army (UDCA)	1994	1	2
Uganda Federal Army	1988	1	1
Uganda Federal Democratic Alliance (UFEDA)	1996	1	1
Uganda Freedom Movement (UFM)	1981 - 1985	19	44
Uganda People's Army	1985 - 1990	15	136
Ugandan People's Democratic Army	1989	1	28
Uighur Liberation Organization	2000 - 2011	4	21
Ukrainian Liberation Front	1980	1	0
Ulster Freedom Fighters (UFF)	1974 - 2007	252	147
Ulster Volunteer Force (UVF)	1974 - 2005	261	363
Umar al-Mukhtar Martyr Forces	2000	2	0
Umbane People's Liberation Army (Swaziland)	2008	2	0
Ummah Liberation Army	1999	1	0
Unidad Militar Bolivariana	1989	1	0
Unified Kurdish Socialist Party	1981	1	0
Unified Workers Command	1978	1	0
Union Du People Corse	1980	1	0
Union Guerrera Blanca (UGB)	1976 - 1980	14	18
Union of Chadian Forces (UFNT)	2007	1	17
Union of Congolese Patriots (UPC)	2003	1	0
Union of Democratic Forces	1998	1	0
Union of Forces for Democracy and Development	2006 - 2009	3	103
Union of Galilee Christians	1986	1	0
Union of Peaceful Citizens of Algeria	1994	1	0
Union of Revolutionary Communists in Turkey (TIKB)	1999	1	0
Union of the People (UDP)	1977 - 1978	21	1
Union of the Peoples of the Arabian Peninsula	1979	1	5
Union of Young Kurdish Revolutionaries	1992	1	0
Union Parishad	2007	1	0
Unione di u Populu Corsu (UPC)	1980	1	0
United Action Council	1994	3	0
United Arab Revolution	1986	1	0
United Democratic Front (UDF)	1985 - 1986	2	6

GROUP	DATES ACTIVE	TOTAL ATTACKS	TOTAL FATALITIES
United Democratic Liberation Army (UDLA)	2011	3	3
United Democratic Terai Liberation Front (UDTLF)	2008	1	0
United Freedom Front (UFF)	1975 - 1984	29	0
United Front for Democracy Against Dictatorship	2010	21	0
United Front for Democratic Change (FUC)	2006	4	0
United Front for Nigeria's Liberation (UFNL)	1996	1	14
United Jewish Underground	1982	1	0
United Jihad Council	2005	1	15
United Kuki Liberation Front (UKLF) - India	2010	3	1
United Liberation Front for the New Algeria	1976	1	0
United Liberation Front of Assam (ULFA)	1988 - 2011	244	599
United Liberation Front of Barak Valley - India	2010	1	0
United Liberation Movement for Democracy in Liberia	1994	2	0
United Liberation Torchbearers Forces	1985	5	6
United Nasirite Organizaiton	1986	1	0
United National Liberation Front (UNLF)	2003 - 2010	7	9
United National Party	1994 - 1997	2	2
United Nicaraguan Opposition	1986	5	8
United People's Democratic Front Bangladesh	2009	1	0
United People's Democratic Solidarity (UPDS)	2000 - 2006	6	15
United People's Front	1992	1	0
United Popular Action Front (FAPU)	1978 - 1980	13	13
United Popular Action Movement	1983 - 1994	109	19
United Popular Liberation Army of America	1974	1	0
United Revolutionary Front	1989	2	0
United Self Defense Units of Colombia (AUC)	1999 - 2009	41	170
United Somali Congress	1990 - 1992	1	2
United Students Forum	1994	1	6
United Wa State Army	1995	1	6
Universal Liberation Front	1977	2	0
Universal Proutist Revolutionary Federation	1977	2	0
UNLF (Uganda National Liberation Front)	1981	1	4
Up the IRS, Inc	1986 - 1991	8	0
Urhobo Revolutionary Army	2009	1	0
Usbat al-Ansar (League of Partisans)	2000	1	2
Valais Group Against Hydro-Rhone	1985	1	0
Vandalicia Teodoro Suarez	2010	1	0
Vanguard of Red Youth (AKM)	2003	1	0
Vanuatu Mobile Force (VMF)	1996	2	0
Venezuela Cartel	1991	1	23
Vengence Party	1985	1	1
Vietnamese Organization to Exterminate Communists	1981 - 1987	4	4
Vigorous Burmese Student Warriors	1999 - 2004	2	1
Village League	1982	1	0
Vincente Mecha Revolutionary Christians	1981	1	0
Vishwa Hindu Parishad (VHP)	1999 - 2001	5	3
Viviana Gallardo Command	1996	1	0
Volunteers of Innocent People of Nagas (VIPN)	2010	1	0
Vyborg Brigade	1977	1	0
Wahhabi Movement	2010	1	1

GROUP	DATES ACTIVE	TOTAL ATTACKS	TOTAL FATALITIES
Waltraud Boock Group	1976 - 1977	3	1
We Who Built Sweden	1997	1	0
Weather Underground, Weathermen	1970 - 1975	45	0
West Nile Bank Front (WNBF)	1995 - 1996	2	10
West Side Boys	2000	1	0
Western Somalia Liberation Front	1983	1	0
White Guard	1994	1	1
White Legion (Ecuador)	2003	1	0
White Legion (Georgia)	1997 - 1998	3	18
White Liberation Army	1990	1	0
White Panther Party	1970	1	0
White Wolves	1988 - 1992	11	7
White Wolves (UK)	1999	2	2
Wild Cats	1979	1	1
Wild Geese of the Cities	1985	1	0
Wit Kommando	1980	1	0
Wolves of Islam	1998	1	1
Worker Autonomy, Continuous Struggle	1977	1	0
Worker Counterpower	1977	2	0
Worker's Brigade	1985	1	0
Workers Brigade for Communism	1981	6	1
Workers Power	1976	1	0
Workers' Forces of Liberation	1989	1	0
Workers' Organization for Communism	1978 - 1980	2	0
Workers' Revolutionary Party	1988	1	1
Workers' Self-Defense Movement (MAO)	1978 - 1981	15	3
Working People's Alliance (WPA)	1980	1	1
World Church of the Creator	1999	6	3
World Punishment Organization	1982	1	0
Yamaguchi-Gumi Gang	1983	1	0
Yatama	1992	2	2
Yazbik Revolutionary Organization	1984	1	2
Yellow Organization of Air Force Officers	1984	3	0
Yich Telga	1992	1	0
Yokoku Seiwa-Kai	1992	1	0
Young Brigade of Navarro	1977	1	0
Young Communist League	2007 - 2009	11	0
Young Cuba	1972	2	1
Young Liberators of Pattani	2002	1	0
Young Officer Union Reformist Armed Forces - Philippines	2006	1	0
Young Pioneers	1992	1	2
Youth Action Group	1974 - 1976	6	0
Youth for Revolution	1992	1	0
Youth of Islamic Awakening	1999	1	0
Youths of Ali Movement	1986	2	1
Zairean Socialist Party	1984	2	2
Zapatista National Liberation Army	1988 - 2010	24	91
Zarate Willka Armed Forces of Liberation	1988 - 1990	5	2
Zebra killers	1973 - 1974	20	15

GROUP	DATES ACTIVE	TOTAL ATTACKS	TOTAL FATALITIES
Zemun Clan	2003	1	0
Zero Point	1973	1	0
Zero Tolerance	2009 - 2010	2	0
Zimbabwe African Nationalist Union (ZANU)	1978 - 2002	21	26
Zimbabwe African People's Union	1978 - 1983	13	143
Zimbabwe Patriotic Front	1978 - 1980	9	15
Zimbabwe People's Army (ZIPA)	1978 - 1979	2	0
Zionist Resistance Fighters	1999	1	1
Zviadists	1998	1	0

Appendix C: Summary of yearly statistics in mass-casualty and suicide terrorist attacks: 1972 – 2011

This Appendix summarises the yearly statistics in mass-casualty and suicide attacks by terrorist groups between 1972 and 2011. The two tables summarise the total yearly number of attacks, the numbers of mass casualty attacks resulting in over 50 fatalities, the numbers of major mass casualty attacks resulting in over 100 fatalities, the total number of fatalities per year and a summary of the locations of such attacks for each year. All statistics in this Appendix have been derived from the Global Terrorism Database (GTD), and exclude attacks where the GTD listed the perpetrator as ‘Unknown’. Complete details of the statistics summarised below are held on file by the author.

Table 1: Summary of yearly statistics in non-suicide mass-casualty attacks: 1972 - 2011

YEAR	TOTAL MASS CASUALTY NON SUICIDE ATTACKS	ATTACKS WITH FATALITIES > 50	ATTACKS WITH FATALITIES > 100	TOTAL FATALITIES	LOCATIONS OF ATTACKS
1972	1	1	0	81	South Vietnam (1)
1973	0	0	0	0	0
1974	1	1	0	88	Greece (1)
1975	1	1	0	92	Argentina (1)
1976	1	1	0	73	Barbados (1)
1977	1	1	0	100	Malaysia (1)
1978	1	0	1	430	Iran (1)
1979	3	3	0	208	Ethiopia (1), Rhodesia (1), Syria (1)
1980	6	5	1	618	El Salvador (4), Colombia (1), Italy (1)
1981	8	8	0	635	El Salvador (3), Guatemala (2), Egypt (1), Iran (1), Syria (1)
1982	13	10	3	1,138	El Salvador (7), Guatemala (2), Nicaragua (2), Iran (1), Iraq (1)
1983	35	24	11	3,242	Nicaragua (17), Peru (5), El Salvador (4), Angola (3), Peru (1), Uganda (1), United Arab Emirates (1)

YEAR	TOTAL MASS CASUALTY NON SUICIDE ATTACKS	ATTACKS WITH FATALITIES > 50	ATTACKS WITH FATALITIES > 100	TOTAL FATALITIES	LOCATIONS OF ATTACKS
1984	28	17	11	3,268	Nicaragua (14), El Salvador (4), Sri Lanka (3), Peru (2), Angola (1), Ethiopia (1), Philippines (1), Sudan (1), Uganda (1)
1985	19	16	3	1,679	Nicaragua (7), Lebanon (3), El Salvador (2), Mozambique (2), Sri Lanka (2), Canada (1), Colombia (1), Greece (1), Namibia (1), Peru (1)
1986	7	4	3	856	Mozambique (2), Nicaragua (2), Angola (1), El Salvador (1), Saudi Arabia (1)
1987	14	10	4	1,442	Sri Lanka (3), India (2), Mozambique (2), El Salvador (1), Guatemala (1), Lebanon (1), Pakistan (1), Myanmar (1)
1988	4	3	1	477	Angola (1), Great Britain (1), Lebanon (1), Peru (1)
1989	11	9	2	840	Sri Lanka (4), Mozambique (2), Peru (2), Colombia (1), Indonesia (1), Niger (1)
1990	10	8	2	817	Sri Lanka (4), Peru (2), El Salvador (1), Mozambique (1)
1991	13	11	2	1,067	Peru (4), Sri Lanka (3), Ethiopia (2), Croatia (1), Angola (1), Burundi (1), Haiti (1), India (1), Sierra Leone (1)
1992	16	11	5	1,415	Djibouti (2), Ethiopia (2), Sri Lanka (2), Turkey (2), India (2), Burundi (1), Chad (1), Djibouti (1), Iraq (1), Kenya (1), Nigeria (1)
1993	0	0	0	0	AS NOTED IN [2.5], THE GTD DOES NOT HOLD STATISTICS ON TERRORIST ATTACKS FOR 1993
1994	16	13	3	2,558	Burundi (3), Rwanda (2), Turkey (2), Algeria (1), India (1), Iran (1), Iraq (1), Liberia (1), Mexico (1), Sierra Leone (1), South Africa (1)
1995	10	6	4	937	Burundi (1), Colombia (1), Iraq (1), Philippines (1), Russia (1), Rwanda (1), Sri Lanka (2), Uganda (1), USA (1)
1996	11	8	3	1,500	Burundi (5), Sri Lanka (2), Uganda (2), Congo (1), Pakistan (1)
1997	20	13	7	2,326	Algeria (10), Rwanda (4), Burundi (1), Egypt (1), India (1), Iraq (1), Uganda (1)
1998	13	5	8	1,874	Colombia (2), Kenya (2), Sierra Leone (2), Algeria (1), Angola (1), Burundi (1), Rwanda (1), Sri Lanka (1)
1999	10	9	1	755	Russia (4), Angola (1), Chad (1), Congo (1), Nigeria (1), Russia (1), Sri Lanka (1)
2000	3	2	1	334	Colombia (1), Guinea (1), Uganda (1)
2001	4	2	2	510	Angola (3), Philippines (1)
2002	5	0	5	660	Nepal (3), Colombia (1), Russia (1)
2003	2	2	0	170	Congo (1), Iraq (1)
2004	9	6	3	1,365	Spain (2), Nepal (1), Philippines (1), Russia (1), Uganda (1)
2005	3	2	1	268	Iraq (4), India (1), Nepal (1)

YEAR	TOTAL MASS CASUALTY NON SUICIDE ATTACKS	ATTACKS WITH FATALITIES > 50	ATTACKS WITH FATALITIES > 100	TOTAL FATALITIES	LOCATIONS OF ATTACKS
2006	15	12	3	1,385	Iraq (6), Sri Lanka (4), Sudan (3), India (2), Nigeria (1)
2007	18	14	4	1,636	Iraq (7), India (2), Pakistan (2), Ethiopia (2), Chad (1), Sri Lanka (1), Sudan (1), Algeria (1)
2008	8	7	1	600	Congo (2), India (2), Iraq (2), Afghanistan (1), Sudan (1)
2009	10	8	2	919	Nigeria (4), Congo (2), Iraq (1), Iraq (1), Pakistan (2), China (1)
2010	5	4	1	400	Congo (1), India (2), Uganda (1), Yemen (1)
2011	3	2	1	338	Afghanistan (1), Sudan (1)
TOTALS	358	259	99	37,101	

Table 2: Summary of yearly statistics in suicide attacks: 1981 – 2011

YEAR	TOTAL SUICIDE ATTACKS	ATTACKS WITH FATALITIES > 50	ATTACKS WITH FATALITIES > 100	TOTAL FATALITIES	LOCATIONS OF ATTACKS
1981	1	0	0	41	Lebanon (1)
1982	0	0	0	0	
1983	5	1	1	348	Lebanon (4), Kuwait (1)
1984	2	0	0	23	Lebanon (2)
1985	15	1	0	163	Lebanon (15)
1986	3	0	0	6	Lebanon (3)
1987	2	0	0	12	Lebanon (2)
1988	1	0	0	7	Lebanon (1)
1989	2	0	0	2	Israel (1), South Africa (1)
1990	2	0	0	8	Lebanon (1), Sri Lanka (1)
1991	2	1	0	71	Sri Lanka (2)
1992	2	0	0	25	Argentina (1), Sri Lanka (1)
1993	0	0	0	0	AS NOTED IN [2.5], THE GTD DOES NOT HOLD STATISTICS ON TERRORIST ATTACKS FOR 1993
1994	11	2	0	247	Israel (4), Sri Lanka (3), West Bank / Gaza (2), Argentina (1), Panama (1)

YEAR	TOTAL SUICIDE ATTACKS	ATTACKS WITH FATALITIES > 50	ATTACKS WITH FATALITIES > 100	TOTAL FATALITIES	LOCATIONS OF ATTACKS
1995	20	1	0	289	Sri Lanka (11), West Bank / Gaza (3), Algeria (2), Pakistan (2), Croatia (1), Israel (1)
1996	16	1	0	235	Sri Lanka (7), Israel (4), Turkey (3), Lebanon (2)
1997	12	1	1	258	Sri Lanka (5), Israel (2), West Bank / Gaza (2), China (1), Iraq (1), Lebanon (1)
1998	25	0	0	216	Sri Lanka (9), Pakistan (3), Turkey (3), Algeria (2), India (2), West Bank / Gaza (2), Hungary (1), Lebanon (1), Northern Ireland (1), Israel (1)
1999	29	0	0	92	Turkey (12), Sri Lanka (10), Iraq (2), Greece (1), India (1), Lebanon (1), Russia (1), USA (1)
2000	39	0	0	290	Sri Lanka (15), Russia (11), Philippines (3), West Bank / Gaza (3), Algeria (1), China (1), India (1), Lebanon (1), Pakistan (1), Turkey (1), Yemen (1)
2001	51	0	3	3,246	Israel (21), Sri Lanka (6), India (4), USA (4), West Bank / Gaza (3), Russia (2), Turkey (2), Afghanistan (1), Bangladesh (1), China (1), France (1), Germany (1), Indonesia (1), Macedonia (1), Nepal (1), Sudan (1)
2002	78	1	2	680	Israel (42), West Bank / Gaza (15), India (6), Indonesia (3), Russia (3), Afghanistan (2), Pakistan (2), Colombia (1), Iran (1), Kenya (1), Tunisia (1), Yemen (1)
2003	85	3	0	774	Israel (18), Iraq (15), West Bank / Gaza (13), Russia (11), Morocco (5), Saudi Arabia (5), Pakistan (3), Colombia (3), India (3), Turkey (3), Afghanistan (2), Philippines (2), Indonesia (1), Sri Lanka (1)
2004	115	3	1	1,270	Iraq (70), West Bank / Gaza (8), Israel (7), Pakistan (5), Russia (5), Uzbekistan (5), Afghanistan (4), India (3), Saudi Arabia (2), China (1), Colombia (1), Indonesia (1), Italy (1), Sri Lanka (1), Turkey (1)
2005	215	7	1	2,281	Iraq (162), Afghanistan (14), Pakistan (6), Bangladesh (6), Israel (6), Great Britain (4), India (3), Jordan (3), Indonesia (2), Egypt (2), Qatar (1), Turkey (1), Uzbekistan (1), West Bank / Gaza (1), China (1), Qatar (1), Turkey (1), Uzbekistan (1)
2006	174	5	1	1,170	Iraq (95), Afghanistan (49), Sri Lanka (9), Pakistan (6), Israel (4), Russia (2), Somalia (2), West Bank / Gaza (2), Turkey (1), Yemen (1), India (1), Indonesia (1), Saudi Arabia (1)
2007	362	10	5	4,581	Iraq (204), Afghanistan (75), Pakistan (55), Sri Lanka (5), Algeria (5), Morocco (5), Somalia (3), India (3), Russia (2), Finland (1), Great Britain (1), Iran (1), Kenya (1), Yemen (1)
2008	249	6	1	2,367	Iraq (106), Afghanistan (56), Pakistan (37), Algeria (14), Sri Lanka (13), Somalia (3), France (3), Lebanon (3), China (2), Israel (2), Georgia (1), Greece (1), India (1), India (1), Iran (1), Mexico (1), Russia (1), Syria (1), Turkey (1), West Bank / Gaza (1), Yemen (1)

YEAR	TOTAL SUICIDE ATTACKS	ATTACKS WITH FATALITIES > 50	ATTACKS WITH FATALITIES > 100	TOTAL FATALITIES	LOCATIONS OF ATTACKS
2009	177	6	1	2,277	Iraq (53), Afghanistan (44), Pakistan (44), Sri Lanka (11), Russia (5), Algeria (2), China (2), India (2), Indonesia (2), Iran (2), Somalia (2), Yemen (2), Mauritania (1), Philippines (1), Saudi Arabia (1), Turkey (1), Uzbekistan (1), USA (1)
2010	163	6	1	2,237	Iraq (51), Afghanistan (46), Pakistan (34), Russia (11), Yemen (8), Somalia (3), Sweden (1), Bangladesh (1), Denmark (1), USA (1), Iran (1), Israel (1), Myanmar (1), Philippines (1), Tajikistan (1)
2011	202	7	0	1,988	Afghanistan (78), Iraq (45), Pakistan (39), Somalia (8), Russia (7), Yemen (7), Nigeria (5), Egypt (2), Indonesia (2), Kazakhstan (2), Syria (2), Algeria (1), Mauritania (1), Turkey (1), Israel (1), Tunisia (1)
TOTALS	2,060	62	18	25,204	

Appendix D: Summary of aviation bombings: 1970 - 2012

This Appendix summarises the recorded bombings of aircraft by terrorist groups between 1970 and 2012. For each bombing it records the date, location, flight that was bombed, the attack method, the perpetrating terrorist group and the fatalities resulting. The statistics in this Appendix have been derived from the Global Terrorism Database (GTD) and from the RAND Database on Worldwide Terrorism Incidents. Complete details of the statistics summarised below are held on file by the author.

DATE	LOCATION	FLIGHT	ATTACK METHOD	PERPETRATOR	FATALITIES	SOURCE
21-February-1970	Frankfurt - Vienna	Austrian Airlines Caravelle	Bomb in baggage compartment	PFLP - GC	0	RDWTI
21-February-1970	Switzerland - Israel	Swissair Flight 330	Bomb in baggage compartment	PFLP - GC	47	RDWTI
14-March-1970	Athens - Cairo	United Arab Airlines Antonov 24	Bomb in landing gear	Unknown	0	RDWTI
21-April-1970	Manila	Philippines Airlines Flight	Bomb in baggage compartment	Unknown	25	GTD
10-May-1970	Geneva Airport	Iberian Air Lines DC9	Bomb in baggage compartment	Unknown	0	RDWTI
20-November-1971	Taipei - Hong Kong	China Airlines Caravelle	Bomb on board	Unknown	25	GTD
26-January-1972	Stockholm - Belgrade	Airliner	Bomb on board	Croatian émigrés	26	RDWTI
16-August-1972	Rome	El Al Israel Airlines plane	Bomb in baggage compartment	Nationalist Group for the Liberation of Palestine	0	RDWTI
08-September-1974	Greece - Athens	TWA - Tel Aviv to New York	Bomb in baggage compartment	PFLP - GC	88	RDWTI

DATE	LOCATION	FLIGHT	ATTACK METHOD	PERPETRATOR	FATALITIES	SOURCE
01-January-1976	Beirut - Dubai	Middle East Airlines Flight 438	Bomb in forward cargo compartment	Unknown	82	RDWTI
06-October-1976	Barbados - Jamaica	Cubana Flight 455	Time bombs	Anti-Castro Cubans	78	RDWTI
15-December-1976	Damascus - Baghdad	Egyptian Airlines plane	Bomb on board	Unknown	40	RDWTI
04-September-1978	Kariba, Rhodesia	Air Rhodesia Flight 825	Attacked by shoulder-launched aircraft missiles after take-off	Zimbabwean African Peoples Union	48	GTD
12-February-1979	Kariba, Rhodesia	Air Rhodesia Flight 827	Attacked by shoulder-launched aircraft missiles after take-off	Zimbabwean African Peoples Union	54	GTD
15-November-1979	Chicago - Washington	American Airlines jetliner	Bomb in baggage compartment	Iranian student group	0	RDWTI
12-December-1981	Mexico City Airport	Aeronica Boeing 727	Exploded at airport	Unknown	0	RDWTI
11-August-1982	Narita - Honolulu	Pan Am Flight 830	Onboard explosion	Mohammed Rashed	1	RDWTI
23-September-1983	Approach to Abu Dhabi	Gulf Air Flight 771	Bomb in baggage compartment	Abu Nidal	111	GTD
10-September-1984	Chad	French Airliner	Bomb on board	Libyan agents	0	GTD
23-June-1985	In Flight - Transatlantic	Air India Flight 182	Bomb in baggage - passenger did not board	Sikh Separatists	329	RDWTI
27-December-1985	Rome Airport	El Al Check in counter	Coordinated with attack on Vienna Airport - Killed 3; Injured 39	Abu Nidal	16	RDWTI
02-April-1986	Rome - Athens	TWA Flight 840	Onboard explosion	Arab Revolutionary Cells / Abu Nidal	4	RDWTI

DATE	LOCATION	FLIGHT	ATTACK METHOD	PERPETRATOR	FATALITIES	SOURCE
03-May-1986	Colombo Airport	Sri Lankan airliner	Bomb on board - delayed departure	LTTE	21	RDWTI
27-May-1986	Pakistan	Saudi Arabian National Airline & PanAm Offices	3 coordinated bombings - within 20 minutes of others	Abu Nidal	1	RDWTI
29-November-1987	Thailand	Korean Air Flight 858	Bomb on board	North Korean agents	115	RDWTI
11-April-1988	Afghanistan	Soviet passenger plane	Surface to Air Missile	Afghan guerrillas	29	RDWTI
21-December-1988	Lockerbie	Pan Am Flight 103	Bomb on board	Libyan agents	270	RDWTI
28-June-1989	Mogadishu - Hargesia, Somalia	Somali Airlines Fokker 27	Rocket attack on plane	Somali National Movement	30	GTD
19-September-1989	Chad	UTA Flight 772	Bomb in cargo compartment	Hezbollah	171	RDWTI
27-November-1989	Colombia	Avianca Flight 203	Bomb on board	Medellin drug cartel / The Extraditables	110	RDWTI
19-July-1994	Panama	Panamanian commuter airplane	Suspected suicide bombing	Ansar Allah - Lebanese group	21	RDWTI
11-December-1994	Philippines - Japan	Philippines Airlines Flight 434	Bomb on board - Test run for the 1995 Bojinka Plot (discussed in [2.5.2])	Ramzi Yousef / Abu Sayyaf Group	1	RDWTI
22-December-2001	Paris - Miami	American Airlines Flight 63	Attempted suicide bombing by explosives concealed in his shoe	Al Qaeda-trained Richard Reid	0	GTD
24-August-2004	Russia	Volga-Avia Express Flight 1303; Siberia Airlines Flight 1047	Detonation of suicide bombs on both flights	Islambouli Brigades / Riyad us-Saliheyn Martyrs' Brigade	89	RDWTI

DATE	LOCATION	FLIGHT	ATTACK METHOD	PERPETRATOR	FATALITIES	SOURCE
25-December-2009	USA	Northwest flight 253	Attempted detonation of bomb	Al Qaeda	1	RDWTI
					1,833	

Appendix E: Summary of aviation hijackings: 1968 - 2012

This Appendix summarises the recorded hijackings of aircraft by terrorist groups between 1968 and 2012. For each hijacking it records the date, location, flight that was hijacked, the perpetrating terrorist group, a summary of the hijack and the fatalities resulting. The statistics in this Appendix have been derived from the Global Terrorism Database (GTD), the RAND Database on Worldwide Terrorism Incidents (RDWTI) and from various media sources. Complete details of the statistics summarised below are held on file by the author.

DATE	LOCATION	FLIGHT	PERPETRATOR	SUMMARY OF HIJACK	FATALITIES	SOURCE
05-March-1968	Riohacha - Barranquilla, Colombia	Colombian Avianca Airlines DC-4	Ejercito de Liberacion Nacional	Three hijackers diverted the aircraft to Cuba, where the aircraft and all passengers were returned to Colombia the next day	0	RDWTI
19-June-1968	Santo Domingo - Curacao	Venezuelan VIASA Airlines DC9	Dominican leftists	Aircraft hijacked to Cuba by three Dominican leftists	0	RDWTI
22-July-1968	Rome - Tel Aviv	El Al Flight 426	Popular Front for the Liberation of Palestine - General Command	Hijackers demanded the release of Palestinians being held in Israeli jails. The aircraft was diverted to Algiers. Following negotiations, all passengers were progressively released over five weeks in exchange for the release of 16 Palestinians held in Israeli jails	0	RDWTI
11-September-1968	St. John - Toronto	Air Canada Viscount four-engine turbo-prop	US Black Power group	Aircraft hijacked to Cuba	0	RDWTI
04-November-1968	New Orleans - Miami	National Airlines Flight 186	Black Panthers	Aircraft hijacked to Cuba where hijackers were arrested	0	RDWTI

DATE	LOCATION	FLIGHT	PERPETRATOR	SUMMARY OF HIJACK	FATALITIES	SOURCE
08-November-1968	Paris - Athens	Olympic Airways aircraft	Opponents of Greek military Junta	Hijackers threatened passengers and crew, but were arrested upon landing	0	RDWTI
02-January-1969	Crete - Athens	Olympic Airways aircraft	Lone hijacker	Hijackers diverted aircraft to Cairo	0	RDWTI
08-June-1969	Angola	Portuguese Airliner	2 Africans - dressed as Portuguese Mil Officers	Hijackers diverted the aircraft to Pointe-Noire in Congo where the aircraft and passengers were released	0	RDWTI
17-June-1969	Oakland, California - New York	TWA Flight 154	Black Panthers	Aircraft diverted to Cuba	0	RDWTI
18-August-1969	Cairo - Aswan	Egyptian Misrair Anatov-2	6 hijackers	Aircraft diverted to an airstrip near Jidda in Saudi Arabia	0	RDWTI
29-August-1969	Paris - Athens	TWA Flight 840	Popular Front for the Liberation of Palestine	Aircraft was diverted to Damascus in Syria - where all passengers escaped before the aircraft exploded. The hijackers released all but six Israeli passengers and demanded release of Syrians in Israeli custody. Hijackers were arrested by Syrian authorities	0	RDWTI
06-September-1969	Ecuador	Two Ecuadorean Air Force transport aircraft	Opponents of Ecuadorian government	13 individuals hijacked the two aircraft to Cuba, in apparent protests against the deaths of protestors against the Ecuadorian government. During a refuelling stop in Colombia a shoot-out ensued, with two crew killed	2	RDWTI
13-September-1969	Addis Ababa - Djibouti	Ethiopian Airlines DC-6	Eritrean Liberation Front	Hijackers forced aircraft to land at Aden in South Yemen - where they were arrested	0	RDWTI
12-December-1969	Madrid - Addis Ababa	Ethiopian Airlines jet	Eritrean Liberation Front	An attempt by two armed individuals to hijack the aircraft was foiled when the hijackers were shot by on-board security guards	0	RDWTI

DATE	LOCATION	FLIGHT	PERPETRATOR	SUMMARY OF HIJACK	FATALITIES	SOURCE
21-December-1969	Athens - Rome	TWA aircraft	Popular Front for the Liberation of Palestine	Three armed individuals were arrested at Athens Airport, and later admitted plans to hijack the aircraft to Tunis, disembark passengers and then detonate aircraft in protesting against US support for Israel	0	RDWTI
01-January-1970	Montevideo - Rio de Janeiro	Cruzeiro do Sul Sud Aviation SE-210 Caravelle VI R	VAR-Palmares	Hijackers demanded aircraft divert to Cuba. Aircraft was diverted to Lima, then Panama City and then arrived in Havana two days later. Hijackers stated their actions were intended to pay homage to the dead guerrilla leader Che Guevara	0	RDWTI
09-January-1970	Paris - Rome	TWA 707	Lone anti-US individual	Hijacker diverted aircraft to Lebanon, where he was arrested	0	GTD
31-March-1970	Tokyo - Fukuoka	Japan Airlines Flight 351	Japanese Red Army	Hijackers demanded aircraft divert to Pyongyang in North Korea. Passengers allowed to disembark at Seoul Airport before aircraft continued on to Pyongyang	0	RDWTI
26-April-1970	Brazil	Brazilian VASP airliner	Left wing individuals	Aircraft was diverted to Cuba after passengers were disembarked in Guyana	0	RDWTI
01-July-1970	Rio de Janeiro - São Paulo	Cruzeiro do Sul Sud Aviation SE-210 Caravelle VI R	Alianca Libertadora Nacional	Aircraft hijacked by 4 individuals demanded release of Cuban political prisoners. The aircraft was stormed by Brazilian forces and the hijackers were arrested	0	RDWTI
12-July-1970	Brazil	Commercial airliner	Vanguardia Popular Revolucionaria	One individual attempted to hijack the aircraft, demanding the release of political prisoners; however he was over-powered and arrested	0	RDWTI
22-July-1970	Beirut - Athens	Olympic Airways 727	Palestinian Popular Struggle Front	Six individuals hijacked the aircraft and demanded the release of seven Arab prisoners in Greek jails. After Greek authorities agreed to this request all passengers were released	0	RDWTI
02-August-1970	New York to San Juan, Puerto Rico	Pan Am 747	Puerto Rican individual	Hijacker diverted aircraft to Cuba. The hijacker was arrested upon landing in Cuba, and all passengers were released	0	RDWTI

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06-September-1970	Four coordinated hijackings	Pan Am Flight 93; Swissair Flight 100; TWA Flight 741; BOAC Flight 775	Popular Front for the Liberation of Palestine	On 6 September 1970 the PFLP hijacked three airliners bound for New York from locations in Europe, and diverted them to various locations in the Middle East. Pan Am Flight 93 from Brussels was first hijacked to Beirut, then to Cairo - where it was detonated after passengers and crew were evacuated. Swissair Flight 100 from Zurich and TWA Flight 741 from Frankfurt, were flown to a landing strip at Dawson Field in the Jordanian desert. The PFLP also attempted to hijack El Al Flight 219 after take-off from Amsterdam – but this attempt was foiled by an on-board security guard. The PFLP stated the hijackings were in retaliation for US support of Israel; and demanded the release of Arab prisoners in Switzerland, the UK, and West Germany. On 9 September 1970, the PFLP hijacked a BOAC Flight 775 out of Bahrain to Dawson's Field, bringing the total number of hostages to over 300. On 11 September 1970 the hijackers freed majority of hostages, and on 12 September 1970, detonated the hijacked aircraft. Following negotiations all remaining hostages were released unharmed over the following two weeks.	0	RDWTI
08-September-1970	Athens	Ethiopian airliner	Eritrean Liberation Front	An attempted hijacking was foiled by security guards aboard the aircraft	0	RDWTI
27-September-1970	New York City, United States	United Arab Republic airliner	Jewish Defense League	No further information readily available	0	GTD
09-October-1970	Iran	Iranian airliner	Iranian terrorists	Aircraft hijacked to Baghdad by Iranian terrorists seeking release of 21 prisoners held in Iran	0	RDWTI
22-October-1970	Costa Rica	Costa Rican airliner	Nicaraguan guerrillas - FSLN	Hijackers demanded the release of Nicaraguan guerrillas being held in Costa Rica. Once released the prisoners were flown to Cuba aboard the hijacked aircraft	0	RDWTI
22-January-1971	Ethiopia	Ethiopian airliner	Eritrean Liberation Front	Airliner hijacked to Libya	0	RDWTI

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23-January-1971	South Korea	South Korean airliner	South Korean individual	A South Korean individual attempted to hijack the aircraft to North Korea. A sky marshal aboard the aircraft fired at the hijacker, causing his grenade to explode, killing the hijacker and another passenger	2	RDWTI
02-February-1971	India	Indian Airlines aircraft	Kashmiri nationalists	Two hijackers demanded the Indian government release prisoners that were being held in Kashmir. After the Indian government rejected their demands the hijackers detonated the aircraft after releasing all passengers and crew	0	RDWTI
30-March-1971	Philippines	Philippines Airlines flight	Kabataang Makabayan Youth Organization	Aircraft hijacked by six students opposed to the Marcos regime. The aircraft was flown to China where they were granted asylum, with the aircraft being returned to the Philippines	0	RDWTI
08-September-1971	Beirut - Amman	Jordanian Alia airliner	Al Fatah	Aircraft hijacked to Libya	0	RDWTI
04-October-1971	Beirut - Amman	Alia Caravelle	Al Fatah	Al Fatah members attempted to hijack aircraft, demanding passage to Iraq; however they were over-powered by the crew	0	RDWTI
27-November-1971	USA	TWA 727	Republic of New Africa movement	Hijackers diverted a TWA 727 to Cuba	0	RDWTI
19-February-1972	Cairo - Amman	Alia Caravelle	Jordanian National Liberation Movement	Hijackers attempted to divert aircraft to Libya, however they were over-powered by on-board security guards	0	RDWTI
22-February-1972	New Delhi - Athens	Lufthansa airliner	Organization for Victims of Zionist Occupation	Hijackers demanded the release of Arab prisoners being held in Germany and Egypt. All passengers and crew were released upon the payment of \$5 million ransom	0	RDWTI
03-May-1972	Turkey - Bulgaria	Turkish airliner	Turkish People's	Hijackers demanded the release of prisoners being held in Turkey. They later surrendered to Bulgarian authorities	0	RDWTI

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			Liberation Army			
08-May-1972	Vienna - Tel Aviv	Sabena Belgian World Airlines	Black September	Hijackers demanded the release of 317 Palestinians being held in Israeli jails. Israeli troops disguised as mechanics stormed the aircraft, with the hijackers being detained after a fire fight	1	RDWTI
24-May-1972	Salisbury - Johannesburg	South African Airways 727	Lebanese individuals	Hijackers demanded money from the Anglo-American Mining Company and threatened to detonate the aircraft. After releasing some passengers at a refuelling stop, they diverted to Malawi - where troops freed all remaining passengers and crew	0	RDWTI
31-July-1972	Detroit - Miami	Delta Air Lines Flight 841	Black Panthers	Five members of the Black Liberation Army hijacked aircraft. They released all passengers in exchange for a \$1M payment in Miami and then flew to Algeria		RDWTI
22-August-1972	Beirut - Cairo	Southern Yemen DC-6 aircraft	Eagles of National Unity - Anti Saudi	Hijackers diverted aircraft to Libya where they were granted asylum	0	RDWTI
15-September-1972	Sweden	Scandinavian Airlines System airliner	Croatian Separatists	Hijackers diverted aircraft to Madrid and demanded the release of Croatian terrorists held in Swedish jails. They later surrendered to Spanish authorities	0	RDWTI
22-October-1972	Turkey	Turkish airliner	Turkish People's Liberation Army	Hijackers diverted aircraft to Bulgaria, demanding the release of prisoners in Turkey. They later surrendered to Bulgarian authorities	0	RDWTI
29-October-1972	Beirut - Ankara	Lufthansa German Airlines 727	Black September	Hijackers demanded the release of Black September terrorists in custody and threatened to detonate the aircraft. After the West German government released the Black September prisoners to Yugoslavia, the aircraft was flown to Libya where all passengers and crew were released	0	RDWTI

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08-November-1972	Mexico	Mexican airliner	Armed Communist League	Hijackers demanded release of imprisoned guerrillas, arms and \$330,000. After the Mexican government complied, the aircraft was flown to Cuba where all passengers were released	0	RDWTI
24-November-1972	Frankfurt - Montreal - Toronto	Air Canada DC8	Czech individual	Hijacker demanded the release of Czech prisoners being held by West Germany. He was killed by police aboard the aircraft	1	RDWTI
08-December-1972	Ethiopia	Ethiopian Airlines airliner	Ethiopian students	In an unsuccessful hijacking, the hijackers were killed after the explosion of one of their hand grenades in a fire fight with police at an airport	6	RDWTI
26-January-1973	France	French airliner	French Legionnaire	In an unsuccessful hijacking attempt, the hijacker was shot dead after taking five hostages	1	RDWTI
18-May-1973	Venezuela - Mexico	Venezuelan Avensa airliner	Zero Point - People's Revolutionary Army	4 persons hijacked aircraft to Caracas, Panama City, then Mexico City; Demanded release of Venezuelan prisoners; Mexican government persuaded hijackers to fly to Cuba - where they were arrested; All passengers and crew released back to Caracas	0	RDWTI
18-May-1973	Irkutsk - Chita	Aeroflot Tu-104	Russian individual	A bomb carried by an individual Russian hijacker demanding passage to China exploded, causing the aircraft to crash near Lake Baikal, killing all 82 on board	82	See below ¹
30-May-1973	Pereira, Colombia	Colombian aircraft	Unknown	No further information readily available	0	GTD
04-July-1973	Buenos Aires, Argentina	Aerolineas Argentinas 737	Unknown	No further information readily available	0	GTD

¹ Hijacking description: Tupolev 104B 18 May 1973. *Aviation Safety Network* <http://aviation-safety.net/database/record.php?id=19730518-0>

DATE	LOCATION	FLIGHT	PERPETRATOR	SUMMARY OF HIJACK	FATALITIES	SOURCE
20-July-1973	After take-off from Amsterdam	Japan Air Lines Flight 404	Organization of the Sons of Occupied Territories - in cooperation with Japanese Red Army	Hijackers attempted to land in Lebanon and then Bahrain - where authorities prevented it from landing. The aircraft then landed in Dubai, then flew to Damascus, and finally to Libya - where the hijackers released all passengers and crew and destroyed the aircraft	0	RDWTI
20-October-1973	Buenos Aires - Salta	Argentine Airlines 737	Tupamaros (Uruguay)	Hijackers diverted aircraft to Yacuibam, Bolivia - where all passengers and crew were released in return for safe passage to Cuba	0	RDWTI
25-November-1973	Beirut - Tokyo	KLM 747	Arab Nationalist Youth for the Liberation of Palestine	Hijacked by 3 men over Iraq - who threatened to blow up aircraft when no country allowed aircraft to land; Landed in Malta; Departed for Dubai after negotiations - incident ended without fatalities	0	RDWTI
17-December-1973	Rome	Lufthansa airliner	5 Arab guerrillas	Five Arab guerrillas staged an armed assault on a Pan Am airliner at Rome Airport. They then hijacked a Lufthansa aircraft to Athens and then flew to Kuwait. They had demanded the release of Palestinians held by Greece, but later surrendered in Kuwait	32	RDWTI
03-March-1974	Beirut - London	British Airways VC-10	Arab Nationalist Youth for the Liberation of Palestine	Hijackers detonated aircraft after releasing all passengers and crew at Amsterdam, where they were later apprehended. The Palestinian Liberation Organisation denied responsibility for the hijacking	0	RDWTI
15-March-1974	Amsterdam - Tokyo via Beirut	KLM 747	Popular Front for the Liberation of Palestine	A planned hijacking was thwarted when police arrested six persons attempting to smuggle arms and explosives onto the aircraft in Beirut	0	RDWTI
15-July-1974	Japan	Japan Airlines airliner	Japanese Red Army	Hijacker demanded the release of an imprisoned JRA member and passage to North Korea. The hijacker was arrested while the aircraft refuelled in Nagoya	0	RDWTI

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06-November-1974	Amman - Aqaba	Royal Jordanian Airlines airliner	Jordanian Free Officers Movement	Hijackers diverted the aircraft to Libya - where the aircraft, passengers and crew were returned to Jordan	0	RDWTI
21-November-1974	Dubai	British Airways VC-10	Palestinian terrorists	Hijackers diverted aircraft to Libya, then Tunisia - demanding Egypt and the Netherlands release Palestinian prisoners. The hijackers were granted asylum in Tunisia and the passengers were released	1	RDWTI
01-December-1974	Bombay - Karachi	Swissair DC8	Pakistani terrorist	A hijacker demanded passage to Libya or Lebanon was over-powered by the crew and arrested upon landing in Karachi	0	RDWTI
25-December-1974	Bombay-Beirut-Rome-New York	Air India B0747	Czech individual	A Czech individual attempted to hijack the aircraft after taking off from Beirut; but was over-powered by crew and arrested upon landing	0	RDWTI
01-March-1975	Iraq	Iraqi Airlines Boeing 737	Kurdish rebels	Hijackers diverted aircraft to Iran, demanding the release of 85 Kurdish rebels and \$5 million. They surrendered to Iranian authorities and were later executed	2	RDWTI
07-April-1976	Philippines	Philippine Airline BAC-111	Moro National Liberation Front	Hijackers demanded the release of political prisoners. After refuelling in Manila, the aircraft flew via Bangkok to Libya where the hijackers were granted asylum and the passengers and crew were released. This is the longest distance hijacking	0	RDWTI
21-May-1976	Philippines	Philippine Airline BAC-111	Moro National Liberation Front	Hijackers demanded passage to Libya and \$375,000 ransom. The hijackers were killed in a shoot-out with security forces at Zamboanga airport on Eastern Mindanao Island	10	RDWTI
27-June-1976	Athens - Paris	Air France Flight 139	Popular Front for the Liberation of Palestine - General Command	Aircraft hijacked to Libya, after refuelling it was flown to Entebbe in Uganda. The hijackers demanded the release of 53 Palestinian prisoners in Israel, Kenya and Europe. Israel mounted a long distance commando raid and rescued the majority of passengers and crew	25	RDWTI

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23-August-1976	Cairo - Luxor	Egyptian Boeing 7	Libyan Revolutionary Command Council	Hijackers demanded the release of Palestinian prisoners. Egyptian forces stormed the aircraft and the hijackers were arrested	0	RDWTI
05-September-1976	France	KLM airliner	Popular Front for the Liberation of Palestine	Hijackers diverted aircraft to Cyprus, then Israel, then Cyprus, demanding the release of Palestinian prisoners. The hijackers were arrested in Greece	0	RDWTI
10-September-1976	New York - Chicago	TWA Flight 355	Croatian Separatists	Hijackers diverted aircraft to Canada, then to Iceland, and then to France. Passengers were progressively released by the hijackers who also claimed that bombs would be detonated within the United States unless newspapers publicised the case for Croatian independence from Yugoslavia. The hijackers surrendered to authorities in France	0	RDWTI
10-September-1976	New Delhi - Bombay	Indian Airlines B0737	Libyan individuals	Hijackers sought to divert aircraft to Mecca. During re fuelling in Pakistan, Police drugged the water on board - allowing all passengers to be evacuated and for the hijackers to be arrested	0	RDWTI
19-March-1977	Diyarbakir to Ankara	Turkish Airlines flight	Turkish students	Hijackers diverted aircraft to Beirut and demanded to visit a Palestinian refugee camp before surrendering to authorities	0	RDWTI
24-April-1977	Poland - Nuremburg	Polish TU134	Polish soldier	Solider attempted to hijack aircraft to escape Poland, but was apprehended by Polish authorities	0	RDWTI
26-April-1977	Makale and Gonder, Ethiopia	Ethiopian Airlines flight	Eritrean Liberation Front	Hijackers attempted to divert aircraft to Saudi Arabia or Sudan, but were killed by security forces upon landing	0	RDWTI
08-May-1977	Tokyo - Honolulu	Northwest Orient 747	American individual	Individual attempted to hijack aircraft to Moscow but was over-powered by crew	0	RDWTI
21-June-1977	Chile	LAN Airways flight	Chilean individual	Hijackers diverted aircraft to Argentina; then demanded a larger aircraft to Algeria where he surrendered	0	RDWTI

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29-June-1977	Dubai - Muscat, Oman	Gulf Air flight	Lebanese individual	Hijackers diverted aircraft to Doha, Qatar. They were protesting about the political situation in South Lebanon, and demanded intervention from Qatar government, \$12,000 ransom for and the release of political passengers. Upon landing the hijackers released all passengers and crew and were arrested	0	RDWTI
05-July-1977	Arica - Santiago, Chile	LADECO Airliner	Chilean individuals	Hijackers diverted aircraft to Lima, demanding the release of political prisoners and free passage to Caracas; However the Venezuelan government refused to grant asylum - so the aircraft was diverted aircraft to Cuba instead	0	RDWTI
08-July-1977	Beirut - Kuwait	Kuwait Airways aircraft	7 Palestinians	Hijackers diverted aircraft to Kuwait and then on to Syria where they surrendered	0	RDWTI
12-August-1977	Paris - Cairo	Air France aircraft	Egyptian individual	An individual attempting to hijack the aircraft (supposedly to bring together Egypt and Libya after recent fighting) was pushed out of the aircraft by passengers and crew	0	RDWTI
28-September-1977	India	Japan Airlines airliner	Japanese Red Army	Aircraft diverted to Dacca, Bangladesh where hijackers demanded the release of Japanese prisoners and \$6 million. The aircraft then headed to Algeria via Kuwait and Syria, with all passengers being progressively released	0	RDWTI
13-October-1977	Palma de Mallorca - Frankfurt	Lufthansa Flight 181	Popular Front for the Liberation of Palestine	Hijackers diverted aircraft via Rome, Cyprus, Bahrain, Dubai, and Aden to Mogadishu in Somalia. They demanded the release of Palestinian prisoners in West Germany and \$15 million ransom. One of the pilots was killed in Aden. A joint raid by the West German GSG 9 and British SAS resulted in all passengers being freed in Mogadishu after the six day hijacking.	1	RDWTI
06-November-1977	Amman - Aqaba	Royal Jordanian Airlines aircraft	Jordanian Free Officers Movement	Aircraft diverted to Libya where the hijackers were granted asylum and all passengers and crew were released	0	RDWTI

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04-December-1977	Penang - Kuala Lumpur	Malaysia Airlines Flight 653	Japanese Red Army claimed to have been responsible	Aircraft hijacked shortly after take-off from Penang, with hijackers attempting to divert it to Singapore. The aircraft crashed in the Straits of Johor, with unconfirmed reports of shootings and explosions aboard the aircraft before it crashed	100	RDWTI
03-February-1978	Pakistan	Pakistani 747	Pakistani individual	An attempted hijacking failed after the hijacker's grenade exploded - with the hijacker being arrested	0	RDWTI
12-January-1979	Tunisia	Tunis-Air Boeing 707	Tunisian individuals	Hijackers diverted aircraft to Libya. They demanded the release of Tunisian opposition politicians, but were apprehended by Libyan authorities	0	RDWTI
16-January-1979	Lebanon	Middle East Airlines jet	Amal - Lebanese group	Aircraft diverted to Amman, then Cyprus, then back to Beirut. Hijackers demanded release of their religious leader, and surrendered to authorities in Beirut	0	RDWTI
27-February-1979	Oslo - Moscow	Soviet airliner	Ananda Marga	Hijackers seeking to escape the USSR diverted aircraft to Stockholm where they surrendered	0	RDWTI
08-March-1979	Managua, Nicaragua	Executive jet	Unknown	No further information readily available	0	GTD
04-April-1979	Sydney Airport	Pan Am 747	Italian individual	Individual attempted to divert aircraft to Moscow via Singapore and Rome, but was over-powered by police	0	RDWTI
20-June-1979	United States	American Airlines jet	Serbian nationalist	Hijackers diverted aircraft to New York, then switched aircrafts and flew to Ireland with a small number of hostages, demanding the release of a Serbian prisoner. Hijackers were arrested upon arrival in Ireland	0	RDWTI
24-August-1979	Tripoli, Libya	Libyan Airlines 727	Individual	No further information readily available	0	GTD
07-September-1979	Iran - Italy via Beirut	Alitalia jet	Imam Sadr movement - Shiia	Aircraft hijacked after a stopover in Beirut. The hijackers demanded the release of their religious leader. After being denied permission to land in France, a siege ensued in Rome - after which the aircraft flew to Iran where they surrendered	0	RDWTI

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12-September-1979	Frankfurt - Cologne, West Germany	Lufthansa 727	Individual	No further information readily available	0	GTD
16-October-1979	Khoms, Libya	Arab Airways, Fokker Friendship	3 individuals	No further information readily available	0	GTD
23-November-1979	Japan	Japan Air Lines DC-10	Japanese individual	Hijackers demanded passage to the USSR, but were over-powered by crew	0	RDWTI
15-January-1980	Rome - Tunis	Alitalia DC-9	Tunisian individual	Hijackers demanded release of jailed trade union leaders. They attempted to divert the aircraft to Libya - but airports there were closed due to inclement weather. Hijackers surrendered upon landing in Sicily	0	RDWTI
18-January-1980	Beirut - Larnaca, Cyprus	Middle East Airline Boeing 720B	Lebanese individual	Hijacker seeking to publicise the disappearance of a Shiite religious leader demanded the aircraft return to Beirut to refuel, and surrendered in Beirut	0	RDWTI
25-January-1980	Atlanta, United States	Delta Airlines, Lockheed LA-1011	Black American Moslems	No further information readily available	0	GTD
28-January-1980	Baghdad - Beirut	Middle East Airlines Boeing 707	Lebanese individual	Similarly to the 18 January 1980 incident, the hijacker was seeking to publicise the disappearance of a Shiite religious leader, but surrendered in Beirut	0	RDWTI
31-January-1980	Beirut Airport	Air France aircraft	Lebanese individuals	Planned hijacking - individuals apprehended whilst boarding aircraft	0	RDWTI
10-March-1980	Beirut	Middle Eastern Airlines aircraft	Shiite Muslims	No further information readily available	0	GTD
13-October-1980	Istanbul - Ankara	Turkish Airlines Boeing 727	Amal - Lebanese group	Hijackers demanded passage to Iran. Aircraft was diverted to Diyarbakir, Turkey to refuel. All passengers were released when Turkish forces stormed the aircraft	1	RDWTI
06-November-1980	Caracas, Venezuela	Avensa Airlines DC-9	International Movement of the Proletariat	No further information readily available	0	GTD

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05-December-1980	Magarita, Venezuela	DC-9 Domestic Airline Aeropostal	4 individuals	No further information readily available	0	GTD
15-December-1980	Colombia	Colombian Avianca airliner	Movement of April 19	Hijacked diverted aircraft to Cuba where they surrendered to Cuban authorities. Their reported objective was to disrupt a 9 nation Latin American summit being held in Colombia	0	RDWTI
06-February-1981	Colombia	Colombian airliner	Colombian individuals	Hijackers demanded passage to Mexico or Panama, but surrendered after releasing several hostages	0	RDWTI
02-March-1981	Karachi - Peshawar, Pakistan	Pakistan International Airlines 720	Al Zulfikar - Pro Bhutto extremists	Aircraft hijacked to Kabul where a Pakistani diplomat was killed. The hijackers demanded Pakistan release left wing political prisoners. After seven days the aircraft was diverted to Syria where following negotiations passengers were released when Pakistani government released 50 political prisoners.	1	RDWTI
27-March-1981	Honduras - New Orleans	Honduran airliner	Cinchonero Popular Liberation Front - Honduran leftist group	Hijacked diverted aircraft to Nicaragua, demanding the release of Salvadoran leftists from Honduran prisons. The Honduran government agreed to release the prisoners if passengers and crew were released to Panamanians. The hijackers then surrendered to Panamanian authorities	0	RDWTI
28-March-1981	Palembang - Medan, Indonesia	Garuda GA 206	Commando Jihad	Hijackers demanded the release of 20 political prisoners in Indonesia, and the expulsion of Israeli militants. They attempted to proceed to Colombo but had insufficient fuel. After refuelled in Penang the aircraft proceeded to Don Muang in Thailand where it was stormed by Thai commandos	0	RDWTI
24-May-1981	Istanbul - Ankara	Turkish Airlines DC-9	Dev Sol	Hijackers diverted aircraft to Bulgaria. They demanded release of Turkish prisoners and \$500,000, but Turkey refused to negotiate. As two hijackers were lured from the aircraft to make a press statement, the remaining hijackers were over-powered by passengers and crew	0	RDWTI

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26-September-1981	Dubrovnik - Belgrade, Yugoslavia	Yugoslav Airlines flight	Croatians	No further information readily available	4	GTD
29-September-1981	India	Indian Airlines aircraft	Sikh separatists	Hijackers diverted aircraft to Lahore, Pakistan, demanding the release of Sikh separatists from Indian prisons. Pakistani commandos disguised as cleaners stormed the aircraft	0	RDWTI
30-September-1981	Medellin, Colombia	Areopesca cargo aircraft	Movement of April 19	No further information readily available	0	GTD
29-October-1981	Costa Rica	Costa Rican aircraft	Nicaraguan Anti-Communist Democratic Movement	Hijackers diverted aircraft to El Salvador, demanding the release of prisoners. They were arrested upon arrival in El Salvador	0	RDWTI
26-November-1981	Zimbabwe - Bombay Victoria, Seychelles	Air India 707	Mercenaries	No further information readily available	0	GTD
07-December-1981	Milan, Italy	Libyan Airlines jet	Shiite Muslims	No further information readily available	0	GTD
07-December-1981	Zurich - Tripoli	Libyan Airlines jet	Amal - Lebanese group	Aircraft diverted to Athens, Rome, Tehran and Beirut (twice). Hijackers demanded the release of Shiite religious leader Imam Musa Sadr, claiming he had been kidnapped by Libya	0	RDWTI
07-December-1981	Venezuela	Three Venezuelan airliners - Coordinated hijackings	El Salvadorian leftist guerrillas	Aircraft were hijacked from Venezuela to Honduras, Guatemala, Colombia and Panama. Hijackers made various demands to Venezuelan government. All passengers were later released	0	RDWTI

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27-January-1982	Bogota - Pereira, Colombia	Colombian 727 airliner	Movement of April 19	Hijackers issued various demands to the Colombian government and threatened to detonate the aircraft if the army moved in. After reaching a deal with the Colombian government hijackers released passengers and were provided passage to Cuba	0	RDWTI
25-February-1982	Kuwait - Beirut - Libya	Kuwait Airways KU 561	Amal - Lebanese group	Aircraft hijacked on the ground in Beirut, with hijackers demanded the release of an Islamic terrorist leader	0	RDWTI
26-February-1982	Tanzania	Air Tanzanian airline Boeing 737	Tanzanian individuals	Aircraft hijacked to Nairobi, then elsewhere in Kenya; then Jidda, Saudi Arabia, then Athens; and finally to Stansted, England. Hijackers demanded the resignation of the Tanzanian President, but after three days surrendered to British police	0	RDWTI
28-April-1982	La Ceiba - Tegucigalpa, Honduras	Honduras Dash-7 SAHSA	Lorenzo Zelaya People's Revolutionary Forces	Hijackers demanded the release of political prisoners, \$150,000 ransom and the publication of a manifesto. All passengers and crew were released and the hijackers were provided free passage to Cuba	0	RDWTI
27-May-1982	Damascus, Syria	Air Maroc jet	Individual	No further information readily available	0	GTD
28-May-1982	Athens - Morocco	Air Maroc jet	Moroccan religious fanatic	Aircraft diverted to Tunisia, where hijacker surrendered after reciting religious precepts urging governments and citizens to abide by Islamic principles	0	RDWTI
01-August-1982	Nairobi - Dar es Salaam	Kenyan Air Force aircraft	Kenyan Air Force personnel	Two Kenyan Army officers hijacked a military aircraft to Tanzania	0	RDWTI
22-August-1982	Mumbai - Delhi	Indian Airlines flight	Sikh militant	Hijackers attempted to divert aircraft - but were killed by Indian security forces	1	RDWTI
20-January-1983	South Yemen	Al Yanda 707	Palestinians	No further information readily available	2	GTD

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16-April-1983	Turkey	Turkish airliner	Dev Sol	Aircraft hijacked to Greece. Hijackers demanded passage to Australia but later surrendered to Turkish authorities	0	RDWTI
23-June-1983	Greece	Libyan Boeing 707	Amal - Lebanese Group	Aircraft hijacked over Mediterranean and diverted to another Greek Airport where all passengers were released. Hijackers were motivated to locate their religious leader, Imam Musa Sadr presumed to be held in Libya	0	RDWTI
06-July-1983	Iran	Iranian airliner	Moujahideen guerrillas opposed to Ayatollah Khomeini	Hijackers diverted aircraft to Kuwait, then to France where they surrendered, stating they wished to publicise political abuses in Iran	0	RDWTI
14-July-1983	Nicaragua	Nicaraguan aircraft	Nicaraguan Democratic Force - FDN / Anti-Sandinistas	Aircraft hijacked to Costa Rica, and then to Honduras where the hijackers escaped	0	RDWTI
27-August-1983	Austria	Air France aircraft	Iraqi Moslems	No further information readily available	0	GTD
25-March-1984	United States	Piedmont flight	Black Liberation Army	Hijackers diverted aircraft to Cuba, where passengers were released	0	RDWTI
28-March-1984	New Orleans, United States	Delta flight 327	Black Liberation Army	No further information readily available	0	GTD
05-July-1984	Srinagar - Delhi, India	Indian Airlines flight	All India Sikh Students Federation	No further information readily available	2	GTD
29-July-1984	Venezuela	Venezuelan airliner	Opponents of Haitian President	Hijackers took over aircraft at an airport. They demanded weapons, a helicopter and \$5 million. They were apprehended when the aircraft was stormed by commandos	0	RDWTI

DATE	LOCATION	FLIGHT	PERPETRATOR	SUMMARY OF HIJACK	FATALITIES	SOURCE
31-July-1984	West Germany	Air France 737	Guardsmen of Islam	Aircraft diverted to Iran, with hijackers demanding the release of Iranian prisoners being held in France. All passengers were released in Iran - after which the aircraft was detonated	0	RDWTI
08-August-1984	Iran	Iranian airliner	2 individuals	No further information readily available	0	GTD
10-August-1984	Bangalore - Mangalore, India	Indian Airlines flight	Individual	No further information readily available	0	GTD
24-August-1984	Delhi - Srinagar	Indian Airlines flight	7 Sikhs	Hijackers demanded passage to the United Arab - where all passengers were released	0	RDWTI
08-September-1984	SE Iran - Tehran	Iranian airliner	Iranian Monarchists	No further information readily available	0	GTD
12-September-1984	Teheran-Shiraz, Iran	Iranian airliner	Mujahideen-I-Khalq (MK)	No further information readily available	0	GTD
15-September-1984	Cyprus - Baghdad	Iraqi Airways 737	Armed individuals	Individuals attempted a hijacking over Jordan; however this was thwarted by on-board security guards	0	RDWTI
08-October-1984	Mashhad - Tehran, Iran	Iranian airliner	Individual	No further information readily available	0	GTD
06-November-1984	Jeddah - Riyadh, Saudi Arabia	Saudi Airlines flight	Yemenis	No further information readily available	1	GTD
17-November-1984	Mogadishu - Saudi Arabia	Somali Airliner	5 Somalis	Aircraft hijacked to Addis Ababa, with hijackers demanding the release of political prisoners held by the Somali government. The hijackers surrendered in exchange for safe passage out of the country	0	RDWTI
04-December-1984	Pakistan	Kuwait Airways Flight 221	Hezbollah	Aircraft diverted to Iran. Hijackers demanded the release of prisoners in Kuwaiti jails. After the hijackers killed two American passengers, the aircraft was stormed by Iranian commandos	2	RDWTI

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07-February-1985	Lebanon	Cyprus Airways airliner	Black Brigade	Hijackers demanded the release of prisoners held in Cyprus jails - with all passengers and crew being released after these prisoners were freed	0	RDWTI
02-March-1985	Ethiopia	French disaster relief aircraft	Tigray Peoples Liberation Front	Aircraft hijacked by a group demanding regional autonomy. All passengers were released by hijackers	0	RDWTI
17-March-1985	Saudi Arabia	Saudi Arabian airliner	Arab individual	Attempted hijacking which failed after a hijacker's grenade exploded when the aircraft was stormed by Saudi forces, with all passengers and crew being freed	0	RDWTI
27-March-1985	Munich - Athens	Lufthansa airliner	Libyan hijacker	Aircraft diverted to Istanbul by hijackers demanding passage to Libya; However hijackers surrendered to Turkish authorities	0	RDWTI
07-June-1985	Athens - Rome	TWA Boeing 727	Hezbollah	Aircraft hijacked to Beirut, with hijackers demanding the release of prisoners being held in Kuwait, Israel and Spain. After one American passenger was killed, remaining hostages were released 23 days later following mediation efforts by Shi'ite Amal leader Nabih Berri and Syrian government	1	RDWTI
11-June-1985	Lebanon	Jordanian Boeing 727	Amal	Aircraft diverted to Beirut, then Cyprus, then Sicily, and finally Beirut. After releasing passengers the hijackers (who claimed to be acting on behalf of Lebanese government) detonated the aircraft	0	RDWTI
12-June-1985	Beirut	Middle East Airlines 707	Palestinians	No further information readily available	0	GTD
14-June-1985	Athens	TWA Flight 827	Hizballah	Hijackers held passengers hostage for 17 days	0	GTD
15-June-1985	East Berlin	US Airliner	East Germans	East German authorities foiled a planned hijacking when arresting two persons carrying explosives	0	RDWTI
26-October-1985	Medellin - El Bagre, Colombia	Colombian aircraft	2 individuals	No further information readily available	0	GTD
10-November-1985	Kampala, Uganda	Uganda Airlines aircraft	National Resistance Movement	No further information readily available	0	GTD

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23-November-1985	Athens - Cairo	Egypt Air Flight 648	Abu Nidal Organisation	Aircraft hijacked to Malta. 60 passengers were killed when Egyptian commandos stormed the aircraft	60	RDWTI
19-December-1985	USSR	Antonov 24	Russian individuals	Aircraft was hijacked to China - where all passengers were released	0	RDWTI
29-April-1986	Kuwait	Kuwait Airways 747	12 Kuwaitis	A plan to hijack a Kuwaiti Airliner to an east Asian country was foiled by Kuwaiti authorities	0	RDWTI
05-September-1986	Mumbai - Karachi - Frankfurt - New York	Pan Am Flight 73	Abu Nidal Organization	Hijackers sought the release of prisoners being held in Cyprus. After a 16 hour siege, Pakistani security forces stormed aircraft which resulted in the deaths of 22 passengers	22	RDWTI
25-December-1986	Baghdad - Amman, Jordan	Iraqi Airways Flight 163	Hezbollah / Islamic Jihad	The grenades of the hijackers accidentally detonated, causing the aircraft to crash, killing 63 of the 106 passengers	63	RDWTI
19-May-1987	Fiji	Air New Zealand 747	Fijian Indian	An individual stormed the aircraft upon arrival from Japan, demanding the release of members of overthrown government; however he was over-powered by the crew	0	RDWTI
24-July-1987	Congo - Italy	Air Afrique DC 10	Hezbollah	Hijackers diverted aircraft to Geneva, then demanded passage to Beirut. The hijackers killed a French passenger, but the other passengers escaped when the aircraft was stormed by commandos	1	RDWTI
30-September-1987	Peru	Soviet Aeroflot aircraft	Peruvian	An attempted hijacking was foiled when the hijacker was over-powered by passengers and crew	0	RDWTI
22-February-1988	Taiwan	China Airlines aircraft	Pro-China Taiwanese individual	A hijacking attempt by an individual wishing for the reunification of China was over-powered by the crew	0	RDWTI
12-March-1988	Pakistan	Pakistan International Airlines flight	Suspected member of Afghan secret police	An attempted hijacking was foiled when the hijacker (who wanted to fly to Afghanistan or India) was over-powered by crew and on-board security	0	RDWTI

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05-April-1988	Bangkok to Kuwait	Kuwaiti Airlines flight	Hezbollah	Aircraft diverted to Iran, then Algeria. Hijackers demanded the release of pro-Iranian prisoners being held by Kuwait, with two passengers being killed	2	RDWTI
29-September-1988	Belo Horizonte Pampulha - Rio, Brazil	VASP Flight 375	Brazilian individual	The hijacker tried to force a crash into the Palacio do Planalto (Presidential office), however he was over-powered and the aircraft landed safely	1	See below ²
22-December-1988	Njoeng Jacobkondre, Suriname	Nomad aircraft	Brunswijk Jungle Commando	No further information readily available	0	GTD
30-January-1989	Colombia	Colombian airliner	Miskito Indian activist	Activist hijacked the aircraft after take-off and demanded passage to Miami; however he was over-powered by the crew and arrested	0	RDWTI
22-March-1989	Prague - Frankfurt	Hungarian Airlines aircraft	Two individuals	No further information readily available	0	GTD
10-April-1989	Cap Haitien, Haiti	US aircraft	Two individuals	No further information readily available	0	GTD
24-April-1989	Ningbo - Xiamen, China	Cacc flight	Chinese individual	No further information readily available	0	GTD
18-May-1989	Angola - Tanzania	ANC-chartered Aeroflot flight	South African agent	The South African agent's attempt to hijack an aircraft with African National Congress members aboard was foiled by the crew	0	RDWTI
01-June-1989	Port-au-Prince - Curacao, Haiti	ALM jet	Two Haitian individuals	Two individuals attempted to hijack aircraft to New York; but were arrested when the aircraft landed at Curacao	0	RDWTI

² Hijacking description: Boeing 737-317 29 September 1988. *Aviation Safety Network* <http://aviation-safety.net/database/record.php?id=19880929-0>

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18-June-1989	Kabul - Zaranj, Afghanistan	Afghan domestic flight	Afghan individuals	Aircraft hijacked to Iran	0	RDWTI
19-September-1989	Morocco	Moroccan passenger aircraft	Individual	The Moroccan aircraft was hijacked in connection with a dispute about the status of Moroccan-controlled Western Sahara territory, however the incident was resolved peacefully	0	RDWTI
06-October-1989	Myanmar	Myanmar domestic airliner	Myanmar students	The aircraft was hijacked by students demanding the release of all political prisoners in Myanmar, an end to martial law and an end to night curfews. The hijackers later surrendered and released all passengers and crew	0	RDWTI
16-December-1989	Beijing, China	Air China Boeing 747	Chinese individual	No further information readily available	1	GTD
25-January-1990	Shiraz - Bandar Abbas, Iran	Iran Air Flight 133	Iranian individuals	No further information readily available	0	GTD
05-July-1990	Panama	Panamanian airliner	FARC	Aircraft hijacked by members of FARC who intended to use aircraft to transport the FARC founder to Cuba	0	RDWTI
16-August-1990	Colon, Panama	Panamanian aircraft	5 individuals	No further information readily available	0	GTD
02-October-1990	From China	Xiamen Airlines Flight 8301	Chinese individual	The aircraft was hijacked by a Chinese individual seeking asylum in Taiwan. It crashed in Guangzhou while attempting a landing, Killing all 128 on board	128	See below ³
05-October-1990	Novgorod - Petrozavodsk, Soviet Union	Aeroflot aircraft	Unknown	No further information readily available	0	GTD
01-November-1990	Brazil	Brazilian airliner	Individual	After aircraft hijacked, pilot made an emergency landing in the Canary Islands	0	RDWTI

³ Nicholas Kristof 'Hijacking Prompts Beijing Shake-Up' *New York Times* 10 October 1990, p. 3 <http://www.nytimes.com/1990/10/10/world/hijacking-prompts-beijing-shake-up.html>

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09-November-1990	Bangkok - Rangoon	Thai Airways Flight TG305	Justice and Liberty Warriors	Aircraft diverted to Calcutta, where the hijackers (who wished to draw international attention to the plight of the pro-democracy movement in Burma), surrendered	0	RDWTI
07-January-1991	Trujillo, Peru	Faucett Airlines DC8	Tupac Amaru Revolutionary Movement	No further information readily available	2	GTD
21-January-1991	Burgas, Bulgaria - Odessa, Soviet Union	Aeroflot aircraft	Individual	No further information readily available	0	GTD
01-February-1991	Turbo, Colombia	ACES Airline aircraft	National Liberation Army of Colombia	No further information readily available	0	GTD
13-February-1991	Tbilisi, Soviet Union	Aeroflot Tupalov 154 Jet	Individual	No further information readily available	0	GTD
01-March-1991	Archangel - Leningrad	Aeroflot aircraft	Individual	No further information readily available	0	GTD
05-March-1991	Leningrad Airport, USSR	Domestic USSR flight	Soviet individual	Hijacker attempted to divert the domestic flight to Sweden with an anti-tank grenade; however the hijacker was killed during this attempt	1	RDWTI
26-March-1991	Kuala Lumpur - Singapore	Singapore Airlines Flight 117	Pakistan People's Party	Aircraft hijacked by a team of four demanding the release of members of Pakistan People's Party. All hijackers were killed and all hostages freed by Singaporean special forces in an operation lasting 30 seconds	0	RDWTI
31-March-1991	Bechar - Algiers, Algeria	Air Algerie flight	Individual	No further information readily available	0	GTD
13-June-1991	Georgia, USSR	Domestic USSR flight	Georgian individual	Hijacker attempted to divert domestic flight to Iran or Iraq; however hijacker was over-powered by Soviet troops	0	RDWTI

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20-August-1991	Yaguara, Colombia	LIK-3453 Aircraft	Two individuals	No further information readily available	0	GTD
19-September- 1991	Rome - Tunis	Alitalia Flight AZ 864	Individual	No further information readily available	0	GTD
16-October- 1991	Debre Markos - Bahir, Ethiopia	Ethiopian Airlines 737	Individual	No further information readily available	0	GTD
27-October- 1991	Trujillo - Tocache, Peru	Juan Leguia Jimenez Airline Company	Narco- Terrorists	No further information readily available	0	GTD
27-October- 1991	Quito, Ecuador	Transportes Aereos Ejecutivos Aero Commander 6- 90 Turboprop	Revolutionary Armed Forces of Colombia (FARC), Shining Path	No further information readily available	0	GTD
09-November- 1991	USSR	Domestic USSR flight	Chechen separatists	Aircraft diverted to Turkey, with hijackers protesting against Russia's policy towards Chechnya. Upon landing all passengers and crew were released	0	RDWTI
13-November- 1991	Siberia - St. Petersburg, Russia	Aeroflot aircraft	Russian individual	No further information readily available	0	GTD
25-November- 1991	Dire Dawa, Ethiopia	Ethiopian Airlines 737	Former Ethiopian government officials	No further information readily available	0	GTD
31-January-1992	El Porvenir, Panama	Aerotaxi Internacion aircraft	Four individuals	No further information readily available	0	GTD
01-February- 1992	Chimkent, Kazakhstan	Kazakhstani Airliner	Two individuals	No further information readily available	0	GTD

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05-February-1992	Djibouti	Ethiopian Airliner	Two individuals	No further information readily available	0	GTD
30-March-1992	Tunis - Madrid	Tunis Air flight	Individual	No further information readily available	0	GTD
12-April-1992	Ethiopia	Ethiopian airliner	Ethiopian individuals	Aircraft diverted to Nairobi, where all passengers and crew were released and the hijackers were arrested	0	RDWTI
13-April-1992	Somalia	Chartered Cessna 402	Somali individuals	Aircraft hijacked by five Somalis who were taken to Djibouti, where the incident ended peacefully	0	RDWTI
25-April-1992	Carti, Panama	Aerotaxi Airlines Cessna Caravan	Narco-Terrorists	No further information readily available	0	GTD
08-June-1992	Grozny - Moscow	Aeroflot TV-154	Unknown	No further information readily available	0	GTD
28-August-1992	Addis Ababa, Ethiopia	Ethiopian Airlines flight	5 individuals	No further information readily available	0	GTD
04-September-1992	Vietnam	Vietnam Airlines Airbus 300	Anti-government individual	Aircraft hijacked and forced to fly at low altitudes so the hijacker could distribute anti-government leaflets, before parachuting from the aircraft	0	RDWTI
30-September-1992	Islamabad - Saudi Arabia	Pakistani Airliner	Three individuals	No further information readily available	0	GTD
29-December-1992	Havana - Varadero, Cuba	Aero Caribbean	Individual	No further information readily available	0	GTD
06-February-1993	Venezuela	Tourist aircraft	Suspected Narcoguerrillas	Aircraft hijacked for use in drug operations	0	RDWTI
28-March-1993	India	Indian Airlines aircraft	Indian Hindu individual	Aircraft was hijacked to Pakistan. After being denied permission to land it was diverted back to India. The hijackers were protesting against Hindu- Muslim violence in India and surrendered upon return to India	0	RDWTI

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04-July-1993	Mozambique	Mozambique commuter aircraft	Mozambiquan man	The hijacker, who demanded passage to Australia, diverted the aircraft to Johannesburg - where it was stormed by special forces	0	RDWTI
16-August-1993	Tunis - Amsterdam	KLM airliner	Egyptian individual	Aircraft diverted to Dusseldorf where the hijackers demanded passage to New York and the release of Omar Abel-Rahman (an Egyptian cleric involved with 1993 WTC bombing). The aircraft was stormed by German police	0	RDWTI
16-September-1993	Germany	German transport aircraft	Turkish individual	Aircraft hijacked to Turkey	0	RDWTI
10-December-1993	Paris - Nice	Air France flight	Algerian individual	Aircraft hijacked by Algerian individual demanding passage to Libya. Upon landing at Nice the passengers were released and the hijacker was disabled by police	0	RDWTI
13-January-1994	Madras - Calcutta, India	Indian Airlines flight	Individual	No further information readily available	0	GTD
23-January-1994	Dakar - Addis Ababa	Ethiopian Airlines flight	Individual	Aircraft diverted to Rome	0	GTD
18-February-1994	Chengdu - Fuzhou, China	China Southwest Airlines	Individual	No further information readily available	0	GTD
28-February-1994	Oran - Annaba, Algeria	Air Algerie 727	Three individuals	No further information readily available	0	GTD
08-March-1994	Jeddah, Saudi Arabia - Addis Ababa, Ethiopia	Saudi Airliner	Two individuals	Aircraft was diverted to Nairobi where all passengers were released	0	GTD
06-April-1994	Khartoum - Dongola, Sudan	Sudan Air 737	Individual	No further information readily available	0	GTD

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07-April-1994	Memphis - San Jose, California	FedEx Flight 705	Disgruntled employee	Hijacked by disgruntled employee Auburn Calloway who had planned to crash it into Fed Ex Headquarters. Calloway was overpowered by flight crew and aircraft landed safely	0	See below ⁴
25-April-1994	Jeddah - Addis Ababa	Ethiopian Airlines flight	Ethiopian individual	Hijacker diverted aircraft to London - where he released passengers and crew after negotiations	0	RDWTI
06-June-1994	Fuzhou - Guangzhou, China	China Southern Airlines 737	Individual	No further information readily available	0	GTD
07-August-1994	Guatemala - Panama	COPA B-737	Individual	No further information readily available	0	GTD
14-September-1994	Aden - Sanaa, Yemen	Yemeni Alyemda Airlines 737	Individual	No further information readily available	0	GTD
25-October-1994	Makhachkala, Russia	Aeroflot Yak-40 Jetliner	Individual	No further information readily available	0	GTD
27-October-1994	Moscow - Mineralniye Vody, Russia	Aeroflot TU-154 Airliner	Two individuals	No further information readily available	0	GTD
03-November-1994	Norway	SAS aircraft	Bosnian refugee	Aircraft hijacked by Bosnian refugee wanting to highlight international attention on the need for aid to Bosnia; Hijacker surrendered after negotiations	0	RDWTI
08-November-1994	Greece / Germany - Dusseldorf	Olympic Airways Airliner	Individual	No further information readily available	0	GTD
14-November-1994	Algiers - Ouargla, Algeria	Algerian aircraft	Union of Peaceful Citizens of Algeria	Aircraft diverted to Majorca, where hijackers demanded the release of political prisoners in Algeria, upholding of the 1991 elections and passage to Marseille; Hijackers then surrendered	0	RDWTI
23-November-1994	Syktvykar, Russia	Russian TU-134	Three individuals	No further information readily available	0	GTD

⁴ Dave Hirschman *Hijacked: The True Story of the Heroes of Flight 705* (William Morrow, 1997)

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23-November-1994	Stavropol, Russia	Russian Airliner	Individual	No further information readily available	0	GTD
05-December-1994	Berbera, Somalia	Air Djibouti Airliner	Somali individuals	No further information readily available	0	GTD
15-December-1994	Catavari, Brazil	Brazilian Airliner	Two individuals	No further information readily available	0	GTD
23-December-1994	Fuzhov, Fujian Province, China	Chinese regional airliner	Individual	No further information readily available	0	GTD
24-December-1994	Algiers - Paris	Air France 8969	Armed Islamic Group (GIA)	Aircraft hijacked by four members of the Armed Islamic Group (GIA), who had planned to crash the aircraft into the Eiffel Tower. After the hijackers killed 3 passengers, French special forces stormed the aircraft in Marseilles where all four hijackers were killed and the remaining hostages were freed	8	RDWTI
04-January-1995	Khartoum, Sudan	Sudanese Airliner	Two Sudanese individuals	No further information readily available	0	GTD
17-March-1995	Addis Ababa, Ethiopia	Ethiopian Airliner	Individual	No further information readily available	0	GTD
21-June-1995	Tokyo - Hakodatr, Japan	All Nippon Airways aircraft	Individual	No further information readily available	0	GTD
01-July-1995	Norihsk, Russia	Russian Airliner	2 Russians	No further information readily available	0	GTD
02-July-1995	Sanaa, Yemen	Ethiopian Airliner	Individual	No further information readily available	0	GTD
30-July-1995	Managua, Nicaragua	La Costena Airliner	Individual	No further information readily available	0	GTD
02-August-1995	Shanghai - Guangzhou, China	China Eastern Flight MU5379	Individual	No further information readily available	0	GTD

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03-August-1995	Kandahar, Afghanistan	Trans Avia Russian Il-76 Cargo Aircraft	Taliban	No further information readily available	0	GTD
15-August-1995	Cape Town, South Africa	South African airliner	Individual	No further information readily available	0	GTD
03-September-1995	Palma de Mallorca, Spain	French airbus R-300	Anti-Nuclear Group	No further information readily available	0	GTD
21-September-1995	Kandahar, Afghanistan	Ariana Airline 727	Taliban	No further information readily available	0	GTD
09-November-1995	Athens, Greece	Olympic Airways airliner	Ethiopian individual	No further information readily available	0	GTD
26-December-1995	Asmara, United Arab Emirates	Saudi Airliner	Individual	No further information readily available	0	GTD
06-January-1996	Between Taipei and Tainan, Taiwan	Trans Asia Airways Airbus 321	Individual	No further information readily available	0	GTD
08-March-1996	Ercan, Northern Cyprus - Istanbul	Turkish Airlines Boeing 727	Turkish Chechen sympathisers	Aircraft diverted to Sofia then to Munich. The hijacker made a statement to media regarding the Chechen situation and then surrendered	0	RDWTI
24-March-1996	Khartoum, Sudan	Sudanese airliner	Two individuals	No further information readily available	0	GTD
27-March-1996	Egypt	Egypt Air Airbus A320	Members of Bani Hilal Tribe	Aircraft diverted to Libya, with hijackers demanded the lifting of the siege of Palestine. All passengers and crew released in Libya	0	RDWTI
04-April-1996	Dhaka - Barisal, Bangladesh	Y-12 aircraft	Individual	No further information readily available	0	GTD
25-July-1996	Oran, Algeria	Air Algeria B-767	Algerian individual	No further information readily available	0	GTD

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26-July-1996	Madrid, Spain	Iberia Airlines DC-10	Lebanese male	No further information readily available	0	GTD
08-August-1996	Mauritania	Air Mauritania flight	Mauritanian individual	Hijackers demanded passage to Morocco, but were overpowered by crew and arrested on landing	0	RDWTI
26-August-1996	Khartoum, Sudan	Sudan Airways Airbus 310	Iraqis	No further information readily available	0	GTD
03-September-1996	Beirut, Lebanon	Charter aircraft	Bulgarian individual	No further information readily available	0	GTD
24-September-1996	Herat - Kandahar, Afghanistan	Aircraft carrying Taliban militia	Pakistani individuals	Aircraft hijacked to Bagram Air Base. Hijackers wanted to expose Pakistani support for the Taliban	0	RDWTI
15-November-1996	Guangzhou - Xiamen, China	Chinese airliner	Individual	No further information readily available	0	GTD
23-November-1996	Addis Ababa - Nairobi	Ethiopian Airlines Flight 961	Ethiopian prison escapees	Aircraft was hijacked by three prison escapees demanding passage to Australia to seek political asylum. Aircraft crashed into the Indian Ocean after hijackers attempted to stop the pilot landing on Comoros Island. 127 of the 175 passengers on-board were killed - the third deadliest aerial hijacking	125	RDWTI
00-January-1900	Aranquita, Aravea, Colombia	Piper Seneca twin engine aircraft	Individual	No further information readily available	0	GTD
07-January-1997	Vienna, Austria	Austrian Airlines aircraft	Bosnian refugee	No further information readily available	0	GTD
10-February-1997	Guangzhou, China	Domestic airliner	Individual	No further information readily available	0	GTD
27-February-1997	New Delhi - Jammu	Alliance Airline	Individual	No further information readily available	0	GTD
10-March-1997	Kaohsiung, Taiwan	Far Eastern Air Transport aircraft	Individual	No further information readily available	0	GTD

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09-June-1997	Malta - Turkey	Air Malta Flight 830	Turkish individuals	Aircraft hijacked by individuals demanding the release of a prisoner jailed for attempting to assassinate Pope John Paul in 1981; Hijackers surrendered to Police in Cologne	0	RDWTI
09-November-1997	La Paragua - Las Minas, Venezuela	Aeroselva light aircraft	Individual	No further information readily available	0	GTD
10-December-1997	Russia	Russian airliner	Chechen rebels	No further information readily available	0	GTD
31-January-1998	Nicaragua	Nicaraguan aircraft	Nicaraguan individuals	Aircraft diverted to Costa Rica where hijackers demanded political asylum. They were arrested upon landing	0	RDWTI
18-February-1998	Russia	Russian aircraft	Russian terrorist	An attempted hijacking by an individual demanding passage out of Russia was foiled when the hijacker was over-powered by police	0	RDWTI
24-May-1998	Pakistan	Pakistan International Airlines Fokker flight PK554	Pakistani individuals	Hijackers attempted to divert aircraft to Rajasthan Province in India; however the aircraft was forced to land at a Pakistani Air Force Base where the hijackers were arrested	0	RDWTI
23-June-1998	Seville - Barcelona	Iberian Airlines aircraft	Mentally ill individual	Hijacker demanded passage to Israel, but later surrendered to authorities	0	RDWTI
09-August-1998	Russia	TU-154 aircraft	Russian individual	Hijacker demanded \$100, 00 and passage to a third country. All passengers were freed from the aircraft	0	RDWTI
14-September-1998	Turkey	Turkish Airlines Flight 145	Turkish individual	Aircraft hijacked by an individual protesting about a ban on wearing headscarves in Turkish universities and public offices. Hijacker surrendered after three hours	0	RDWTI
29-October-1998	Turkey	Turkish Airlines flight 487	Kurdistan Workers Party (PKK)	One hijacker attempted to divert aircraft to Switzerland. Upon landing in Ankara, the hijacker was killed by Police in a rescue operation	1	GTD
02-March-1999	Marseille - Paris	Air France aircraft	Individual	Former police officer seeking greater European unity hijacked aircraft, surrendered after three hours	0	GTD

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12-March-1999	Bucaramanga - Bogota, Colombia	Avianca Airlines	Narco-terrorists	Aircraft hijacked, and passengers released after a ransom was paid	0	GTD
12-April-1999	Colombia	Colombian Avianca airliner	ELN- Army of National Liberation	Aircraft hijacked to a remote landing strip. Some passengers were held hostage for 20 months. Hijackers were later arrested	0	GTD
24-December-1999	Kathmandu - Delhi	Indian Airlines Flight 814	Harakat ul-Mujahidin	Aircraft was diverted to Amritsar, Lahore, Dubai and then Kandahar. After one week India released three jailed Pakistani terrorists in exchange for the hostages - one of whom was killed	1	GTD
06-February-2000	Moscow - Essex	Afghan Ariana Airlines aircraft	Anti-Taliban Group	Hijackers demanded the release of Ismail Khan (an opponent of the Taliban regime). Aircraft was diverted first to Tashkent, Uzbekistan, then to Aktyubinsk, Kazakhstan, then to Moscow and finally to London - with passengers being progressively released. All hostages were released after a four day standoff	0	GTD
14-September-2000	Doha, Qatar - Amman, Jordan	Qatar Airways aircraft	Iraqi individual	Aircraft hijacked by an Iraqi individual seeking asylum from persecution in Iraq. Aircraft was diverted to Saudi Arabia where the hijacker was detained	0	GTD
17-September-2000	Guadalcanal, Solomon Islands	Solomon Airlines aircraft	Isatabu Freedom Movement	Solomon Island militants hijacked aircraft, released passengers after payment of ransom	0	GTD
14-October-2000	Jeddah - London	Saudi Arabian Airlines Flight 115	Four Saudi nationals	Hijackers demanded passage to Damascus, Syria - although Syria gave permission for aircraft to land, the aircraft instead landed in Baghdad. The hijackers demanded the Saudi Royal family leave power. Following three hours of negotiations, the hostages were freed and the hijackers arrested	0	GTD

DATE	LOCATION	FLIGHT	PERPETRATOR	SUMMARY OF HIJACK	FATALITIES	SOURCE
23-January-2001	Yemen	Yemeni aircraft	Yemeni - pro Iraqi	Aircraft hijacked by an individual wanting to show support for Saddam Hussein by flying to Baghdad airport as a challenge to Iraq's international isolation; However hijacker was over-powered by crew	0	GTD
28-January-2001	Bangkok - Abu Dhabi	Gulf Air Flight 153	Iraqi individual	Iraqi individual attempted to divert aircraft divert to Europe; but was over-powered by crew	0	GTD
15-March-2001	Istanbul - Moscow	Russian Tu-154 passenger aircraft	Chechen individuals	Hijackers demanded the end of hostilities in Chechnya; Russian military stormed aircraft upon landing	2	RDWTI
11-September-2001	United States	Four US airliners	Al Qaeda	Four aircraft hijacked, with three being crashed into high profile - See Table 6 in Chapter 2	2,996	GTD
20-February-2002	Colombia	Colombian aircraft	FARC	Aircraft was forced to land on a road; with the hijackers abducting a Colombian politician on-board	0	GTD
11-May-2002	China	Xiamen Airlines Flight MF8336	Chinese individual	A mentally ill Chinese man attempted to hijack the aircraft; however he was over-powered by the crew	0	GTD
09-September-2002	Bombay - Seychelles	Air Seychelles Boeing 737	Indian individual	An armed Indian man attempted to hijack the aircraft shortly after take-off; he was over-powered by the crew and arrested on landing	0	GTD
15-October-2002	Sudan	Saudi aircraft	Saudi individuals	Two Saudi nationals hijacked the aircraft and demanded to fly to the United States; however they were overpowered by the crew and arrested on landing	0	
07-February-2003	Istanbul, Turkey	aircraft on tarmac	Individual	A Turkish man wanting to travel to Russia to see his former girlfriend attempted to hijack the aircraft before take-off; however he was over-powered and arrested	0	GTD
03-October-2006	Tirana - Istanbul	Turkish Airlines Flight 1476	Greek individual	Aircraft hijacked by a man demanding to speak to the Pope. After the pilot transmitted a 7500 hijack message, the aircraft was intercepted by the Greek Air Force; and landed safely in Italy	0	See below ⁵

⁵ Turkish jet hijacker surrenders' *BBC Online* 3 October 2006 <http://news.bbc.co.uk/2/hi/europe/5403976.stm>

DATE	LOCATION	FLIGHT	PERPETRATOR	SUMMARY OF HIJACK	FATALITIES	SOURCE
22-January-2007	Botswana - South Africa	Unspecified aircraft	Suspected Al Qaeda member	A passenger threatened to detonate an explosive device aboard the aircraft. The aircraft landed, and the hijacker released passengers and crew and was arrested	0	RDWTI
24-January-2007	Khartoum, Sudan	Air West Flight 612	Individual	Aircraft was hijacked and diverted to Chadian capital of N'Djamena where the hijacker surrendered	0	GTD
15-February-2007	Nouakchott - Las Palmas	Air Mauritania 737	Individual	Aircraft hijacked by a Moroccan man seeking political asylum in France. The aircraft landed at a Las Palmas Air Force Base where the hijacker was arrested	0	See below ⁶
30-March-2007	Libya - Sudan	Sudan Airways aircraft	Individual	Aircraft was hijacked by an armed assailant. The aircraft landed safely in Khartoum where the hijacker was arrested	0	GTD
10-April-2007	Ankara, Turkey	Turkish aircraft	Individual	A man claiming to have explosives hijacked the aircraft - which landed safely in Ankara, where the hijacker was arrested	0	GTD
03-May-2007	Havana, Cuba	Aircraft leaving Cuba	Renegade soldiers	Two attackers attempted to hijack aircraft; but were over-powered and arrested upon landing	0	GTD
19-August-2007	Nicosia - Istanbul	Atlas jet MD-80	Arab students	Aircraft was hijacked by two Arab students claiming to be Al Qaeda operatives and demanding passage to Tehran. The aircraft landed in Antalya - where the passengers escaped and the hijackers were arrested	0	See below ⁷
18-April-2008	Arequipa - Lima, Peru	Aero condor aircraft	Individual	Individual demanding to speak to the Peruvian President attempted to hijack aircraft - but was over-powered by crew before landing	0	GTD

⁶ Passengers overpower aircraft hijacker in Spain's Canary Islands, suspect arrested' *USA Today* 15 February 2007 http://usatoday30.usatoday.com/news/world/2007-02-15-air-mauritania_x.htm

⁷ Pilots and passengers foil hijacking of Turkish jet' *International Herald Tribune* 20 August 2007 <http://www.nytimes.com/2007/08/19/world/europe/19iht-turkey.1.7168816.html>

DATE	LOCATION	FLIGHT	PERPETRATOR	SUMMARY OF HIJACK	FATALITIES	SOURCE
26-August-2008	Nyala, Sudan	Boeing 737	Sudanese individuals	Hijacked by two individuals seeking to flee Sudan. Aircraft was diverted from landing at Khartoum to and proceeded to south-eastern Libya - where the hijackers surrendered to Libyan authorities after a gunfight	0	GTD
26-August-2008	Libya - Sudan	Sun Air flight 611	Sudan Liberation Movement	Aircraft hijacked by three armed attackers - who surrendered upon landing in Libya	0	GTD
19-April-2009	Montego Bay - Canada	CanJet Flight 918	Jamaican individual	An armed individual stormed the aircraft past airport security and demanded passage to Cuba. Most passengers paid their way off the aircraft. Six crew members were held hostage for several hours. The hijacker was later disarmed and arrested	0	See below ⁸
09-September-2009	Cancun - Mexico City	Aero México Flight 576	Bolivian individual	Hijacker claimed to have a bomb and demanded to speak to the Mexican president. The aircraft landed at Mexico City where the passengers and crew were released when the aircraft was stormed by police	0	See below ⁹
02-November-2009	Bossaso, Somalia	Daallo Airlines aircraft	Al-Shabaab	Two armed assailants hijacked aircraft, which landed safely. After exchanging gunfire with police they were over-powered and arrested	0	GTD
29-July-2010	Mineralniye Vody - Moscow	Kavminvodyavia Airline aircraft	Individual	Individual attempted to hijack aircraft upon landing. He demanded a meeting with police, but was over-powered and arrested	0	GTD
05-January-2011	Oslo - Istanbul	Turkish Airlines Flight 1754	Individual	A man who claimed to have a bomb demanded the aircraft return to Norway. The passengers overpowered him and the aircraft landed safely at Atatürk Airport where the hijacker was arrested	0	GTD

⁸ 'Incident: Canjet B738 at Montego Bay on April 19th 2009, hijacker on board' *The Aviation Herald*, 20 April 2009 <http://avherald.com/h?article=41859361&opt=0>

⁹ Bolivian man acted alone in Mexico hijacking, official says' *CNN.com.world* 10 September 2009
<http://edition.cnn.com/2009/WORLD/americas/09/09/mexico.hijacking/index.html>

DATE	LOCATION	FLIGHT	PERPETRATOR	SUMMARY OF HIJACK	FATALITIES	SOURCE
24-April-2011	Paris - Rome	Alitalia Flight 329	Individual	A man attempted to divert the aircraft to Libya, but was subdued by crew and passengers, and arrested upon landing in Rome	0	See below ¹⁰
29-June-2012	Hotan - Urumqi, Xinjiang region in China	Tianjin Airlines Flight 7554	Six individuals	Individuals attempted a hijacking; however this was thwarted by police officers and other passengers	0	See below ¹¹

¹⁰ Accident: Alitalia A321 en route on Apr 24th 2011, attempted hijack' *Aviation Herald* 25 April 2011 <http://avherald.com/h?article=43b7e3ef&opt=1>

¹¹ China's first plane hijacking in 22 years foiled' *International Business Times* 29 June 2012 <http://www.ibtimes.com/chinas-first-plane-hijacking-22-years-foiled-704930>

Appendix F: Summary of yearly trends in barricade terrorist incidents: 1970 – 2011

This Appendix summarises the yearly patterns in barricade terrorist incidents between 1970 and 2011. For each year it records the total number of incidents globally, the total fatalities resulting and also includes a breakdown of the locations at which the barricade incidents occurred during each year, noting significant incidents. The statistics in this Appendix have been derived from the Global Terrorism Database (GTD), with complete details of the statistics summarised below held on file by the author. As [2.5] noted, the GTD defines ‘barricade terrorist incidents as ‘[acts] whose primary objective is to take control of a vehicle such as an aircraft, boat, bus, etc. for the purpose of diverting it to an un-programmed destination, obtain payment of a ransom, force the release of prisoners, or some other political objective. Hijackings are distinct from Hostage Taking because the target is a vehicle, regardless of whether there are people/passengers in the vehicle.’

Year	Total Incidents	Total Fatalities	Locations of barricade incidents
2011	5	40	India (1) - 50 fatalities, Afghanistan (1), Turkey (1), Yemen (1), Paraguay (1)
2010	12	107	Iraq (1) - 58 fatalities, Afghanistan (3), Pakistan (2) - 27 fatalities, Sudan (2), Yemen (1), United States (1)
2009	11	36	Pakistan (4), Philippines (2), India (1), Afghanistan (1), Yemen (1), Congo (1), Sri Lanka (1)
2008	7	51	Pakistan (2), Philippines (2), Afghanistan (1), Iraq (1), Kenya (1)
2007	14	26	Pakistan (3), PNG (1), Iraq (1), Iran (1), Nigeria (2), Niger (1), West Bank / Gaza (2), Congo (1), Afghanistan (1)
2006	17	28	Algeria (1) - Hostage-taking by Salafist Group for Preaching and Fighting - 21 fatalities, Afghanistan (2), Nigeria (2), Philippines (1), Chad (3), India (1), Turkey (1), Corsica (2), West Bank / Gaza (2), Sri Lanka (1)
2005	100	154	Iraq (34) - 1 attack ending in 36 fatalities; Afghanistan (14), Yemen (2), Nepal (16), Colombia (4), Somalia (1), Russia (1), Thailand (1), Algeria (2), India (4), West Bank / Gaza (3), Philippines (1), Sudan (1), Peru (1), Nigeria (2), Senegal (1), Georgia (1)

Year	Total Incidents	Total Fatalities	Locations of barricade incidents
2004	5	371	Russia (1) - Beslan School Siege by Riyadus-Salikhin Reconnaissance and Sabotage Battalion of Chechen Martyrs (344 fatalities); Saudi Arabia (1) - Al-Khubar Oil Complex Siege by Al Qaida in the Arabian Peninsula (22 fatalities), India (1), Iraq (1), West Bank and Gaza (1)
2003	3	10	India (1), Saudi Arabia (1), Philippines (1)
2002	5	131	Russia (1) - Moscow Theatre Siege by Riyadus-Salikhin Reconnaissance and Sabotage Battalion of Chechen Martyrs and Special Purpose Islamic Regiment (SPIR) and Islamic International Peacekeeping Brigade (IIPB) - demanded complete withdrawal of Russian forces from Chechnya - Russian special forces stormed theatre - resulting in 129 fatalities; Philippines (1), Germany (1), Turkey (1), Nepal (1)
2001	5	19	Philippines (1) - Abu Sayyaf Group (16 fatalities), Nigeria (1), Colombia (1), Macedonia (1), Turkey (1)
2000	6	8	Latvia (1), Bangladesh (1), Philippines (1), Nigeria (1), Thailand (1), Colombia (1), Bangladesh (1)
1999	11	14	Colombia (3), Armenia (1), Philippines (1), Uzbekistan (1), Nigeria (1); Between 16 - 19 February, closely coordinated hostage takings at embassies by supporters of the Kurdistan Workers Party (PKK) occurred in Switzerland (1), Germany (1), Netherlands (1) - all resolved with no fatalities
1998	0	0	Nil recorded
1997	3	4	Colombia (2), Brazil (1)
1996	14	23	Russia (1) - Nicaragua (2), Somalia (2), Algeria (1), Tajikistan (1), Yemen (1), Vanuatu (1), Mexico (1), PNG (1), Sri Lanka (1), Philippines (1)
1995	6	236	Russia (1) - Hostage-taking by Chechen separatists (121 fatalities), Philippines (1) - Hostage-taking by Abu Sayyaf Group (114 fatalities), El Salvador (1), Turkey (1), Chile (1), Indonesia (1)
1994	25	60	Cambodia (1) - Hostage taking by Khmer Rouge (50 fatalities), Nicaragua (4), Guatemala (2), Northern Ireland (2), Russia (2), Brazil (1), United States (1), Bosnia-Herzegovina (1), Australia (1), Afghanistan (1), France (1), Venezuela (1), Mozambique (1), Cuba (1), Japan (1), Suriname (1), Cameroon (1)
1993	0	0	GTD has no records for 1993
1992	22	5	Peru (5), Nicaragua (3), West Bank / Gaza (2), Afghanistan (2), Venezuela (1), Cambodia (1), Turkey (1), Colombia (1), Algeria (1), Bolivia (1), Bangladesh (1), Israel (1), United States (1), Yemen (1)
1991	16	11	Peru (4), Corsica (2), El Salvador (2), Colombia (2), Ecuador (1), Japan (1), Philippines (1), Great Britain (1), Chile (1), Argentina (1)
1990	17	0	Peru (5), El Salvador (3), Chile (3), Colombia (2), Zambia (1), Sri Lanka (1), Corsica (1), Philippines (1)
1989	18	21	Chile (6), El Salvador (4), Nicaragua (2), Turkey (2), Philippines (1), Suriname (1), Zambia (1), Zimbabwe (1)
1988	16	1	Peru (4), Colombia (3), El Salvador (2), Chile (2), Ecuador (2), Philippines (2), United States (1)

Year	Total Incidents	Total Fatalities	Locations of barricade incidents
1987	26	6	Peru (9), Chile (7), Philippines (4), Colombia (2), Turkey (2), El Salvador (1), Honduras (1)
1986	27	2	Peru (16), Colombia (6), Chile (4), Lebanon (1)
1985	55	20	El Salvador (16), Colombia (11), Peru (9), Guatemala (5), Ecuador (3), Philippines (2), Nicaragua (2), Greece (2), Chile (1), Mozambique (1), France (1), Angola (1), Canada (1)
1984	25	201	Ethiopia (1) - Hostage-taking by Tigray Peoples Liberation Front (200 fatalities), Colombia (8), Chile (6), Peru (5), Greece (1), Ecuador (1), Sri Lanka (1), Honduras (1) El Salvador (1)
1983	21	0	Peru (7), Colombia (6), El Salvador (3), Belgium (1), Bolivia (1), France (1), Ecuador (1)
1982	47	25	Guatemala (19), El Salvador (8), Peru (5), Colombia (3), Northern Ireland (3), Nicaragua (2), USA (1), Netherlands (1), West Germany (1), Ireland (1), Switzerland (1), Honduras (1), Lebanon (1)
1981	28	7	Guatemala (6), France (3), Colombia (3), Peru (3), El Salvador (2), Mexico (2), Philippines (2), Northern Ireland (1), Norway (1), Thailand (1), Costa Rica (1), Bolivia (1), Chile (1), Brazil (1)
1980	49	9	El Salvador (31), Colombia (8), Bolivia (4), Puerto Rico (1), Peru (1), Venezuela (1), Chile (1), Italy (1), Northern Ireland (1)
1979	75	20	El Salvador (38), Colombia (11), Nicaragua (8), Italy (5), Guatemala (4), Iran (2), Spain (2), Puerto Rico (1), Rhodesia (1), Argentina (1), Turkey (1), Philippines (1), France (1), Israel (1)
1978	42	51	Israel - Hostage-taking by Al Fatah in Haifa - 41 fatalities, Colombia (17), Spain (7), El Salvador (4), Puerto Rico (2), Nicaragua (2), Italy (6), Netherlands (1), France (1), USA (1)
1977	10	1	Italy (4), USA (2), West Germany (1), Spain (1), Colombia (1), Guatemala (1)
1976	6	16	Italy (2), Jordan (1), Syria (1), Corsica (1), Northern Ireland (1)
1975	11	35	El Salvador (2), Austria (1), Netherlands (1), Argentina (1), Spain (1), Nicaragua (1), Malaysia (1), Sweden (1), Israel (1), France (1)
1974	5	35	Israel (2) - Hostage-taking by Popular Front for the Liberation of Palestine - General Command - 21 fatalities, Netherlands (1), Argentina (1), Dominican Republic (1)
1973	6	36	Italy - Hostage-taking by Black September - 30 fatalities, Argentina (1), Lebanon (1), France (1), USA (1), Great Britain (1)
1972	2	0	Argentina (1), Thailand (1)
1971	0	0	
1970	3	0	Jordan (2), Uruguay (1)
TOTALS	771	1780	

Appendix G: Chronology of successful maritime terrorism attacks: 1961 – 2013

This Appendix summarises the all recorded successful maritime terrorist attacks between 1961 and 2013. For each attack it records the date; the location of the attack and the navigational status of the attacked vessel (Underway (U), In port (P), At anchor (A), or Offshore platform (OP)); the perpetrators of the attack; the attacked vessel; the method of attack and its effects; the Maritime Terrorism Threat Matrix incident category; the injuries resulting from the attack; the fatalities resulting from the attack; and the source from which the information about the attack was derived – which include the Global Terrorism Database (GTD), the RAND Database on Worldwide Terrorism Incidents (RDWTI) and other sources as listed below.

Date	Location and Status of Attacked Vessel	Perpetrators	Attacked vessel	Method and effect of attack	Maritime Terrorism Threat Matrix Category	Injuries	Fatalities	Source
22-January-1961	Southern Caribbean - U	Portuguese and Spanish rebels	Portuguese cruise ship Santa Maria	Hijacking of vessel - 600 passengers released after 11 days	Target: From inside vessel	0	0	Chalk ¹
24-May-1968	25 NM from Key West, United States - U	Anti-Castro Cubans - El Poder Cubano	British cargo ship Granwood	Explosives on vessel	Target: From inside vessel	0	0	RDWTI ²
30-May-1968	Near Tampa, United States - U	Anti-Castro Cubans - El Poder Cubano	Japanese ship Asaka Maru	Explosives on vessel	Target: From inside vessel	0	0	RDWTI
01-June-1968	Galveston, United States - P	Anti-Castro Cubans - El Poder Cubano	Japanese ship Mikagasan Maru	Explosives on vessel	Target: From inside vessel	0	0	RDWTI

¹ Peter Chalk *The Maritime Dimension of International Security Terrorism, Piracy, and Challenges for the United States* (RAND Corporation, 2008), 48

² RAND Database of Worldwide Terrorism Incidents http://smapp.rand.org/rwtid/search_form.php

Date	Location and Status of Attacked Vessel	Perpetrators	Attacked vessel	Method and effect of attack	Maritime Terrorism Threat Matrix Category	Injuries	Fatalities	Source
01-August-1968	300 miles east of Miami, Florida - U	Unknown	British freighter Lancastrian Prince	Explosives on vessel	Target: From inside vessel	0	0	RDWTI
08-August-1968	Biscayne Bay, Miami, Florida - A	Anti-Castro Cubans - El Poder Cubano	British freighter Caribbean Venture	Underwater explosion	Target: From underwater	0	0	RDWTI
03-September-1968	Miami Harbour - P	Croatian terrorists	Yugoslavian ship Kupres	Explosives on vessel	Target: From inside vessel	0	0	RDWTI
16-September-1968	Miami Harbour - P	Anti-Castro Cubans - El Poder Cubano	Polish vessel Polancia	Vessel fired upon	Target: From the land	0	0	RDWTI
26-April-1971	Off the Mozambique coast - U	Armed Revolutionary Action	Portuguese ship	Explosives on vessel	Target: From inside vessel	0	23	RDWTI
04-June-1971	Strait of Bab el Mandeb at Red Sea entrance - U	Popular Front for the Liberation of Palestine (PFLP)	Liberian Oil Tanker Coral Sea	Ten bazooka shells fired from speedboat	Target: From other vessel	0	0	RDWTI
12-November-1971	Belfast, Northern Ireland	Irish Republican Extremists	Dutch ship	Vessel fired upon from shore	Target: From the land	0	1	GTD ³
04-March-1973	Beirut, Lebanon - P	Black September	Greek charter ship Sanya - carrying 250 US tourists to Haifa Israel	Bomb placed below waterline; Ship sank	Target: From underwater	0	0	RDWTI
27-March-1973	Key Biscayne, Florida - P	Cuban Group JCN	Soviet research ship	Ship bombed whilst alongside	Target: From the land	0	0	RDWTI

³ National Consortium for the Study of Terrorism and Responses to Terrorism Global Terrorism Database <http://www.start.umd.edu/gtd/>

Date	Location and Status of Attacked Vessel	Perpetrators	Attacked vessel	Method and effect of attack	Maritime Terrorism Threat Matrix Category	Injuries	Fatalities	Source
30-December-1973	Miami river at dock whilst awaiting cargo - P	Cuban National Liberation Front	573-ton Mereghan cargo vessel	Two grenades fired at vessel	Target: From the land	0	0	RDWTI
31-January-1974	Singapore - Connected to 6 February 1974 incident - U	Japanese Red Army and PLFP	Ferry boat	Eight passengers aboard a ferry boat were taken hostage – with the hijackers demanding safe passage to an Arab country	Target: From other vessel	0	0	RDWTI; Lehr ⁴
02-February-1974	Karachi port, Pakistan - P	Moslem International Guerrillas	Greek freighter	Hijackers threatened to kill crew members unless the Greek government released two Arab terrorists sentenced to death. The hijackers' demands were met and the hostages were released	Target: From the land	0	0	RDWTI
06-February-1974	Kuwait - Connected to 31 January 1974 incident	PLFP	Japanese embassy in Kuwait	Twelve persons were taken hostage. Hijackers demanded safe passage for the 31 January 1974 hijackers and their hostages. A Japanese Airlines flight to transport the 31	Maritime-related	0	0	RDWTI

⁴ Peter Lehr 'Maritime Terrorism: Locations, Actors and Capabilities' in Rupert Herbert-Burns, Sam Bateman and Peter Lehr (eds) *Lloyd's MIU Handbook of Maritime Security* (CRC Press, 2008), 59

Date	Location and Status of Attacked Vessel	Perpetrators	Attacked vessel	Method and effect of attack	Maritime Terrorism Threat Matrix Category	Injuries	Fatalities	Source
				January 1974 hijackers from Singapore to Kuwait, and then onto South Yemen – where the hijackers released the hostages.				
01-May-1974	Los Angeles Harbour - P	Jewish Defense League	Ferry Caribe Star	Detonation of explosives aboard the ferry – which sank	Target: From inside vessel	0	0	RDWTI
05-June-1974	Ryder Yacht Basin, Miami - P	Suspected Anti-Duvalier Haitian exiles	Haitian patrol boat in dry dock	A grenade was thrown onto the boat	Target: From the land	0	0	RDWTI
01-August-1974	Port Suez, Egypt - P	Unknown	Singapore vessel Alcazar	Explosives attached to the vessel's hull	Target: From underwater	0	0	RDWTI
1 November 1974	Tigre boat dock, Argentina – P	Montoneros	Argentine federal police chief's yacht	Explosives placed on the yacht	Target: From inside vessel	0	2	Lehr ⁵
28-December-1974	San Juan, Puerto Rico - P	Anti-Castro Cubans	Soviet cruise vessel Maxim Gorki	Hand grenade thrown onto vessel	Target: From the land	2	0	RDWTI
23-July-1975	Okinawa Harbour - P	Radical Japanese leftists	Chilean training vessel and Japanese University ship	Molotov cocktails thrown at vessels	Target: From the land	2	0	RDWTI
04-August-1975	Miami Harbour - P	Jaws	Bahamian vessel Goldfinger II	Explosives attached to the vessel's hull	Target: From underwater	1	0	RDWTI
27 August 1975	Santiago shipyard – P	Montoneros	Argentine Navy destroyer	Frogmen attached 170kg of underwater	Target: from underwater	0	0	Lehr ⁶

⁵ Lehr, above n 4, 63

⁶ Lehr, above n 4, 62 - 63

Date	Location and Status of Attacked Vessel	Perpetrators	Attacked vessel	Method and effect of attack	Maritime Terrorism Threat Matrix Category	Injuries	Fatalities	Source
			Santisima Trinidad	demolition charges to destroyer's hull				
26-September-1975	Manila, Philippines - P	Moro National Liberation Front	Japanese freighter	Freighter with 27 crew was hijacked; later released after \$133,000 ransom paid	Target: From the land	0	0	RDWTI
01-November-1975	San Juan, Puerto Rico	Unknown	Soviet cruise ship	Explosives on vessel	Target: From inside vessel	0	0	GTD
02-November-1975	San Juan, Puerto Rico - P	Unknown	Russian cruise vessel S.S. Maksim Gorky	Explosives attached to the vessel's hull	Target: From underwater	0	0	RDWTI
07-November-1975	Off Basilan Island, Philippines - U	Moro National Liberation Front	Japanese fishing vessel	Six crew aboard vessel taken hostage; later released	Target: From other vessel	0	0	RDWTI
14 December 1975	Argentinian port – P	Montoneros	Argentine Navy Commander-in-chief's yacht	Yacht struck sea mines and sustained serious damage	Target: From underwater	0	0	Lehr ⁷
28-December-1975	San Juan, Puerto Rico - P	Anti-Castro Cuban exiles	Russian cruise vessel S.S. Maksim Gorky	Bomb thrown onto vessel	Target: From the land	1	0	RDWTI
16-January-1976	Oporto, Portugal - P	Anti-Communist Action Front	Russian vessel Nadya Ribakovatye	Two grenades thrown at vessel	Target: From the land	0	0	RDWTI
12-February-1976	5 NM off Anguilla Cays island of Cay Salbank - A	Anti-Castro Cuban exiles	Soviet ship Dzhordano Bruno	Gunfire from small boat	Target: From other vessel	0	0	RDWTI
05-April-1976	Straits of Florida	Anti-Castro Cuban exiles	Two Cuban fishing vessels	Machine gun attack from small boat	Target: From other vessel	0	1	RDWTI

⁷ Lehr, above n 4, 63

Date	Location and Status of Attacked Vessel	Perpetrators	Attacked vessel	Method and effect of attack	Maritime Terrorism Threat Matrix Category	Injuries	Fatalities	Source
01-June-1976	Off the coast of Cuba	Anti-Castro Cuban exiles	Soviet ship	Shelling attack	Target: From the land	0	0	RDWTI
18-July-1976	10 NM off Colombian coast - A	Unknown	Sloop Feisty	Spanish-speaking men boarded vessel at anchor and attacked crew	Target: From other vessel	0	2	RDWTI
01-August-1976	Beirut, Lebanon - P	Lebanese Christian Group	Greek vessel Tina	Vessel struck limpet mines , later sank	Target: From underwater	0	0	RDWTI
09-August-1976	Tyre, Lebanon - P	Unknown	Greek Cypriot cargo ship Athena	Explosion on board vessel - which later sank	Target: From inside vessel	0	0	RDWTI
16-September-1976	Port Elizabeth, New Jersey - P	Cuban anti-Communist group, Omega 7	Soviet cargo ship	Bomb placed on the hull of the ship by a frogman	Target: From underwater	0	0	RDWTI
23-October-1976	Beirut, Lebanon - P	Lebanese Christian Group	Three Greek vessels Eko, Riri, and Spiro	Limpet mines placed under vessels by frogmen - All three vessels sank	Target: From underwater	0	0	RDWTI
22-July-1977	Lima, Peru - P	International Commandos of Zone 6 of CORU	Cuban fishing vessel	Vessel struck two magnetic explosive mines; Vessel was a total loss	Target: From underwater	0	0	RDWTI
14-November-1977	Off Algerian coast - U	Algerian-backed Polisario Front	Spanish fishing trawler	Trawler attacked with mortars and machine guns from a speedboat. Three crew were taken hostage and later released	Target: From other vessel	0	0	RDWTI
21-April-1978	Western Sahara	Polisario Front	Spanish fishing vessel	Hijacking	Target: Unknown source	0	0	GTD

Date	Location and Status of Attacked Vessel	Perpetrators	Attacked vessel	Method and effect of attack	Maritime Terrorism Threat Matrix Category	Injuries	Fatalities	Source
30-April-1978	Santa Cruz Island, Philippines - U	Muslim Separatist rebel group	Don Carlos cargo vessel	Vessel attacked by four speedboats and crew were taken hostage	Target: From other vessel	0	0	RDWTI
13-August-1978	Zamboanga, Philippines	Moro National Liberation Front	Philippines ferry boat Vinirose	Armed assault	Target: From the land	8	5	GTD
01-January-1979	Off Portuguese coast - U	Fund for the Animals; Green Peace	Whaling vessel Sierra	Protest vessel Sea Shepherd rammed a whaling vessel	Kinetic weapon: Against other vessel	0	0	RDWTI; Lehr ⁸
13-May-1979	Pangutaran, Philippines	Moro National Liberation Front	Philippines commercial vessel	Armed assault	Target: Unknown source	0	2	GTD
13-May-1979	Tapul, Philippines	Moro National Liberation Front	Philippines fishing boat	Bombing	Target: Unknown source	0	3	GTD
24-June-1979	Pasajes, Spain	Basque Fatherland and Freedom (ETA)	French cargo ship Monterey	Bombing	Target: Unknown source	0	0	GTD
09-July-1979	Khorramshahr, Iran	Black Wednesday	Iranian government vessel	Bombing	Target: Unknown source	0	0	GTD
09-August-1979	Belfast, Northern Ireland	Guerrillas	Commercial ship	Bombing	Target: Unknown source	0	0	GTD
6 February 1980	Lisbon port, Portugal – P	Sea Shepherds	Whaling vessel Sierra	Vessel struck a limpet mine and sank	Target: From underwater	0	0	Lehr ⁹

⁸ Lehr, above n 4, 66

⁹ Lehr, above n 4, 64

Date	Location and Status of Attacked Vessel	Perpetrators	Attacked vessel	Method and effect of attack	Maritime Terrorism Threat Matrix Category	Injuries	Fatalities	Source
31-May-1980	Off Spanish coast - U	Algerian Polisario Front	Spanish fishing trawler	Vessel was hijacked and later sunk	Target: Unknown source	0	0	RDWTI
04-June-1980	Off the coast of Western Sahara - U	Polisario Front	Portuguese fishing trawler Rio Vouga	Vessel was hijacked and later sunk	Target: From other vessel	0	0	RDWTI
02-July-1980	Off the coast of Morocco - U	Polisario Front	Moroccan fishing trawler Cap Juby II	Trawler was bombarded	Target: Unknown source	0	0	RDWTI
29-September-1980	Off the coast of Mauritania - U	Polisario Front	Spanish fishing trawler Costa de Terranova	Vessel hijacked	Target: From other vessel	0	0	RDWTI
29-September-1980	Off the coast of Mauritania - U	Polisario Front	Spanish fishing vessel Sarita	Vessel hijacked	Target: From other vessel	0	0	RDWTI
29-October-1980	Genoa port - P	Maltese Liberation Front	Libyan gunboat	Bomb placed on gunboat's hull by frogmen	Target: From underwater	0	0	RDWTI
22-March-1981	Off the coast of Spain - U	Iranian monarchists opposed to the Khomeini regime	Iranian warship Tarbarzin purchased from France	Hijacking by a 25 former members of the Shah's Navy	Target: From other vessel	0	0	RDWTI
26-September-1981	Off the Western Sahara coast - U	Polisario Front	Portuguese fishing vessel Porto Ceu	Fishing vessel fired upon by speedboat	Target: From other vessel	3	1	RDWTI
02-November-1981	Nantes Harbour, France - P	Irish National Liberation Army	Royal Navy hydrographic vessel Hecate	Divers located a bomb with 2.2 pounds of explosives on the ship's hull below waterline	Target: From underwater	0	0	RDWTI

Date	Location and Status of Attacked Vessel	Perpetrators	Attacked vessel	Method and effect of attack	Maritime Terrorism Threat Matrix Category	Injuries	Fatalities	Source
13-November-1981	Port of Beira, Mozambique	Mozambique National Resistance Movement	Harbour entrance buoys	Infrastructure attack - harbour entrance buoys were attacked	Disruption Tool: Navigation chokepoint	0	0	GTD
09-March-1982	Port of Tyre, Lebanon - P	Unknown	Lebanese cargo ship	Explosives on vessel caused her to sink	Target: From inside vessel	0	0	RDWTI
26-December-1982	Pagadian city harbor, Philippines	Moro National Liberation Front	Ferries MV Lady Ruth and Santa Lucia	Both ferries bombed at quayside	Target: From inside vessel	70	6	GTD
23-February-1983	Irish sea inlet - U	Provisional Irish Republican Army	British cargo ship	12 attackers seized the ship, cast its crew adrift in a life raft and blew up the ship	Target: From other vessel	0	0	RDWTI
05-August-1983	Port Stanley, Falkland Islands - U	Ultra-nationalist Argentine group Artigas-Giachino Command	Danish ship Kraka	Explosives on vessel	Target: From inside vessel	10	0	RDWTI; GTD
21-October-1983	Puerto Cabezas, Nicaragua	Misurasata Indian Organization	Nicaraguan vessel	Armed Assault	Target: Unknown source	10	1	GTD
24-February-1984	El Bluff, Nicaragua	Democratic Revolutionary Alliance	Nicaraguan fishing boat Pescasa 15	Armed Assault	Target: Unknown source	2	6	GTD
24-February-1984	El Bluff, Nicaragua	Democratic Revolutionary Alliance	Nicaraguan fishing boat Aldo Chauarria	Armed Assault	Target: Unknown source	0	0	GTD
25-February-1984	El Bluff, Nicaragua	Democratic Revolutionary Alliance	Nicaraguan fishing boat Pescasa 23	Bombing	Target: Unknown source	0	0	GTD

Date	Location and Status of Attacked Vessel	Perpetrators	Attacked vessel	Method and effect of attack	Maritime Terrorism Threat Matrix Category	Injuries	Fatalities	Source
14-March-1984	Corinto, Nicaragua	Nicaraguan Democratic Force	Panamanian Ship - Los Caribes	Bombing	Target: Unknown source	0	0	GTD
20-March-1984	Puerto Sandino, Nicaragua - U	US-backed mercenaries	Entrance to Port of Sandino	Explosive device placed at entrance to harbour	Target: From underwater	5	0	RDWTI
21-March-1984	Puerto Corinto, Nicaragua	Nicaraguan Democratic Force	Soviet tanker Lugansk	Bombing	Target: Unknown source	5	0	GTD
28-March-1984	Corinto, Nicaragua	Nicaraguan Democratic Force	Liberian freighter	Bombing	Target: Unknown source	0	0	GTD
29-March-1984	Corinto, Nicaragua	Nicaraguan Democratic Force	Nicaraguan cargo ship	Bombing	Target: Unknown source	0	0	GTD
29-March-1984	Corinto, Nicaragua	Nicaraguan Democratic Force	Nicaraguan cargo ship	Bombing	Target: Unknown source	0	0	GTD
30-March-1984	Corinto, Nicaragua	Democratic Revolutionary Alliance	Nicaraguan fishing vessel AIMA Sultana	Bombing	Target: Unknown source	3	0	GTD
31-March-1984	Nicaragua - Corinto, Bluefields, El Bluff, Puerto Sandino - U	Nicaraguan Democratic Force; and Democratic Revolutionary Alliance	Eleven Soviet, Panamanian, Dutch, Liberian and Nicaraguan ships	Sea mines placed by CIA-backed operatives caused the vessels to sink	Target: From underwater	0	0	RDWTI; GTD
10-April-1984	El Cardon Island, Nicaragua	Unknown	Nicaraguan fishing vessel El Cardon	Bombing	Target: Unknown source	3	0	GTD

Date	Location and Status of Attacked Vessel	Perpetrators	Attacked vessel	Method and effect of attack	Maritime Terrorism Threat Matrix Category	Injuries	Fatalities	Source
01-May-1984	Corinto, Nicaragua	Nicaraguan Democratic Force	Japanese ship Taushiro Mahuro	Bombing	Target: Unknown source	4	0	GTD
21-May-1984	Guadeloupe	Unknown	French yacht	Bombing	Target: Unknown source	0	0	GTD
05-June-1984	Nicaragua - P	Nicaraguan counter-revolutionaries	Nicaraguan boat	Vessel hijacked by seven counter-revolutionaries	Target: From the land	0	0	RDWTI
28-June-1984	Buenos Aires, Argentina - P	Sargento Cisneros Commandos	Two Shell Oil tankers - the Perito Moreno the Belgrano	Vessels blown up	Target: From the land	10 missing	0	RDWTI
09-July-1984	Suez Canal, Egypt	Hizballah	US Warship	Warship damaged by floating sea mines	Target: From underwater	0	0	RDWTI
30-July-1984	Luanda, Angola - A	Unknown	Angolan ship Lundoge	Bombing	Target: Unknown source	0	0	GTD
31-July-1984	Angola	UNITA	Soviet Ship	Bombing	Target: Unknown source	0	0	GTD
01-August-1984	Luanda Harbour Angola - A	National Union for the Total Independence of Angola	2 freighters anchored	Sea mines	Target: From underwater	0	0	RDWTI
10-January-1985	Wawa, Nicaragua	Nicaraguan Democratic Force	Nicaraguan government fishing boat	Armed Assault	Target: Unknown source	0	0	GTD

Date	Location and Status of Attacked Vessel	Perpetrators	Attacked vessel	Method and effect of attack	Maritime Terrorism Threat Matrix Category	Injuries	Fatalities	Source
25-June-1985	Lekeitio, Spain	Basque Fatherland and Freedom (ETA)	Spanish fishing vessel Javier Ester	Armed Assault	Target: Unknown source	0	1	GTD
22-August-1985	Off Moroccan coast - U	Polisario Front	Small boat	Two crew aboard the boat were taken hostage and later released	Target: From other vessel	0	0	RDWTI
21-September-1985	Off Moroccan coast - U	Polisario Front	Spanish fishing boat	Machine gun attack	Target: From other vessel	2	1	RDWTI
25-September-1985	Larnaca Cyprus - U	Al-Fatah - PLO/ Force 17	Israeli yacht The First	Three crew members taken hostage	Target: From other vessel	0	3	RDWTI
27-September-1985	Red Sea - U	Islamic Jihad / Hezbollah	Cypriot vessel	Sea mines	Target: From underwater	0	0	RDWTI
07-October-1985	Off Egyptian coast - U	Palestinian Liberation Front	Italian cruise liner Achille Lauro	Cruise Liner hijacked by four PLF members after crew discovered them with weapons. After killing one Jewish passenger. Following negotiations, hijackers abandoned vessel in exchange for safe passage to Tunisia	Target: From inside vessel	0	1	RDWTI; GTD
30-January-1986	Messina port, Italy - P	Unknown	Two 135-ton Cypriot hydrofoil boats	Bomb placed on ship's keel - Vessel sunk	Target: From underwater	0	0	RDWTI
08-April-1986	Gulf of Suez - U	Unknown	Small Greek cargo ship	Sea mines - Vessel sunk	Target: From underwater	0	2	RDWTI
22-July-1986	Mangkaan, Tagbina Island, Philippines	New People's Army	Philippines MV Fatima	Hijacking	Target: From other vessel	0	15	GTD

Date	Location and Status of Attacked Vessel	Perpetrators	Attacked vessel	Method and effect of attack	Maritime Terrorism Threat Matrix Category	Injuries	Fatalities	Source
22-July-1986	Off Moroccan coast - U	Polisario Front	One Spanish and one Soviet fishing trawlers	Trawlers fired upon from a speedboat	Target: From other vessel	1	1	RDWTI
10-September-1986	Off coast of Western Sahara	Polisario Front	Spanish merchant ship	Armed assault	Target: Unknown source	0	1	GTD
14-September-1986	Off Moroccan coast - U	Polisario Front	Spanish merchant ship	Gunfire and mortars from speedboat	Target: From other vessel	0	1	RDWTI
27-November-1986	Off the Saharan coast - U	Unknown	Spanish fishing boat	Boat fired upon from a motorised rubber dinghy	Target: From other vessel	0	0	RDWTI
23-January-1987	Off the coast of Mauritania - U	Polisario Front	Panamanian bulk carrier Maritime King	Rocket and machine gun fire	Target: Unknown source	0	0	RDWTI
01-February-1987	Beirut, Lebanon - P	Unknown	Egyptian ship Fast Carrier	Two limpet mines placed below waterline; Carrier damaged	Target: From underwater	0	0	RDWTI
27-August-1987	Kobe, Japan	Unknown	Construction ship - New Kansai Intl Airport	Armed assault	Target: Unknown source	0	0	GTD
08-November-1987	Off the coast of the Gaza Strip - U	Abu Nidal Organisation	French-registered yacht	Eight crew taken hostage by ANO members opposed to King Hussein of Jordan; All crew released one month later	Target: From other vessel	0	0	RDWTI

Date	Location and Status of Attacked Vessel	Perpetrators	Attacked vessel	Method and effect of attack	Maritime Terrorism Threat Matrix Category	Injuries	Fatalities	Source
01-December-1987	Off Sidon, Lebanon - U	Hamas	Israeli Daboor patrol craft	Fast boat emerged from behind a fishing vessel, fired on Patrol Craft	Target: From other vessel	0	1	Murphy ¹⁰
14-February-1988	Limassol port, Cyprus - P	Israeli extremist organization KACH International	Ferry boat	Sea mine connected to time fuse	Target: From underwater	0	0	RDWTI
22-February-1988	Trincomalee, Sri Lanka	Unknown	Sri Lankan fishing vessel	Armed assault	Target: Unknown source	0	5	GTD
24-February-1988	Crete, Greece - P	Greek protestors	USNS Saturn	Molotov cocktails thrown at vessel	Target: From the land	6	0	RDWTI
11-July-1988	Trocadero Marina, Greece	Abu Nidal Organisation (ANO)	Passenger ferry City of Poros - U	Machine gun attack from ANO members aboard vessel; Vessel earlier bombed in port	Target: From the land and from inside vessel	98	11	RDWTI
01-August-1988	South-eastern Nicaragua - U	Nicaraguan Resistance	Ferry boat carrying a 10-person American delegation	Armed Assault	Target: Unknown source	27	2	RDWTI; GTD
24-February-1989	Barmouth, Wales	Meibion Glyndwr	Yacht in harbour	Armed assault	Target: Unknown source	0	0	GTD
10-November-1989	Quelimane, Mozambique	Mozambique National Resistance Movement	Spanish Ocean Tug Cauderan	Armed assault	Target: Unknown source	0	0	GTD

¹⁰ Martin Murphy *Small Boats, Weak States, Dirty Money: Piracy & Maritime Terrorism in the Modern World* (2009), 295

Date	Location and Status of Attacked Vessel	Perpetrators	Attacked vessel	Method and effect of attack	Maritime Terrorism Threat Matrix Category	Injuries	Fatalities	Source
18-November-1989	Zamboanga city, Philippines	Unknown	Philippines fishing boat	Armed assault	Target: Unknown source	0	0	GTD
20-November-1989	Zamboanga city, Philippines	Moro National Liberation Front	Fishing boat Celeste	Fishing boat's crew taken hostage	Target: Unknown source	0	0	GTD
30-November-1989	Conwy, Britain	Meibion Glyndwr	Yacht in harbour	Armed assault	Target: Unknown source	0	0	GTD
19-December-1989	Bosporus Strait, Turkey	Unknown	Fishing boat	Bombing	Target: Unknown source	0	4	GTD
24-February-1990	Off the coast of Juniyah, Lebanon - U	Unknown	Greek-owned ferry	Shelling attack	Target: Unknown source	15	1	RDWTI
25-February-1990	Off the coast of Cyprus - U	Syrians	Cypriot passenger vessel	Gunfire from small boat	Target: From other vessel	25	1	RDWTI
07-April-1990	Karaingar, Sri Lanka	Tamils	Indian fishing boat	Hijacking	Target: Unknown source	0	0	GTD
01-April-1991	Gulf of Aden, Somalia	Somali National Movement	Polish Cargo ship Wladyslaw Lokietek	Hijacking	Target: Unknown source	0	0	GTD
24-April-1991	Kismayo, Somalia	Islamic Terrorists	Italian ship carrying Relief Supplies	Hijacking	Target: Unknown source	0	0	GTD
26-April-1991	Perama, Greece	November 17 Revolutionary Organisation	Greek Tug Boat Karapiperis 6	Bombing	Target: Unknown source	0	0	GTD

Date	Location and Status of Attacked Vessel	Perpetrators	Attacked vessel	Method and effect of attack	Maritime Terrorism Threat Matrix Category	Injuries	Fatalities	Source
29-April-1991	Gulf of Aden - U	National Liberation Front of Somalia	Polish cargo ship	Hijacking	Target: From other vessel	0	0	RAND
21-June-1991	Guanabo, Cuba	Anti-Castro Cubans	Cuban fishing vessel Veneciana	Vessel hijacked by Cuban escapees	Target: Unknown source	0	0	GTD
04-August-1991	Mergui, Myanmar	Karen Insurgents	Burmese Fishing Vessel	Armed assault	Target: Unknown source	0	12	GTD
11-August-1991	Zamboanga, Philippines - P	Abu Sayyaf Group	Christian missionary vessel MV Doulous	Grenade attack whilst the vessel was alongside in port	Target: From the land	0	0	Banaloi 2005 ¹¹
07-November-1991	Saint Marc, Haiti	Drug-Related Terrorists	US Freight Vessel	Hijacking	Target: Unknown source	0	0	GTD
11-December-1991	Mogadishu, Somalia	Unknown	Saudi Arabian Tanker Sea Skipper	Hijacking	Target: Unknown source	0	0	GTD
08-January-1992	Baku, Azerbaijan	Unknown	Ferry boat	Explosion on vessel	Target: From inside the vessel	20	12	GTD
17-February-1992	Red Sea, Ethiopia	Eritrean Liberation Front	British sailing boat	Armed assault	Target: Unknown source	0	0	GTD

¹¹ Rommel Banlaoi 'Maritime Terrorism in Southeast Asia: The Abu Sayyaf Threat' (Autumn 2005) 58(4) *Naval War College Review*, 69

Date	Location and Status of Attacked Vessel	Perpetrators	Attacked vessel	Method and effect of attack	Maritime Terrorism Threat Matrix Category	Injuries	Fatalities	Source
13-June-1992	Mogadishu, Somalia	Aidid Militia	Cargo ship	Hijacking	Target: Unknown source	0	0	GTD
01-August-1992	Karachi, Pakistan	Unknown	Kemari Boating Basin	Bombing	Target: Unknown source	43	3	GTD
28-August-1992	Istanbul, Turkey	Kurdistan Workers' Party	Intra-island ferry	Bombing	Target: Unknown source	0	0	GTD
10-September-1992	Koddiyar Bay, Sri Lanka	LTTE	Ferry boat	Bombing	Target: Unknown source	0	30	GTD
17-November-1992	Port Sudan, Sudan	Unknown	US merchant vessel	Armed assault	Target: Unknown source	0	0	GTD
25-December-1993	Port of Eilat, Israel - P	Palestine National Liberation Movement, Al-Fatah	Israeli ship, Jrush Shalom	Bombing whilst docked in port	Target: From the land	11	0	RDWTI
02-July-1994	Cado Gracios a Dios, Nicaragua	Miskito Indian Organization	Fishing Boat	Hijacking	Target: Unknown source	1	1	GTD
07-July-1994	Jen, Algeria	Muslim Fundamentalists	Italian ship Luciana	Armed assault	Target: From the land	0	7	GTD
08-July-1994	Port of Jijel, Algeria - P	Armed Islamic Group	Italian cargo ship	Ship was boarding and the crew attacked	Target: From the land	0	7	RDWTI
05-August-1994	Havana, Cuba	Unknown	Tug boat Dos Rios	Hijacking	Target: From other vessel	0	0	GTD
12-August-1994	Cuba	Unknown	Fishing Boat	Hijacking	Target: From other vessel	0	0	GTD

Date	Location and Status of Attacked Vessel	Perpetrators	Attacked vessel	Method and effect of attack	Maritime Terrorism Threat Matrix Category	Injuries	Fatalities	Source
09-October-1994	Off Vettilaikerni Bead, Sri Lanka - U	LTTE	Cargo vessel Ocean Trader	Attack on vessel, which later sank	Target: From other vessel	0	0	GTD
16-October-1994	Papua New Guinea	Bougainville Revolutionary Army	Club Med II cruise ship	Armed Assault	Target: From other vessel	0	0	GTD
19 April 1995	Trincomalee, Sri Lanka - P	LTTE	Two Sri Lankan Navy gunboats	Scuba diving attack; both vessels destroyed	Target: From underwater	0	0	Lehr ¹²
04-June-1995	Kankasanturai, Sri Lanka - U	LTTE	MV Sea Dancer	Attack on vessel - Destroyed	Target: From other vessel	3	1	GTD
29-August-1995	Off Northeast coast, Sri Lanka - U	LTTE	Passenger ferry Irish Mona	Ferry hijacked with 144 passengers held hostage for 8 days	Target: From other vessel	0	0	GTD
16-January-1996	Trabzon, Turkey - P	Turkish-Abkhazian supporters of Chechen separatists	Panamanian Arasya	50 hijackers stormed vessel in port before sailing; All hostages later released	Target: From the land	1	0	RDWTI
19-January-1996	Between Baucaut and Kisar I, Indonesia	East Timorese Activists	Fishing boat	Crew of fishing boat taken hostage	Target: From other vessel	0	0	GTD
12 April 1996	Colombo, Sri Lanka - P	LTTE	Three Sri Lankan navy supply ships	Explosives attached to the vessels; causing significant damage	Target: From underwater	0	0	Lehr ¹³
07-August-1996	Pethalai, Batticaloa, Sri Lanka	LTTE	Sri Lankan fishing vessel	Hijacking	Target: Unknown source	0	0	GTD

¹² Lehr, above n 4, 63

¹³ Lehr, above n 4, 63

Date	Location and Status of Attacked Vessel	Perpetrators	Attacked vessel	Method and effect of attack	Maritime Terrorism Threat Matrix Category	Injuries	Fatalities	Source
09-August-1996	Pulmiddai, Sri Lanka - P	LTTE	Philippines cargo vessel Princess Wave	Bombed from beneath waterline	Target: From underwater	9	5	RDWTI; GTD
03-December-1996	Nice, France	Unknown	French government vessel	Bombing	Target: Unknown source	0		GTD
28-March-1997	South Coast, Vietnam	Unknown	Danish container ship	Armed Assault	Target: Unknown source	0	0	GTD
21-June-1997	Santa Marta, Colombia	Unknown	Fishing vessel	Armed Assault	Target: Unknown source	0	1	GTD
01-July-1997	Sri Lanka - U	LTTE	Ferry	Ferry hijacked; Passengers and crew - later released, hijackers then destroyed the ferry	Target: From other vessel	0	0	RDWTI
07-July-1997	Sri Lankan North coast near Point Pedro - U	LTTE	North Korean MV Morang Bong	Hijacking of crew - later released	Target: From other vessel	0	1	RDWTI
23-July-1997	Isabela, Philippines - P	MILF	Cargo ship Miguel Lujan and Ferry Leonara	Attacked with gunfire	Target: From other vessel	5	0	Murphy ¹⁴
01-September-1997	Sri Lanka - U	LTTE	Chinese ship	Attack on vessel	Target: From other vessel	0	0	RDWTI
09-September-1997	Pulmoddai, Sri Lanka - U	LTTE	Chinese ship MV Cordiality	Rocket-propelled grenades	Target: From other vessel	10	37	RDWTI; GTD

¹⁴ Murphy, above n 10, 338

Date	Location and Status of Attacked Vessel	Perpetrators	Attacked vessel	Method and effect of attack	Maritime Terrorism Threat Matrix Category	Injuries	Fatalities	Source
20-June-1999	Osoko, Nigeria - OP	Armed individuals	Royal Dutch Shell oil rig	64 workers were held hostage for two days; then released	Weapons-launching platform: Against offshore platform	0	0	Kashubsky ¹⁵
25-July-1999	Port of Trincomalee, Sri Lanka - P	LTTE	Vessel Neuuco Endurance	Suicide bombing attack on vessel whilst in port	Target: From the land	0	2	GTD
10-August-1999	Niger Delta - OP	Armed individuals	US-operated oil rig	Three workers taken hostage for one day and then released	Weapons-launching platform: Against offshore platform	0	0	Kashubsky
14-August-1999	Sri Lanka, Off Northeast coast - U	LTTE	Dubai cargo ship	Vessel hijacked, with crew being released on the same day	Target: From other vessel	0	0	RDWTI
26-September-1999	Northeast coast of Sri Lanka - U	LTTE	Chinese cargo vessel MV Yugi	Rocket attack by 12 LTTE boats	Target: From other vessel	0	0	GTD
25-February-2000	Ozamis City, Philippines	MILF	Our Lady Mediatrix	Bomb on bus driven onto ferry	Target: From inside vessel	30	40	Campbell and Gunaratna ¹⁶
20-September-2000	Zamboagna, Philippines - U	Abu Sayyaf Group	Passenger ferry	Suicide bombing by passenger aboard ferry	Target: From inside vessel	9	1	GTD
12-October-2000	Aden, Yemen - P	Al Qaeda	USS Cole	Suicide detonation of small boat alongside	Target: From other vessel	39	17	RDWTI; GTD

¹⁵ Mikhail Kashubsky 'A Chronology of Attacks on and Unlawful Interferences with, Offshore Oil and Gas Installations, 1975 – 2010' (2011) 5(5-6) *Perspectives on Terrorism*, 139. All references to Kashubsky in this Appendix are to this source.

¹⁶ Tanner Campbell and Rohan Gunaratna 'Maritime Terrorism, Piracy and Crime' in Rohan Gunaratna (ed) *Terrorism in the Asia-Pacific: Threat and Response* (Eastern University Press 2003), 71

Date	Location and Status of Attacked Vessel	Perpetrators	Attacked vessel	Method and effect of attack	Maritime Terrorism Threat Matrix Category	Injuries	Fatalities	Source
02-November-2000	Madras to Colombo - U	LTTE	Russian vessel	Vessel hijacked and crew taken hostage	Target: From other vessel	0	0	GTD
30-October-2001	Point Pedro, Sri Lanka - U	LTTE	Sri Lankan Navy oil tanker Silk Pride	Several speedboats detonated next to the Silk Pride in a coordinated suicide attack	Target: From other vessel	0	10	RDWTI; GTD
22-December-2001	Off Ambon Island, Indonesia - U	Al Qaeda-linked group	Ferry Kalifornia	Explosion onboard vessel	Target: From inside vessel	0	10	Bradford ¹⁷
03-July-2002	Malacca Straits - U	Free Aceh Movement	Indonesian supply ship	Hijacking of vessel	Target: From other vessel	0	0	Sinai ¹⁸
06-October-2002	Mina al-Dubah, Yemen - U	Aden Islamic Army; Al Qaeda	French MV Limburg	Suicide detonation of a small boat alongside; Caused significant disruption to the Yemeni economy and to marine insurance premiums	Target: From other vessel	12	1	RDWTI; GTD
20-March-2003	Off East coast of Sri Lanka near Chundikulam - U	LTTE	Chinese fishing vessel	Rocket attack on fishing vessel which later sunk	Target: From other vessel	1	14	GTD
01-April-2003	Davao City - P	Moro Islamic Liberation Front	Passenger ferries Filipina Princess and Super Ferry 15	Bomb on port	Target: From the land	30	16	Murphy ¹⁹

¹⁷ John Bradford 'The Growing Prospects for Maritime Security Cooperation in Southeast Asia' (Summer 2005) 58(3) *Naval War College Review*, 67

¹⁸ Joshua Sinai 'Future Trends in Worldwide Maritime Terrorism (March 2004) 3(1) *The Quarterly Journal*, 55

¹⁹ Murphy, above n 10, 326

Date	Location and Status of Attacked Vessel	Perpetrators	Attacked vessel	Method and effect of attack	Maritime Terrorism Threat Matrix Category	Injuries	Fatalities	Source
10-August-2003	Malacca Straits - U	Gerakan Aceh Merdeka	Malaysian MV Penrider	Crew taken hostage-taking; later released	Target: From other vessel	0	0	Chalk ²⁰
27-February-2004	Off Corregidor Island, Philippines - U	Abu Sayyaf Group	Super Ferry 14	Bomb inside ferry - Sunk	Target: From inside vessel	200	116	RDWTI; GTD
14-March-2004	Port of Ashdod, Israel	Hamas, al-Aqsa Martyrs Brigade	Port of Ashdod, Israel	Two suicide bombers detonated themselves within shipping container	Land-based attack on port facility ²¹	20	12	Chalk, ²² GTD
24-April-2004	Khor al-Amaya and Al-Basra offshore oil terminals, Iraq - OP	Jamaat al-Tawhid/Tawhid and Jihad	Offshore oil terminals	Two coordinated suicide attack using dhows, fishing boats and speed boats. This incident caused significant interruption to oil production from these terminals	Floating bomb: Against offshore platform	5	6	Chalk ²³ ; GTD
02-September-2004	Red Sea off Yemen - OP	Yemeni insurgents	Oil platforms	Workers taken hostage; later released	Weapons-launching platform: Against offshore platform	0	0	Kashubsky

²⁰ Chalk, above n 1, 50

²¹ Although as [1.5] explained, this Study does not examine terrorist attacks on port facilities perpetrated from the landward (as opposed to seaward) side, this attack is included to illustrate the vulnerabilities of shipping containers to terrorist infiltration. For a discussion of this incident, see [7.3.1.2] 'The vessel as a means: Transporting terrorist-connected persons'

²² Chalk, above n 1, 51

²³ Chalk, above n 1, 50

Date	Location and Status of Attacked Vessel	Perpetrators	Attacked vessel	Method and effect of attack	Maritime Terrorism Threat Matrix Category	Injuries	Fatalities	Source
12-June-2005	Niger Delta - OP	Armed individuals	Floating Production, Storage and Offloading (FPSO) ship Jamestown	45 workers taken hostage; later released	Weapons-launching platform: Against offshore platform	0	0	Kashubsky
28-August-2005	Lamitan, Philippines - P	Abu Sayyaf Group	Passenger ferry Dona Ramona	Bomb inside ferry	Target: From inside vessel	30	0	RDWTI
22-September-2005	South Niger Delta - OP	Militants	Chevron oil platform Idama	Hostage-taking	Weapons-launching platform: Against offshore platform	0	0	Kashubsky
10-January-2006	Niger Delta - OP	Movement for the Emancipation of the Niger Delta (MEND)	Shell oil platform	Attack on oil platform; Workers taken hostage and later released	Weapons-launching platform: Against offshore platform	0	0	Kashubsky
15-January-2006	Niger Delta - OP	MEND	Shell Benisede flow stations	Speed boat attack on flow station, which caused damage and disrupted production	Weapons-launching platform: Against offshore platform	0	16	Kashubsky
18-February-2006	Escravos, Niger Delta - OP	MEND	Forcados offshore oil loading terminal	Speed boat attack; Nine workers abducted and later released	Weapons-launching platform: Against offshore platform	0	0	Kashubsky

Date	Location and Status of Attacked Vessel	Perpetrators	Attacked vessel	Method and effect of attack	Maritime Terrorism Threat Matrix Category	Injuries	Fatalities	Source
11-May-2006	Off Jaffna, Sri Lanka - U	LTTE	Sri Lankan troop ship Pearl Cruise II	15 small boats attacked troop ship, which later sank	Target: From other vessel		17	Murphy ²⁴
02-June-2006	65NM offshore in Niger Delta - OP	MEND	Semi-submersible rig Bulford Dolphin	Speed boat attack by 30 armed militants. Eight workers abducted and oil production interrupted	Weapons-launching platform: Against offshore platform	0	0	Kashubsky
29-June-2006	100NM north of Colombo, Sri Lanka - U	LTTE	Several Sri Lankan Naval vessels	Naval vessels attacked by 20 small boats hiding amongst fishing vessels	Target: From other vessel		17	Murphy ²⁵
17-July-2006	10NM off Lebanon - U	Hezbollah	Israeli corvette INS Ah Hanit	Missile attack from shore	Target: From the land	0	4	Lorenz ²⁶
18-October-2006	Port of Galle, Sri Lanka - U	LTTE	Dakshina Naval Base and fishing harbor	Attackers disguised as fishermen on five explosives-laden vessels approached naval base. Three boats were destroyed and two exploded at the entrance to the harbour ²⁷	Floating bomb: Against land targets	14	16	GTD
22-November-2006	Port Harcourt, Nigeria - A	Armed individuals	FPSO Mystras	Speed boat attack. Crew abducted and later released	Target: From other vessel	1	1	Kashubsky

²⁴ Murphy, above n 10, 317

²⁵ Murphy, above n 10, 317 - 318

²⁶ Akiva Lorenz *The Threat of Maritime Terrorism to Israel* (International Institute for Counter Terrorism) 24 September 2007, 25

²⁷ This incident is recorded as both a successful and an attempted suicide attack

Date	Location and Status of Attacked Vessel	Perpetrators	Attacked vessel	Method and effect of attack	Maritime Terrorism Threat Matrix Category	Injuries	Fatalities	Source
22-December-2006	Off Sri Lankan coast - U	LTTE	Jordanian transport ship Farah III	Ship hijacked, with the crew being released the next day	Target: From other vessel	1	0	RDWTI; GTD
21-January-2007	Point Pedro, Sri Lanka - U	LTTE	Foreign commercial ship	Ship hit by explosives-laden boat in a suicide attack	Target: From other vessel; Floating bomb	0	0	RDWTI
31-March-2007	65NM offshore in Niger Delta - OP	MEND	Semi-submersible rig Bulford Dolphin	Speed boat attack; One worker abducted	Weapons-launching platform: Against offshore platform	0	0	Kashubsky
19-April-2007	Niger Delta - U	Armed individuals	Security vessel supporting Trident VIII drilling rig	Speed boat attack on vessel; One Nigerian sailor abducted	Target: From other vessel	0	0	Kashubsky
01-May-2007	Pennington field, Niger Delta - OP	MEND	Chevron Floating Storage and Offloading ship Olobiri	Speed boat attack; Crew abducted and later released	Weapons-launching platform: Against offshore platform	0	1	Kashubsky
03-May-2007	55NM offshore in Niger Delta - A	MEND	FPSO Mystras	Speed boat attack; Crew abducted and later released	Target: From other vessel	0	0	Kashubsky
05-May-2007	Brass Oil Export Terminal, Niger Delta - OP	Armed individuals	Trident VIII offshore drilling rig	Speed boat attack; Crew member abducted	Weapons-launching platform: Against offshore platform	0	0	Kashubsky

Date	Location and Status of Attacked Vessel	Perpetrators	Attacked vessel	Method and effect of attack	Maritime Terrorism Threat Matrix Category	Injuries	Fatalities	Source
20-October-2007	15NM offshore in Niger Delta - OP	Armed individuals	FPSO Sea Eagle	Speed boat attack; Seven workers abducted and later released	Weapons-launching platform: Against offshore platform	0	0	Kashubsky
26-October-2007	85NM offshore in Niger Delta - OP	MEND	FPSO Mystras	Speed boat attack; Six workers abducted	Weapons-launching platform: Against offshore platform	0	0	Kashubsky
04-December-2007	Off Onne, Nigeria - U	MEND	Exxon Mobil boat	Speed boat attack on vessel	Target: From other vessel	1	1	GTD
16-January-2008	Aker base, Nigeria - U	MEND	Merchant vessel	Speed boat attack on vessel	Target: From other vessel	2	0	GTD
22-March-2008	Sri Lanka - U	LTTE	Sri Lankan Navy Super Dvora craft	Suicide attack using explosives-laden vessel	Target: From other vessel		14	Murphy ²⁸
12-May-2008	Trincomalee, Sri Lanka - P	LTTE	Sri Lankan Supply Ship Invincible	Supply ship attacked by diver rigged with explosive in a suicide attack; Ship sank	Target: From underwater			RDWTI
09-June-2008	Niger Delta - U	MEND	Nigerian security vessel	Speed boat attack on vessel	Target: From other vessel	4	1	GTD
10-June-2008	Niger Delta - U	MEND	Adax Petroleum vessel	Speed boat attack on vessel	Target: From other vessel	4	9	GTD
19-June-2008	Bonny Channel, Nigeria - U	MEND	Chevron vessel	Vessel hijacked, Crew later released	Target: From other vessel	0	0	GTD

²⁸ Murphy, above n 10, 319

Date	Location and Status of Attacked Vessel	Perpetrators	Attacked vessel	Method and effect of attack	Maritime Terrorism Threat Matrix Category	Injuries	Fatalities	Source
19-June-2008	Niger Delta	MEND	Bonga Offshore Oil Platform	Speed boat attack on offshore platform. This attack reduced Nigeria's oil production capacity by one tenth	Weapons-launching platform: Against offshore platform	0	0	GTD
31 June 2008	Niger Delta - OP	Armed individuals	Two oil platforms	165 workers taken hostage; later released	Weapons-launching platform: Against offshore platform	0	0	Kashubsky
24-August-2008	Bonny Channel, Nigeria - U	MEND	Nigerian ship The Benue	Hijacking	Target: From other vessel	0	0	GTD
13-November-2008	Off Porbandar, India - U	Lashkar-e-Taiba; Deccan Mujahideen	Fishing trawler Kuber	Boarding; Killing of 5 crew; Hijacked fishing vessel later used to transport attackers to Mumbai - where they perpetrated 8 attacks between 26 - 29 Nov 2008 - killing 171 and injuring 250	Target: From other vessel; then as a means of transporting terrorist operatives	0	5	RDWTI
21-January-2009	Port Bonny, Niger Delta, Nigeria - U	MEND	MT Meredith	Speed boat attack on vessel	Target: From other vessel	0	0	GTD
09-March-2009	Mullaittivu, Puthumatalan, Sri Lanka - U	LTTE	Cargo ship MV Bintan Hinders	Artillery attack on vessel	Target: From the land	0	0	GTD

Date	Location and Status of Attacked Vessel	Perpetrators	Attacked vessel	Method and effect of attack	Maritime Terrorism Threat Matrix Category	Injuries	Fatalities	Source
13-May-2009	Chanomi Creek, Delta, Nigeria - U	MEND	Cargo ship MV Spirit and Oil tanker MT Chikana	Vessel hijacked; crew later released	Target: From other vessel	6	0	GTD
21-June-2009	Niger Delta - OP	MEND	Afremo oil field offshore platform	Bomb attached to platform by speed boat	Weapons-launching platform: Against offshore platform	0	0	Kashubsky
26-June-2009	Niger Delta - OP	MEND	Forcados offshore oil loading terminal	Speed boat attack	Weapons-launching platform: Against offshore platform	0	20	Kashubsky
29-June-2009	Niger Delta - OP	MEND	Forcados offshore oil loading terminal	Speed boat attack	Weapons-launching platform: Against offshore platform	0	25	Kashubsky
05-July-2009	Niger Delta - OP	MEND	Shell Well Head 20 Platform	Speed boat attack - disrupted production	Weapons-launching platform: Against offshore platform	0	0	Kashubsky
05-July-2009	20NM from Escravos, Nigeria - U	MEND	Chemical tanker Siehem Peace	Crew of chemical tanker taken hostage; Later released	Target: From other vessel	0	0	GTD

Date	Location and Status of Attacked Vessel	Perpetrators	Attacked vessel	Method and effect of attack	Maritime Terrorism Threat Matrix Category	Injuries	Fatalities	Source
12-July-2009	Lagos, Nigeria - P	MEND	Oil offloading facility	Armed raid	Weapons-launching platform: Against land targets	0	5	Kashubsky
12-March-2010	Off Bakassi peninsula SW Cameroon - U	Africa Marine Commando	Two fishing vessels	Hijacking / hostage taking	Target: From other vessel	2	0	GTD
28-March-2010	Off Cameroon coast - U	Africa Marine Commando	Nigerian vessel	Hijacking / hostage taking	Target: From other vessel	0	0	GTD
27-July-2010	Strait of Hormuz near Oman - U	Unknown	Japanese tanker MV M Star	Explosives packed Speed boat - Suicide attack	Target: From other vessel	1	0	DiPaola ²⁹
07-November-2010	12NM off Niger Delta - OP	MEND	High Island VII offshore drilling jack-up rig	19 crew abducted; Released 10 days later	Weapons-launching platform: Against offshore platform	0	0	Kashubsky
08-November-2010	11NM off Niger Delta - OP	MEND	Offshore rig	Crew of rig taken hostage; later released	Weapons-launching platform: Against offshore platform	0	0	Kashubsky
15-November-2010	Off Southeast coast of Nigeria - OP	Niger Delta Liberation Force	ExxonMobil Oso offshore platform	Crew of offshore platform taken hostage; later released	Weapons-launching platform: Against	0	0	Kashubsky

²⁹ Anthony DiPaola 'UAE Confirms Terror Attack on Japan Tanker in Persian Gulf Last Month' *Bloomberg* 7 August 2010 <http://www.bloomberg.com/news/2010-08-06/u-a-e-confirms-terror-attack-on-japan-tanker-in-persian-gulf-last-month.html>

Date	Location and Status of Attacked Vessel	Perpetrators	Attacked vessel	Method and effect of attack	Maritime Terrorism Threat Matrix Category	Injuries	Fatalities	Source
					offshore platform			
17-November-2010	50NM off Cameroon coast - OP	Africa Marine Commando	Moudi oil terminal	Speed boat attack	Weapons-launching platform: Against offshore platform	0	6	Kashubsky

Appendix H: Status of international agreements as at 1 October 2013

This Appendix summarises the status of the international agreements, and for the PSI Interdiction Principles, the States currently listed as “participants” as at 1 October 2013, with the sources for these statuses being noted at the end of this appendix.

	1974 SOLAS Convention	1982 UNCLOS	1988 SUA Convention	1988 SUA Platforms Protocol	2003 SID Convention	2005 SUA Convention	2005 SUA Platforms Protocol	PSI "Participants"
Afghanistan			x	x				x
Albania	x	x	x	x	x			x
Algeria	x	x	x	x		x	x	
Andorra			x	x				x
Angola	x	x						x
Antigua & Barbuda	x	x	x	x				x
Argentina	x	x	x	x				x
Armenia		x	x	x				x
Australia	x	x	x	x				x
Austria	x	x	x	x		x	x	x
Azerbaijan	x		x	x	x			x
Bahamas	x	x	x	x	x			x
Bahrain	x	x	x	x				x
Bangladesh	x	x	x	x				
Barbados	x	x	x	x				
Belarus	x	x	x	x				x
Belgium	x	x	x	x				x
Belize	x	x						x
Benin	x	x	x	x				
Bhutan								
Bolivia	x	x	x	x				
Bosnia & Herzegovina		x	x	x	x			x
Botswana		x	x	x				
Brazil	x	x	x	x	x			
Brunei Darussalam	x	x	x	x				x
Bulgaria	x	x	x	x		x	x	x
Burkina Faso		x	x	x				
Burundi								
Cambodia	x		x	x				x
Cameroon	x	x						
Canada	x	x	x	x				x
Cape Verde	x	x	x	x				
Central African Republic								

	1974 SOLAS Convention	1982 UNCLOS	1988 SUA Convention	1988 SUA Platforms Protocol	2003 SID Convention	2005 SUA Convention	2005 SUA Platforms Protocol	PSI "Participants"
Chad		x						
Chile	x	x	x	x				x
China	x	x	x	x				
Colombia	x							x
Comoros	x	x	x	x				
Congo	x	x						
Cook Islands	x	x	x			x		
Costa Rica	x	x	x	x				
Cote d'Ivoire	x	x	x	x		x	x	
Croatia	x	x	x	x	x			x
Cuba	x	x	x	x				
Cyprus	x	x	x	x				x
Czech Republic	x	x	x	x				x
Dem. People's Rep. Korea	x							
Dem. Rep. of the Congo	x	x						
Denmark	x	x	x	x				x
Djibouti	x	x	x	x				x
Dominica	x	x	x	x				x
Dominican Republic	x	x	x	x		x	x	x
Ecuador	x	x	x	x				
Egypt	x	x	x	x				
El Salvador			x	x				x
Equatorial Guinea	x	x	x	x				
Eritrea	x							
Estonia	x	x	x	x		x	x	x
Ethiopia	x		x					
Fiji	x	x	x	x		x	x	x
Finland	x	x	x	x				x
France	x	x	x	x	x			x
Gabon	x	x						
Gambia	x	x	x					
Georgia	x	x	x	x				x
Germany	x	x	x	x				x
Ghana	x	x	x	x				
Greece	x	x	x	x				x
Grenada	x	x	x	x				
Guatemala	x	x	x	x				
Guinea	x	x	x	x				
Guinea-Bissau		x	x	x				
Guyana	x	x	x	x				
Haiti	x	x						
Holy See								

	1974 SOLAS Convention	1982 UNCLOS	1988 SUA Convention	1988 SUA Platforms Protocol	2003 SID Convention	2005 SUA Convention	2005 SUA Platforms Protocol	PSI "Participants"
Honduras	x	x	x	x				x
Hungary	x	x	x	x	x			x
Iceland	x	x	x	x				x
India	x	x	x	x				
Indonesia	x	x			x			
Iran (Islamic Republic of)	x		x	x				
Iraq	x	x						x
Ireland	x	x	x	x				x
Israel	x		x	x				x
Italy	x	x	x	x				x
Jamaica	x	x	x	x				
Japan	x	x	x	x				x
Jordan	x	x	x	x	x			x
Kazakhstan	x		x	x	x			x
Kenya	x	x	x	x				
Kiribati	x	x	x	x				
Kuwait	x	x	x	x				x
Kyrgyzstan								x
Lao People's Dem. Rep.		x	x	x				
Latvia	x	x	x	x		x	x	x
Lebanon	x	x	x	x				
Lesotho		x	x	x				
Liberia	x	x	x	x				x
Libya	x		x	x				x
Liechtenstein			x	x		x	x	x
Lithuania	x	x	x	x	x			x
Luxembourg	x	x	x	x	x			x
Madagascar	x	x	x	x	x			
Malawi	x	x						
Malaysia	x	x						
Maldives	x	x						
Mali		x	x	x				
Malta	x	x	x	x				x
Marshall Islands	x	x	x	x	x	x	x	x
Mauritania	x	x	x	x				
Mauritius	x	x	x	x				
Mexico	x	x	x	x				
Micronesia (Fed. States of)		x	x					
Monaco	x	x	x	x				
Mongolia	x	x	x	x				x
Montenegro	x	x	x	x				x

	1974 SOLAS Convention	1982 UNCLOS	1988 SUA Convention	1988 SUA Platforms Protocol	2003 SID Convention	2005 SUA Convention	2005 SUA Platforms Protocol	PSI "Participants"
Morocco	x	x	x	x				x
Mozambique	x	x	x	x				
Myanmar	x	x	x	x				
Namibia	x	x	x	x				
Nauru		x	x	x		x	x	
Nepal		x						
Netherlands	x	x	x	x		x	x	x
New Zealand	x	x	x	x				x
Nicaragua	x	x	x	x				
Niger		x	x	x				
Nigeria	x	x	x		x			
Niue	x	x	x	x				
Norway	x	x	x	x				x
Oman	x	x	x	x				x
Pakistan	x	x	x	x	x			
Palau	x	x	x	x		x	x	
Panama	x	x	x	x		x	x	x
Papua New Guinea	x	x						x
Paraguay	x	x	x	x				
Peru	x		x	x				
Philippines	x	x	x	x	x			x
Poland	x	x	x	x				x
Portugal	x	x	x	x				x
Qatar	x	x	x	x				x
Republic of Korea	x	x	x	x	x			x
Republic of Moldova	x	x	x	x	x			x
Romania	x	x	x	x				x
Russian Federation	x	x	x	x	x			x
Rwanda								
Saint Kitts and Nevis	x	x	x			x		
Saint Lucia	x	x	x	x		x	x	x
St. Vincent & Grenadines	x	x	x	x		x	x	x
Samoa	x	x	x					x
San Marino								x
Sao Tome & Principe	x	x	x	x				
Saudi Arabia	x	x	x	x		x	x	x
Senegal	x	x	x	x				
Serbia	x	x	x	x		x		x
Seychelles	x	x	x	x				
Sierra Leone	x	x						
Singapore	x	x	x					x
Slovakia	x	x	x	x				x

	1974 SOLAS Convention	1982 UNCLOS	1988 SUA Convention	1988 SUA Platforms Protocol	2003 SID Convention	2005 SUA Convention	2005 SUA Platforms Protocol	PSI "Participants"
Slovenia	x	x	x	x				x
Solomon Islands	x	x						
Somalia		x						
South Africa	x	x	x	x				
Spain	x	x	x	x	x	x	x	x
Sri Lanka	x	x	x					x
Sudan	x	x	x	x				
Suriname	x	x						
Swaziland		x	x	x				
Sweden	x	x	x	x				x
Switzerland	x	x	x	x		x	x	x
Syrian Arab Republic	x		x	x				
Tajikistan			x	x				x
Thailand	x	x						x
the former Yugoslav Republic of Macedonia		x	x	x				x
Togo	x		x	x				
Timor-Leste		x						
Tonga	x	x	x	x				
Trinidad & Tobago	x	x	x	x				
Tunisia	x	x	x	x				x
Turkey	x		x	x		x		x
Turkmenistan	x		x	x				x
Tuvalu	x	x	x					
Uganda		x	x					
Ukraine	x	x	x	x				x
United Arab Emirates	x		x	x				x
United Kingdom	x	x	x	x				x
United Rep. of Tanzania	x	x	x					
United States	x		x	x				x
Uruguay	x	x	x	x				
Uzbekistan			x	x				x
Vanuatu	x	x	x	x	x	x	x	x
Venezuela	x							
Viet Nam	x	x	x	x				
Yemen	x	x	x	x	x			x
Zambia		x						
Zimbabwe		x						
IMO ASSOCIATE MEMBERS								
Hong Kong, China	x		x	x				
Macao, China	x							
Faroe Islands	x							
European Union								

Sources for the status of the above international agreements:

1974 SOLAS Convention, 1988 SUA Convention, 1988 SUA Platforms Protocol, 2005 SUA Convention and 2005 SUA Platforms Protocol:

International Maritime Organisation – Status of convention (SOLAS, SUA treaties)

‘Summary status of conventions’ as at 31 July 2013

<http://www.imo.org/About/Conventions/StatusOfConventions/Pages/Default.aspx>; Accessed

1 October 2013

1982 UN Law of the Sea Convention:

United Nations Division for Ocean Affairs and the Law of the Sea

‘Chronological lists of ratifications of, accessions and successions to the Convention and the related Agreements as at 20 September 2013’

http://www.un.org/Depts/los/reference_files/chronological_lists_of_ratifications.htm#The

[United Nations Convention on the Law of the Sea](http://www.un.org/Depts/los/reference_files/chronological_lists_of_ratifications.htm#The); Accessed 1 October 2013

2003 SID Convention:

International Labour Organisation ‘Ratifications of C185 – Seafarers’ Identity Documents Convention (Revised), 2003 (No. 185)’

http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO::P11300_INSTRUMENT_ID:312330; Accessed 1 October 2013

PSI “Participants”:

US State Department Bureau of International Security and Non-proliferation ‘Proliferation Security Initiative Participants’, 21 May 2013

<http://www.state.gov/t/isn/c27732.htm>; Accessed 1 October 2013

Appendix I: Effectiveness of preventative security measures against piracy and armed robbery against ships: 2005– 2012

This Appendix summarises the effectiveness of ISPS Code and other security measures in deterring pirate attacks on vessels between 2005 and 2012. For each attempted attack it includes the date; the location and navigational status of the attacked vessel (Underway (U), In port (P), At anchor (A), or Offshore platform (OP)); the name and nationality of the attacked vessel; details of the attack including the number of attackers, their weapons and means of transport; details of security measures taken by the targeted vessel; the effect of the security measures taken by the targeted vessel; and references to the *Annual Reports on Piracy and Armed Robbery Against Ships* from which these reports of attempted attacks were derived.

DATE	LOCATION AND NAVIGATIONAL STATUS OF TARGETED VESSEL	TARGETED VESSEL	DETAILS OF ATTACK	SECURITY MEASURES TAKEN	EFFECT OF SECURITY MEASURES	IMB ANNUAL REPORT REFERENCE
30-March-2005	Sebuku Anchorage, East Kalimantan, Indonesia - A	Hong Kong bulk carrier Darya Rani	Armed robbers boarded carrier and robbed vessel	"Alert crew and armed security guard rushed forward"	Robbers stole ship's stores and escaped in speedboat	2005, 36
31-May-2005	10 NM South of Basra Oil Terminal, Iraq - A	Cyprus tanker MT Nordmillennium	Armed robbers boarded tanker, attacked master and robbed vessel	After robbers left vessel - SSAS activated and Mayday message sent	Coalition warship subsequently arrived on scene to investigate	2005, 19, 22, 59
19-November-2005	Umm Qasr anchorage, Iraq - A	Panamanian bulk carrier Alexandra I	Three armed pirates boarded carrier, attacked crew and robbed vessel	After pirates left vessel - SSAS activated and authorities notified	Coalition warship subsequently arrived on scene to investigate	2005, 27, 60

DATE	LOCATION AND NAVIGATIONAL STATUS OF TARGETED VESSEL	TARGETED VESSEL	DETAILS OF ATTACK	SECURITY MEASURES TAKEN	EFFECT OF SECURITY MEASURES	IMB ANNUAL REPORT REFERENCE
13-January-2006	Tg Priok Anchorage, Indonesia - A	Panamanian container vessel Iberian Express	Two robbers armed with knives boarded ship	Armed shore security guards pointed their guns at the robbers	Robbers aborted attack	2006, 29
27-January-2006	Off Somalia - U	Turkish bulk carrier MV Osman Mete	Five pirates in speedboat armed with machine guns and RPGs, fired upon vessel	SSAS activated; Evasive manoeuvres taken; Fire hoses activated; Coalition naval forces notified	Pirate vessel ceased attack upon seeing coalition naval helicopter and vessel arriving on scene approximately one hour later	2006, 18, 56
22-May-2006	10.5NM South East of Mogadishu, Somalia - U	St Vincent and Grenadines general cargo ship MV Torgelow	Pirates in speedboat opened fire on tanker	Armed security guards aboard vessel returned fire on pirate speedboat	Pirate speedboat ceased firing and moved away	2006, 19, 56
21-August-2006	Santos Anchorage, Brazil - A	Antigua and Barbuda container vessel MSC Manaus	Seven robbers armed with guns boarded vessel and took hostages	SSAS activated; Port authorities notified	Robbers escaped	2006, 42
19-September-2006	Santos Anchorage, Brazil - A	Marshall Islands container vessel Zim Sao Paulo II	Seven robbers armed with guns boarded vessel and took hostages	SSAS activated; Port authorities notified	Robbers escaped	2006, 42
24-September-2006	Dar Es Salaam Anchorage, Tanzania - A	Panamanian LPG tanker Rio Gracia	Five robbers boarded vessel and stole goods from tanker	SSAS activated; Alarm raised; Local authorities notified	Robbers escaped	2006, 46-47

DATE	LOCATION AND NAVIGATIONAL STATUS OF TARGETED VESSEL	TARGETED VESSEL	DETAILS OF ATTACK	SECURITY MEASURES TAKEN	EFFECT OF SECURITY MEASURES	IMB ANNUAL REPORT REFERENCE
18-December-2006	Belawan Anchorage, Indonesia - A	Isle of Man chemical tanker Kristina Theresa	Robbers boarded vessel and attempted to access storage compartments	Alarm raised; Ship's whistle sounded; Fire hose activated; Locked down ship	Robbers aborted attack; Escaped in waiting boat	2006, 35
08-January-2007	Lagos Roads, Nigeria - A	Danish product tanker Trom Estrid	Robbers boarded tanker, attacked and robbed crew	Alarm raised	Robbers escaped vessel	2007, 63
09-January-2007	Lagos Roads, Nigeria - A	Liberian tanker Bow Bahia	Three robbers boarded vessel; assaulted Master whilst escaping	Alarm raised; Crew notified	Upon seeing the crew approach, the robbers escaped overboard	2007, 65
29-January-2007	Bahia De Pozuelos La Cruz, Venezuela - A	Liberian container vessel Maersk Roubaix	Two robbers accessed vessel with intent to rob it	Alarm raised; search conducted by crew	Robbers aborted attack	2007, 57
08-February-2007	1.5NM off Mogadishu, Somalia - A	Panamanian Product tanker MT Sea Energy	Five pirates armed with guns approached, fired upon and attempted to board tanker	Alarm raised; Fire hoses activated; Local authorities notified	Pirates aborted attack; Local authorities arrived on scene 1 hour later	2007, 26 , 81
11-March-2007	Red Sea - U	Panamanian research vessel MV Northern Explorer	15 pirates in wooden boat armed with AK47s fired on vessel	SSAS activated; Sudanese authorities notified	Vessel cleared the area	2007, 27, 86
12-March-2007	Red Sea - U	Panamanian research vessel MV Northern Explorer	Three pirates in speed boat fired upon the vessel	No information provided	Sudanese naval vessel responded; Pirates apprehended but later released	2007, 28

DATE	LOCATION AND NAVIGATIONAL STATUS OF TARGETED VESSEL	TARGETED VESSEL	DETAILS OF ATTACK	SECURITY MEASURES TAKEN	EFFECT OF SECURITY MEASURES	IMB ANNUAL REPORT REFERENCE
12-March-2007	40 NM off Freetown, Sierra Leone - U	Liberian product tanker Atropos	Pirates armed with machine guns and knives boarded and robbed crew	Master unable to activate SSAS due to close attention of pirates	Pirates later departed	2007, 65 - 66
06-April-2007	Dumai Anchorage, Indonesia - A	Panamanian Chemical Tanker Shimakaze	Two robbers accessed vessel with intent to rob it	Alarm raised	Robbers aborted attack, assaulted crew upon leaving	2007, 43-44
08-May-2007	Visakhapatnam Anchorage, India - A	Liberian tanker Onozo	Seven robbers armed with knives boarded tanker	SSAS activated; Alarm raised; Port authorities notified	Robbers escaped	2007, 54
14-May-2007	180NM off Somalia - U	Qatar Cargo vessel IBN Yunos	Pirates armed with machine guns and RPGs approached and fired on tanker - causing fire onboard	SSAS activated; Evasive manoeuvres taken; Rocket parachute signals fired	Pirates aborted attack after one hour due to evasive manoeuvres	2007, 82
19-May-2007	Port Harcourt, Nigeria - alongside	Refrigerated cargo ship Silver Cape	Armed pirates in military fatigues boarded vessel and assaulted crew	Alarm raised	Pirates aborted attack	2007, 28
13-July-2007	Santos, Brazil - A	Liberian container vessel HS Discoverer	Four robbers armed with guns and knives boarded vessel	ISPS Code security plans activated; Police notified	Robbers escaped vessel	2007, 58
21-July-2007	11NM off Santos, Brazil - A	Liberian container vessel HS Berlioz	Two robbers accessed vessel with intent to rob it	"Security procedures followed"; Security message broadcast	Robbers escaped vessel	2007, 58
24-October-2007	Off Lagos, Nigeria - A	Panama product tanker BW Danube	Two robbers boarded tanker and robbed crew	SSAS activated; Local authorities notified	Not specified - but appears robbers later departed	2007, p 71-72

DATE	LOCATION AND NAVIGATIONAL STATUS OF TARGETED VESSEL	TARGETED VESSEL	DETAILS OF ATTACK	SECURITY MEASURES TAKEN	EFFECT OF SECURITY MEASURES	IMB ANNUAL REPORT REFERENCE
11-November-2007	Phu My Port, Vietnam - alongside	Dutch Cargo Vessel Marinus Green	Robbers armed with knives boarded vessel	Vessel contacted port security authorities	Robbers escaped vessel	2007, 53
24-December-2007	Lagos Port, Nigeria - A	Maltese bulk carrier Althea	Four robbers armed with knives	Crew patrols	"Upon seeing the alert crew the robbers escaped"	2007, 74
03-February-2008	Dar Es Salaam anchorage, Tanzania - A	Panama cargo vessel	12 armed robbers in speedboat	SSAS activated; Alarm raised; Crew took anti-piracy measures	Pirates aborted attack and escaped	2008, 63
04-March-2008	Indonesian waters - U	Indian bulk carrier Murshidabad	15-20 speedboats at 30-40 knots began circling the bulk carrier - as close as 5 metres to the stern	Increased speed; Evasive manoeuvres; "Anti-piracy measures"; Broadcast security message via VHF channel 16	"Seeing the crew's vigilance, the speedboats moved away and re-grouped near a fishing trawler in the vicinity"	2008, 71
23-March-2008	Tema Anchorage, Ghana - A	Bahamas tanker Tristar Kuwait	Three robbers boarded tanker	Alarm raised	Robbers jumped overboard and escaped	2008, 64
04-April-2008	Gulf of Aden - U	French passenger vessel Le Ponant	Ten pirates armed with AK47s and RPG in two speed boats took the crew of 30 hostage	SSAS activated, Yemeni authorities and coalition naval forces informed	Crew and vessel released unharmed on 11 April 2008 – apparently ransom was paid	2008, 29, 57
06-April-2008	Nigerian waters	Marshall Islands tanker MT Genmar George T	Unlit speedboat approached from tanker's stern; fired automatic weapons	SSAS activated; Alarm raised	Pirates unsuccessful in boarding tanker	2008, 34

DATE	LOCATION AND NAVIGATIONAL STATUS OF TARGETED VESSEL	TARGETED VESSEL	DETAILS OF ATTACK	SECURITY MEASURES TAKEN	EFFECT OF SECURITY MEASURES	IMB ANNUAL REPORT REFERENCE
06-April-2008	Off Escravos, Nigeria - U	Marshall Islands tanker Genmar George T	Speed boat approached tanker from stern and opened fire with automatic weapons	SSAS activated; Alarm raised	Attack aborted	2008, 86
13-April-2008	12NM off Mangkai Island, Indonesia	Norwegian bulk carrier Spar Cetus	12 pirates in speedboat	SSAS activated; Alarm raised; Fire hoses activated	Pirates departed ship after 50 minutes; Ships in vicinity alerted	2008, 44
16-July-2008	Bonny River Anchorage, Nigeria - A	Norwegian bulk carrier Spar Gemeni	Ten militants boarded vessel a barge, incapacitated local security guards, robbed ship	SSAS activated	No information specified	2008, 66
20-July-2008	Gulf of Aden - U	Panamanian bulk carrier MV Stella Maris	Ship hijacked, sailed to Eyl, anchored and demanded ransom for release of crew and ship	SSAS activated, contacted coalition naval forces	No information specified	2008, p 30, 57
12-August-2008	Gulf of Aden - U	Thai general cargo ship MV Thor Star	28 crew taken hostage	SSAS activated	Ship hijacked, sailed to Eyl, anchored and demanded ransom for release of crew and ship	2008, p 30, 57
19-August-2008	Gulf of Aden - U	Malaysian chemical tanker MT Bunga Melati Dua	Pirates in two speedboats	SSAS activated	Ship hijacked, sailed to Eyl, anchored and demanded ransom for release of crew and ship – released on 29 September 2008	2008, 30

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06-September-2008	33 NM south of Yemeni coast	Singaporean LPG tanker Sigloo Discovery	Six pirates in speedboat armed with RPG	SSAS activated; Alarm raised; Foghorn sounded; Fire hoses activated; Increased speed; Evasive manoeuvres undertaken; Coalition naval vessels notified	Pirates aborted attack	2008, 79
18-September-2008	40NM south of Al Mukalla, Gulf of Aden	Norwegian Chemical Tanker Jo Oak	Two pirate boats approached tanker aggressively	SSAS activated; Alarm raised; Increased speed; Coalition naval forces notified	Pirates aborted attack	2008, 80
25-October-2008	Doula Port, Cameroon - B	Bahamas offshore supply ship Dynamic Installer	Robbers boarded ship berthed alongside		Apprehended by alert shore security personnel	2008, 69
28-October-2008	Gulf of Aden - U	St Vincent and Grenadines Cargo vessel Aquilo	Five pirates in a speed boat fired on tanker with automatic weapons	SSAS activated; Alarm raised; Evasive manoeuvres undertaken; Fire hoses activated; Coalition naval forces notified	Coalition naval vessel responded and escorted the tanker to safety	2008, 82

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28-October-2008	Gulf of Aden - U	Panamanian tanker Leander	12 pirates in three fast attack boats operating from a fishing vessel as mother ship; fired on tanker	SSAS activated; Mayday messages sent; Evasive manoeuvres undertaken; Coalition naval forces notified - naval vessel and helicopter arrived on scene shortly	Pirates aborted attack - coalition naval aircraft dropped ordinance in the vicinity of pirates	2008, 92
06-December-2008	Off Southern Somalia - U	Hong Kong container Maersk Regensburg	Two pirate skiffs approached; fired on ship with guns and RPG; possible fishing vessel mother ship 10NM away	SSAS activated; Increased speed; fire hoses activated. Fire broke out on ship due to RPG and gunfire	Pirates aborted attack	2008, 74
14-January-2009	Gulf of Aden - U	Maltese tanker Daylam	Two pirate boats	Master raised alarm, took evasive manoeuvres and increased speed	Pirates aborted attack; Coalition helicopter and warship responded	2009, 86
29-January-2009	Gulf of Aden - U	Maltese bulk carrier Eleni G	Six speedboats	SSAS activated; Alarm raised; Evasive manoeuvres taken; Fire hoses activated; coalition forces notified and arrived on scene 50 minutes later	<i>"Seeing the alert crew and the aggressive manoeuvres, the pirates abandoned the attack"</i>	2009, 86

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29-January-2009	Balongan Anchorage, Indonesia - A	Greek chemical tanker Elka Athina	Four pirates	Audible alarm activated; Master sent security alert to all ships in vicinity	Pirates fled after hearing audible alarm; but no response from local authorities	2009, 45
29-March-2009	Gulf of Aden - U	German Naval Supply Ship FGS Spessart	Fired upon	Onboard security team returned fire	Pirates apprehended and detained	2009, 88
25-April-2009	645 NM SE of Mogadishu, Somalia	Panamanian passenger ship Melody	Fired upon by pirates	Evasive manoeuvres undertaken; Other measures undertaken	Pirates aborted attack	2009, 79
27-June-2009	South China Sea	Singaporean LPG Tanker Sigloo Discovery	Pirate attack whilst U	SSAS activated	No details provided re response to SSAS activation; Crew negotiated with attackers – who stole goods and then escaped	2009, 51
04-August-2009	Gulf of Aden - U	Bahamas general cargo ship MV Notos Scan	Pirates in a 7-8 metre long wooden boat – shots fired	SSAS activated; Ship increased speed and took evasive manoeuvres ; coalition naval helicopter arrived on scene in 30 minutes	Pirates aborted attack	2009, 28

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17-August-2009	At the Bonny Offshore Oil terminal, Nigeria	Bahamas Crude Oil Tanker MT Front Chief	Not specified	SSAS activated; Crew barricaded themselves in the engine room for safety; Terminal officials notified	No response from local authorities	2009, 31
23-August-2009	Haiphong Anchorage, Vietnam	Antigua and Barbuda cargo vessel Ellen S	Boarded by eight pirates	Alarm activated	Pirates fled after hearing audible alarm; but no response from local authorities	2009, 52
20-September-2009	20 NM off Bonny River Fairway Buoy - U	Antigua and Barbuda cargo vessel Nova Galicia	Pirates stole property, no injuries, departed after one hour	SSAS activated, no details of response	No details provided re response to SSAS activation	2009, 70
26-September-2009	Gulf of Aden - U	Panamanian bulk carrier Handy V	Two speedboats	SSAS activated; Alarm raised, Evasive manoeuvres taken; Parachute signals fired; Coalition warships notified	Pirates aborted attack once coalition warship sighted	2009, 97
04-October-2009	Off coast of Somalia	Singaporean vehicle carrier Hoegh Pusan	Fired upon by two pirate boats	SSAS activated; initiated evasive measures, started fire pump and switched on deck lights; coalition forces notified	Pirates aborted attack after 10 minutes	2009, 80

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05-October-2009	Gulf of Aden - U	Panamanian bulk carrier Seagreen	Two speedboats; RPGs fired	Alarm activated; Evasive manoeuvres undertaken; Parachute signals fired	Pirates aborted attack; Coalition warship and aircraft arrived and chased the pirate boats away	2009, 97
24-October-2009	18.5 nm off coast of Benin - U	Liberian Tanker MT Cancale Star	Not specified	SSAS activated	Pirates panicked and escaped; later apprehended and money recovered	2009, 25
27-October-2009	Off coast of Somalia	French fishing vessel Cap Saint Vincent	Fired upon by pirates	Alarm raised; Ship's armed security team fired warning shots; Coalition naval forces notified	Pirates aborted attack; Coalition helicopter and warship arrived and boarded pirate boats	2009, 81
30-October-2009	Near East Lagos port, Nigeria	Malta Chemicals Tanker MT Mykines	Not specified	SSAS activated, crew utilised fire hoses	Pirates assaulted crew, damaged ship's communications equipment, locked crew in a cabin and escaped	2009, 32
18-November-2009	600 nm off Mogadishu	US container vessel Maersk Alabama	Chased and fired upon	Ship's security team returned fire and other anti-piracy measures taken	Pirates aborted attack	2009, 82
26-November-2009	470 nm southwest of Mogadishu	Antigua and Barbuda cargo vessel Delmas Nacala	Attacked by two pirate vessels	SSAS activated, no details of response; Alarm activated, increased speed; evasive manoeuvres taken	Pirates abandoned attack after three hours	2009, 82 - 83

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02-December-2009	Gulf of Aden - U	Antigua and Barbuda cargo vessel BBC Togo	Two boats launched from a mother ship	SSAS activated; Alarm raised; Evasive manoeuvres taken; Increased speed; Coalition warships notified	Pirates aborted attack after 10 minutes	2009, 99
05-March-2010	300 NM S of Mogadishu, Somalia - U	Seychelles fishing vessel Intertuna Dos	Armed pirates in two skiffs attempted to attack the fishing vessel	Alarm raised; Coalition naval forces contacted; Ship's security team assumed defensive positions	Maritime patrol aircraft and two naval helicopters arrived on scene; pirates aborted attack	2010, 76
11-March-2010	1050nm E of Mogadishu, Somalia - U	Liberian container ER Lubeck	Pirates in two skiffs chased and fired on vessel	SSAS sent; Increased speed and took evasive manoeuvres	Due to ship's increased speed attack aborted	2010, 76
20-March-2010	Calabar, Nigeria - U	Singapore Tug Pacific Supplier	Three pirates armed with machine guns approached vessel	Alarm sounded; Crew locked down; SSAS sent; Local authorities contacted	Pirates fired warning shots, Unable to reach crew; Stole property and escaped	2010, 26, 65
26-March-2010	Gulf of Aden - U	Liberian tanker Stolt Capability	Pirates in a skiff approached tanker	Onboard security team fired warning shots; Notified coalition naval forces	Pirate skiffs backed off	2010, 90

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02-April-2010	Gulf of Aden - U	Italian chemical tanker Valle Di Castiglia	Four pirates in a skiff armed with machine guns fired upon the tanker	SSAS activated; Alarm raised; Took evasive manoeuvres; Coalition warships contacted - arrived 40 mins later	Tanker evaded attack	2010, 90
11-April-2010	882nm East of Mogadishu, Somalia - U	Antigua and Barbuda container City of Guangzhou	Three speed boats closed offensively on ship at a distance of 3.5 NM	SSAS sent; Increased speed and took evasive manoeuvres	Skiffs aborted attack after closing to 1.6 NM due to increased speed of container	2010, 78
25-April-2010	Bab El Mandeb - U	Yemeni chemical tanker Al Masilah	Eight skiffs carrying armed pirates closed in at high speed	Onboard security team fired warning shots near skiffs	Pirates aborted attack	2010, 91
05-May-2010	Off Somali coast - U	South Korean bulk carrier Ocean Trader	Pirates in skiff chased and fired upon carrier	Ship's security team returned fire	Pirates aborted attack	2010, 79
08-May-2010	20 NM off Pulau Mangki, South China Sea - A	Hong Kong carrier Star Sea Rainbow	Six pirates attempted to board ship	Alarm raised; Deck lights activated; Security message sent to ships in the vicinity	"Pirates aborted the attempted attack upon seeing the crew alertness"	2010, 73
25-May-2010	Off Madagascar Island, Mozambique - U	Spanish fishing vessel CampolibreAlai	Skiff approached at high speed - was not deterred by flares	Ship's security team fired upon the skiff	Pirates aborted attack	2010, 80
12-June-2010	20nm off Palau Mangkai, Indonesia S China Sea - U	Cyprus container Iller Trader	12 pirates armed with knives	SSAS alert sent activated after pirates had escaped	N/A - activated after the attack	2010, 46

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13-June-2010	Gulf of Aden - U	Marshall Islands chemical tanker Meriom Iris	Pirates in a skiff chased and attempted to board tanker	SSAS activated; Took evasive manoeuvres; Contacted authorities for assistance	Tanker evaded the boarding	2010, 92
23-June-2010	Bab El Mandeb - U	Marshall Islands chemical tanker Diplomat	Five skiffs each with armed pirates chased tanker	SSAS activated; Took evasive manoeuvres; Increased speed; Switched on deck lights; Started fire pump; Contacted coalition naval forces	Pirates aborted attack after 15 minutes	2010, 93
27-June-2010	Bab El Mandeb - U	Maltese container Kergi	Armed pirates in skiffs chased and fired on ship	Onboard security team returned fire	Pirates aborted attack	2010, 93
02-July-2010	Off Port Bonny, Nigeria - U	Antigua and Barbuda general cargo vessel MV BBC Polonia	12 pirates in two boats; Crew of 12 kidnapped	Alarm raised; SSAS activated; Distress message sent; Crew mustered	Nigerian navy boarded vessel after crew departed & sailed to port; Crew later released	2010, 27, 67
04-July-2010	Red Sea - U	Greek tanker Hellas Symphony	Two boats with 6 - 7 persons each approached tanker	Alarm raised; LRAD activated	Boats aborted chase	2010, 93

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03-August-2010	Hanish Al Kubra Island, Red Sea - U	Marshall Islands chemical tanker Songa Sapphire	Three skiffs chased tanker whilst underway	SSAS activated; Took evasive manoeuvres; Increased speed; Activated foam hoses; Sent distress message; Contacted authorities	Pirates aborted attack	2010, 94
03-August-2010	Red Sea - U	Liberian bulk carrier London 2012	Seven pirates in 2 skiffs chased carrier	SSAS activated; Took evasive manoeuvres; Activated foam hoses; Sent distress message; Contacted authorities	Skiffs aborted attack	2010, 94
11-August-2010	Red Sea - U	Antigua and Barbuda cargo vessel Aniek	Four skiffs closed in on vessel	Alarm raised; Flares deployed; Coalition warships contacted	"A military helicopter arrived and upon seeing the helicopter the skiffs aborted"	2010, 95
22-August-2010	Gulf of Aden - U	Antigua and Barbuda cargo vessel Beluga Family	Pirates armed with automatic weapons chased vessel	SSAS activated; Took evasive manoeuvres; Increased speed; Activated water hoses; Contacted authorities	Skiff aborted attack	2010, 95

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28-August-2010	Gulf of Aden - U	Panamanian cement carrier Caribbean Carrier	Eight pirates armed with automatic guns chased carrier in a high speed boat	SSAS activated; Took evasive manoeuvres; Increased speed; Activated fire hoses; Contacted coalition naval forces for assistance	Pirates aborted attack	2010, 95-96
28-September-2010	Off Somali coast - U	Panamanian tanker MT Asphalt Venture	Tanker hijacked	SSAS activated	Not specified	2010, 29
29-September-2010	Off Somali coast - U	US container Maersk Alabama	Five pirates armed with AK 47s in a skiff closed offensively on ship	SSAS activated; Warning shots fired; LRAD sounded; Evasive manoeuvres; Alarm sounded	"The pirates quickly retreated and aborted the attempted attack"	2010, 81
02-October-2010	Off Somalia - U	Panamanian bulk carrier Amira S	Three pirates armed with automatic weapons approached carrier	Alarm raised; Increased speed; Fire hoses activated	"Action taken by the security team onboard resulted in pirates aborting the attack"	2010, 81
15-October-2010	Vila Do Conde anchorage, Brazil - A	Bahamas cargo vessel Bergen Arrow	Three robbers boarded ship via anchor chain	Security watchmen raised alarm	"Hearing the alarm the robbers escaped empty-handed"	2010, 55
20-October-2010	15nm South of Tin Can Island - Lagos, Nigeria	Hong Kong container Marianne Schulte	Eight pirates armed with guns	SSAS activated; Alarm raised; Second Officer attempted to contact port control	No response from port authorities; Pirates robbed ship and then escaped	2010, 69

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23-October-2010	Gulf of Aden - U	Bahamas cargo vessel Merlin Arrow	Five armed pirates chased and fired upon tanker	Alarm raised; Rocket flares fired towards skiff	Pirates aborted attack	2010, 96
29-October-2010	Off Kenya - U	Liberian tanker Moscow Sea	Armed pirates fired upon the tanker	Security team on board took "preventative measures"	Pirates aborted attack	2010, 82
02-November-2010	150 NM East of Mombasa, Kenya - U	Panamanian carrier Majestic	Seven pirates in two skiffs chased and fired upon carrier	Alarm raised; Rocket flares fired; Armed security team took preventative measures	Pirates aborted attack	2010, 82
02-November-2010	Off Somalia - U	Liberian tanker Batavia	Seven pirates in two skiffs launched from a mother ship - which closed on tanker	Ships security team fired hand flares and warning shots	Pirate skiffs backed off	2010, 83
09-November-2010	Off Somalia - U	Panamanian tanker Floyen	Armed pirates in two skiffs chased and fired on the tanker	Distress signal sent; Ship's security team exchanged fire with pirates	Pirates aborted attack	2010, 83
15-November-2010	Gulf of Aden - U	Gibraltar chemical tanker Valerie	Six armed pirates on a skiff closed in on tanker, shots fired	Onboard security team took preventative measures	Pirates aborted attack	2010, 96 - 97

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22-November-2010	Off Somali coast near Oman - U	Norwegian bulk carrier Carmencita	Ten armed pirates in two skiffs chased and fired upon ship; attempted boarding several times	SSAS activated; Alarm sounded; Increased speed; Contacted coalition warship for assistance	"The pirates aborted the attack upon seeing the presence of a warship and two helicopters"	2010, 85
27-November-2010	Off Somali coast - U	United Arab Emirates tanker D&K1	Two skiffs from a mother ship closed in on, fired upon and attempted to board tanker	SSAS activated; Increased speed; Took evasive manoeuvres; Activated foam and fire hoses; Alarm sounded	"Due to the water-jets and zig-zag manoeuvring the attempted boarding was prevented"	2010, 86
10-December-2010	Off Somali coast - U	Liberian tanker United Star	Armed pirates in two skiffs chased and fired upon the tanker	SSAS activated; Increased speed; Took evasive manoeuvres	Tanker escaped attack, but sustained some damage from the attack	2010, 87
13-December-2010	Off Pemba Island, Tanzania - U	Liberian tanker SCF Alpine	Two speed boats approached and fired upon tanker	Alarm raised; Speed increased; Nearby warship contacted	"When the warship arrived at the location, the skiffs aborted the attack"	2010, 87
16-December-2010	300 NM South-west of Mumbai, India - U	Marshall Islands tanker Hellepont Trinity	Pirates in a skiff armed with machine guns and RPG approached and fired upon tanker	SSAS activated; Took evasive manoeuvres; Activated fire hoses; Fired rocket flares	Pirates aborted the attempted boarding after several attempts	2010, 87
24-December-2010	60 NM South-west of Lagos, Nigeria - A	Italian chemical tanker MT Valle Di Cordoba	15 robbers armed with guns & knives	Attackers switched off communications equipment - including SSAS	N/A - switched off. Pirates robbed ship and left it 3 days later	2010, 27

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24-December-2010	115 NM South-east of Macalanga Point, Mozambique - U	Liberian tanker NS Africa	Two skiffs launched from a mother ship chased tanker	SSAS activated; Distress message sent; Increased speed; Activated water jets	Skiffs aborted the chase after 50 minutes	2010, 88
01-January-2011	Off Somalia - U	UAE Tug Tiba Folk	Armed pirates chased the tug towing a barge	Increased speed, Onboard security fired flares	Pirates aborted attack	2011, 78
14-January-2011	Off Socotra Island, Yemen - U	Chinese Cargo Vessel Le Li	Armed pirates attempted to board vessel	Onboard security team took preventative measures	Pirates aborted attack	2011, 79
18-January-2011	Off Somalia - U	US Cargo Vessel Advantage	Armed pirated chased & fired upon vessel	Onboard armed security fired warning shots	Pirated aborted attack	2011, 80
26-January-2011	490 NM East of Socotra Island, Yemen - U	Ethiopian Cargo Vessel Andinet	Two skiffs chased and fired upon vessel	Onboard security team opened fire; 15 minute fire fight ensued	Pirates aborted attack	2011, 80
28-January-2011	65 NM North of Minicoy Island, India off Somalia - U	Bahamas Container Vessel CMA CGM Verdi	Two pirate speed boats approached the ship at around 20 knots	SSAS activated; Alarm raised; Increased speed; Sent mayday message	Indian coastguard responded; Pirates aborted attack	2011, p 80 - 81

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28-January-2011	560 NM East of Socotra Island, Yemen - U	Liberian Tanker New York Star	Four pirate skiffs launched from mother ship attacked and boarded tanker	Onboard security fired rocket flare - did not deter boarding; Crew barricaded in citadel; Contacted ship's owners	Dutch warship arrived to assist 2 hours later - Pirates had vacated tanker	2011, 62 - 63
01-February-2011	105 NM South of Salalah - U	Singaporean Tanker Maersk Phoenix	Two skiffs fired on tanker with machine guns	SSAS activated; Alarm raised; Increased speed	Skiffs eventually backed off	2011, 97
01-February-2011	123 NM South-east of Socotra Island, Yemen - U	Singapore Tanker Kara Sea	Pirates in a dhow and a skiff closed in on vessel	Alarm raised; Increased speed; Warning flares fired; Onboard security team fired warning shots	Pirates aborted attack	2011, 81
10-February-2011	50 NM off Lagos, Nigeria - U	Liberian Chemical Tanker Elbtank Germany	Eight armed pirates in a fishing boat approached the stern and opened fire	SSAS activated; Alarm raised; Increased speed; Implemented evasive manoeuvres	Pirates aborted attack after one hour	2011, 107
16-February-2011	40 NM South of Porbandar Island, India - U	Liberian Tanker NS Century	Three skiffs closed in on tanker from a mother ship - <u>which had no AIS signal</u>	Evasive manoeuvres implemented; Onboard armed security team fired warning shots	Pirates aborted attack	2011, 82

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02-March-2011	550 NM East of Socotra, Yemen - U	Belgian Yacht Capricorn	Six armed pirates hijacked the yacht	Armed security personnel on a nearby vessel approached to render assistance	When the vessel with armed security personnel approached, the pirates abandoned the yacht	2011, 33
03-March-2011	205 NM off Salahah, Oman - U	UAE Product Tanker D&K 1	Four pirates in a dhow approached tanker	SSAS activated; Increased speed; Implemented evasive manoeuvres	Pirates aborted attack	2011, 84
03-March-2011	260 NM East of Socotra Island, Yemen - U	Liberian Chemical Tanker Voge Dignity	Skiff launched from mother ship approached tanker at speed	Onboard armed security team fired warning shots; brief firefight ensued	Pirates aborted attack	2011, 84
08-March-2011	390 NM North-east of Mogadishu, Somalia - U	US Container Vessel Maersk Alabama	Four pirates in a skiff travelling at 25 knots attempted to board vessel	SSAS activated; Armed security on board fired warning shots	Pirates aborted attack	2011, 85
12-March-2011	14.5 NM off Pulau Mangkai, South China Sea - U	Bahamas Tanker Asian Progress IV	Eight armed pirates approached tanker at high speed	SSAS activated; Alarm raised	"Upon seeing the crew alertness, the pirates aborted the attempted attack"	2011, 76
19-March-2011	190 NM North-east of Pemba Island, Tanzania - U	German Container Vessel E.R. Copenhagen	One mother ship and two skiffs closed in on vessel	SSAS activated; Increased speed; Crew barricaded in citadel; Evasive manoeuvres implemented; Ship steered into swell	Pirates aborted attack	2011, 86

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21-March-2011	495 NM North-east of Mogadishu, Somalia - U	Liberian Tanker Al-Nouf	One mother ship and 2 skiffs fired RPG and guns at tanker	SSAS activated; Increased speed; Implemented evasive manoeuvres; Crew mustered in tanker's citadel	Tanker evaded the attempted boarding; But injuries and damage sustained	2011, p 34, 86
21-March-2011	45 NM North-east of Horsborough Lighthouse, South China Sea - U	Malaysian Cargo Vessel Rena	Eight armed pirates attempted to board tanker	SSAS activated; Alarm raised	"The pirates aborted the attempted attack upon seeing the crew alertness"	2011, p 76 - 77
27-March-2011	122 NM South-east of Salalah, Oman - U	Liberian Tanker NS Asia	Skiff launched from mother ship approached tanker at speed	SSAS activated; Alarm sounded; Crew mustered in citadel; Speed increased; Coalition naval forces contacted; Onboard security team fired at skiff	Pirates aborted attack	2011, 87
13-April-2011	67 NM South-west of Cotonou, Benin - A	Italian Chemical Tanker Alessandra Bottiglieri	Ten armed robbers boarded tanker	SSAS activated	Robbers left tanker next day - all crew safe	2011, 69 - 70
20-April-2011	85 NM South of Lagos Port, Nigeria - U	Marshall Islands Bulk Carrier Star Gamma	Skiff approached and fired upon carrier	SSAS activated; Alarm raised; Distress message sent; Increased speed	Pirates aborted attack	2011, 107

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07-May-2011	Guayaquil Inner Anchorage, Ecuador - A	Marshall Islands Container Ship Wehr Kolenz	12 robbers in two boats boarded ship, stole cargoes and escaped	SSAS activated; Crew barricaded in accommodation spaces	Coastguard and harbour officials attended to investigate	2011, 58
10-May-2011	235 NM East of Salalah, Oman - U	Italian Bulk Carrier MBA Liberty	Two skiffs fired upon ship with guns and RPG	SSAS activated; Alarm raised; Increased speed; Implemented evasive manoeuvres; Contacted coalition warships for assistance	"Due to the aggressive manoeuvres the pirates aborted the attempted attack"	2011, 89
14-May-2011	220 NM East-north-east of Socotra Island, Yemen - U	Maltese Cargo Vessel Merle	One skiff launched from a mother ship	SSAS activated; Increased speed; Fired rocket flares and then warning shots	Pirates aborted attack and moved back towards mother ship	2011, 90
22-May-2011	Jakarta Anchorage, Indonesia - A	Liberian Container Vessel CMA CGM	Two robbers boarded tanker from stern	Crew detected the robbers and informed authorities	"Robbers jumped into the water after being noticed by the ship's crew"	2011, 47
29-May-2011	20 NM W of Muara Jankut, Pontianak, Indonesia - U	Tugboat towing a barge carrying palm oil	Six armed pirates hijacked the barge	SSAS activated - which was relayed to Indonesian authorities	Three days later an Indonesian patrol boat intercepted the hijacked boat and detained the pirates	2011, 47 - 48

DATE	LOCATION AND NAVIGATIONAL STATUS OF TARGETED VESSEL	TARGETED VESSEL	DETAILS OF ATTACK	SECURITY MEASURES TAKEN	EFFECT OF SECURITY MEASURES	IMB ANNUAL REPORT REFERENCE
29-May-2011	In Red Sea - U	Marshall Islands Bulk Carrier Hawk I	Two skiffs fired upon the bulk carrier	SSAS activated; Alarm raised; Crew mustered in citadel; "Enforced anti-piracy measures"	Pirates aborted attack	2011, 100 - 101
18-June-2011	20 NM North-west of Trivandrum, India - U	Panamanian Chemical Tanker Pacific Marchioness	Pirates in a skiff chased tanker	SSAS activated; Implemented anti-piracy measures	Tanker evaded the skiff	2011, 92
24-June-2011	8 NM off Fairway Buoy Cotonou, Benin - A	Marshall Islands Tanker SP Atlanta	Ten robbers boarded tanker; Assaulted crew	SSAS activated; Alarm raised; Port control contacted	Robbers left tanker; But no response from port control	2011, 71 - 72
01-August-2011	Mombasa Port, Kenya - P	Liberian Container Hansa Ravensburg	Two armed robbers boarded vessel	Onboard security spotted robbers and raise alarm	Robbers escaped from vessel	2011, 73
03-August-2011	Chittagong Anchorage, Bangladesh - A	Antigua and Barbudan Container Francoise Gilot	Robber boarded ship via stern, attempted to steal goods aboard	"Alert security guard spotted robber and raised alarm"	"Seeing crew alertness the robber jumped overboard and escaped"	2011, 57
26-August-2011	Jose Port Anchorage, Venezuela - A	Greek Bulk Carrier Maria L	Two skiffs with 12 robbers approached carrier	Onboard armed security opened fire	Robbers abandoned attack	2011, 77
10-September-2011	4 NM off Jazirat Jabal Zuqar Island, Yemen - U	Greek Tanker MT United Emblem	Pirates in three skiffs boarded tanker	SSAS activated; Company Security Officer (CSO) contacted; Increased speed and implemented evasive manoeuvres	Nearby warship responded - confirmed pirates had left the tanker	2011, 30, 68

DATE	LOCATION AND NAVIGATIONAL STATUS OF TARGETED VESSEL	TARGETED VESSEL	DETAILS OF ATTACK	SECURITY MEASURES TAKEN	EFFECT OF SECURITY MEASURES	IMB ANNUAL REPORT REFERENCE
13-September-2011	62 NM South-west of Cotonou, Benin - A	Norwegian Product Tanker MT Northern Bell	Armed pirates attacked tanker during ship to ship transfer operations	SSAS activated; CSO contacted; Crew barricaded themselves in tanker's citadel	Pirates left the vessel after several hours	2011, 27, 73
02-October-2011	650 NM North-east of Mogadishu, Somalia - U	Liberian Chemical Tanker UACC Shams	Two skiffs launched from mother ship 8 NM from tanker; Fired RPG at tanker	Armed security team onboard fired warning shots; Crew barricaded in citadel	Skiff aborted attack after warning shots fired	2011, 36
02-October-2011	500 NM East of Salalah, Oman - U	Liberian Cargo Ship Lara Rickmers	Skiff approached and fired upon ship with guns and RPG	Armed security team onboard fired flares; then warning shots twice Crew barricaded in citadel	Skiff ignored flares and first warning shots; Retreated after second round of warning shots fired	2011, 36
10-October-2011	430 NM East of Socotra Island, Yemen - U	Italian Bulk Carrier MV Montecristo	Attacked and boarded by 11 armed pirates	All crew retreated to citadel; Sent request for assistance	NATO warship arrived on scene within a few hours; Freed crew members and detained pirates	2011, 36
16-October-2011	10 NM East of Pemba Island, Tanzania - U	Indonesian LPG Tanker Gas Bali	Pirate skiff fired upon tanker with RPG and guns	Alarm raised; Crew retreated to citadel; Armed security team onboard fired warning shots	Pirates aborted attack after exchanging fire for around 3 minutes	2011, 37
06-April-2012	16 NM off Iranian coast - U	Panamanian cargo ship MV Xiang Hua Men	Armed pirates attacked and boarded vessel	Alarm raised, activated alert	Iranian warship responded, following gunfire exchange rescued crew and detained pirates	2012, 31

DATE	LOCATION AND NAVIGATIONAL STATUS OF TARGETED VESSEL	TARGETED VESSEL	DETAILS OF ATTACK	SECURITY MEASURES TAKEN	EFFECT OF SECURITY MEASURES	IMB ANNUAL REPORT REFERENCE
28-August-2012	Lome Anchorage, Togo - A	Isle of Man product tanker MT Energy Centurion	Attacked by armed pirates	Distress call made to Togo Navy	Togo Navy responded, gunfire exchange with pirates ensued, pirates later released tanker	2012, 33
05-September-2012	Off Nigerian coast - U	Singaporean chemical tanker MT Abu Dhabi Star	Attacked by armed pirates	Sent distress message, contacted owners and CSO	Nigerian warship and helicopter arrived on scene and rescued all crew	2012, 29 - 30
09-September-2012	Off Nigerian coast - U	Danish tanker MT Torm Gertrud	Pirate vessels approached and fired upon tanker	Raised alarm, increased speed and implemented evasive manoeuvres	Pirates aborted attack	2012, 30
11-December-2012	3 NM South of Johor, Malaysia - A	St Kitts and Nevis tanker MT Merlion Dua	Attacked by armed pirates	Activated SSAS, Informed CSO	Local authorities and Malaysian Maritime Enforcement Agency patrol boats responded, pirates detained	2012, 28
15-December-2012	80nm NW off Muscat, Oman - U	Danish tanker MT Torm Kristina	Attacked by armed pirates	Raised alarm, activated SSAS, sent distress alerts via VHF, implemented evasive manoeuvres	Coalition naval forces responded, pirates had abandoned tanker	2012, 31 - 32