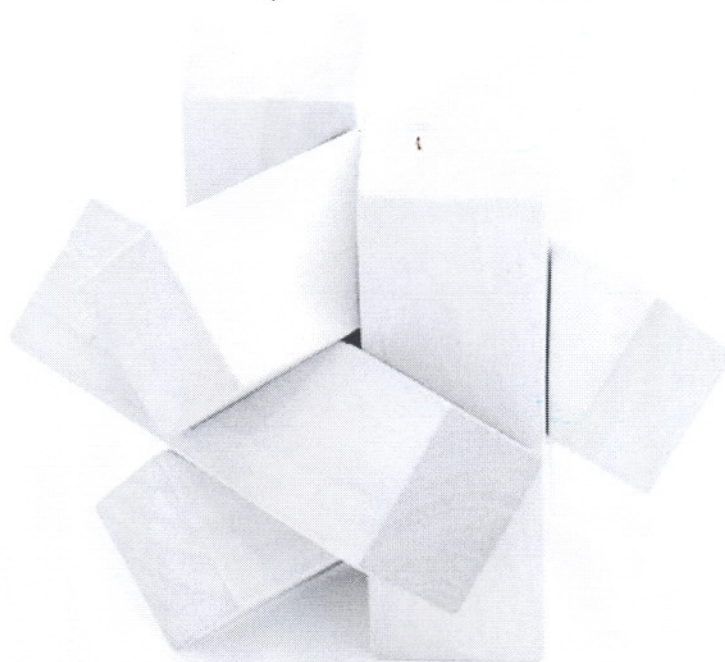


# 26<sup>TH</sup> ASIA-PACIFIC ROUNDTABLE

## *Asian Security Governance and Order*



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### **Concurrent Session One**

Wednesday, 30 May 2012

### **Securing the Sea Lines of Communication (SLOC) : Threats and Responses**

***"Piracy, Sea Robbery and Maritime Crime in the Gulf of Aden and SE Asia:  
Diverging threat trends, contrasting response models"***

by

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**Asia Pacific Roundtable, 30 May 2012, Concurrent Session I: Securing the Sea Lines of Communication (SLOC): Threats and Responses.**

“Piracy, sea robbery and maritime crime in the Gulf of Aden and SE Asia: diverging threat trends, contrasting response models”,

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**Summary/Introduction:**

The western Indian Ocean Region (IOR) and Southeast (SE) Asia are both regions afflicted by persistent maritime crime, but it is increasingly an ‘apples’ versus ‘oranges’ comparison. The number of attacks and attempted attacks on shipping in SE Asia remains numerically higher than the trend level of 4-5 years ago. This includes attacks on vessels under way, including around the Singapore Strait, where law enforcement capacity is concentrated but slow-moving tugs and barges are still prey to the ‘standard’ piratical modus operandi in SE Asia, of boarding, at night, for valuables that can be quickly taken off and re-sold. Hijackings still happen very occasionally. And SE Asia’s archipelagic geography combined with major inter-regional chokepoint ‘SLOC’ are natural enablers for maritime crime. Moreover, idle or sub-standard shipping will always be vulnerable to attack outside of well-protected ports and anchorages – a risk factor that is compounded by a recessionary environment and over-capacity in the shipping industry.

Nonetheless, in comparison with Somalia/GoA, the differences in the scale and typology of predations on shipping in SE Asia, since the last real spike subsided in 2004, have now reached a point where it makes more sense to treat risks to shipping in the two regions as conceptually distinct. Piracy, as practiced and perfected off Somalia and in the Gulf of Aden, needs be differentiated from the lesser and increasingly localised problems of maritime crime still affecting parts of Southeast Asia. My contention is that this contrast reflects the gulf in economic conditions and state capacity on either side of the IOR more basically than it reflects the impact of specific anti-piracy measures. At the same time, sharing experience on the response side still has practical benefits – e.g. ReCAAP was a helpful template for the Djibouti Code of Conduct.



## Definitional Issues

The very different orders of threat posed by piracy on the high seas and petty theft from ships at anchor have, to some extent, been deliberately conflated, to get around a narrow definition of piracy under Article 101 of the 1982 UN Convention on the Law of the Sea (UNCLOS)<sup>1</sup>.

In the 1990s and early 2000s, SE Asia faced a significant threat to shipping, underlined by several prominent vessel hijackings in and around the Straits of Malacca (SoM). Cases such as the *Tenyu*, in 1998 and *Alondra Rainbow*, in 1999, underlined a clear threat posed by organised gangs capable of hijacking ships, offloading high-value cargos, and in some cases murdering and injuring innocent seafarers. The spike in attacks, peaking around 2004, while never posing a systemic threat to inter-regional shipping flows, nonetheless prompted the insurance-related Joint War Committee to declare the SoM as a War Risk Area in 2005, thus commanding a higher risk premium for shippers. Although the JWC decision was based on a questionable threat assessment, the reputational effects on the littoral states were damaging in their own right.

All this demanded a stepped-up regional response. However, according to a strict interpretation of Article 101, “piracy” is limited only to the high seas – thus excluding most Southeast Asian waters, including portions of the Malacca and Singapore Straits, which fall within the territorial seas of the littoral states and the archipelagic waters of Indonesia and the Philippines. Piracy according to UNCLOS must also involve at least 2 vessels and be conducted exclusively “for private ends”, excluding mutiny for example. Significantly, UNCLOS permits any warship to intervene in cases of piracy on the high seas, regardless of flag state control. However, the restrictive UNCLOS definition of piracy was on balance found to be holding back, 1) consistent reporting standards and 2) more coordinated responses among users, coastal and port states.

The International Maritime Bureau (IMB), less bound by legal niceties and reflecting its looser mandate as a commercial organ of the International Chamber of Commerce, instituted a more inclusive definition of piracy and armed robbery. While this enabled more inclusive reporting standards, the IMB’s methodology was criticised - from the opposite perspective - for being too

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<sup>1</sup> According to Article 101 of the 1982 United Nations Convention on the Law of the Sea “Piracy consists of any of the following acts:

(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 inciting or of intentionally facilitating an act described in sub-paragraph (a) or (b).”

expansive, admitting relatively trivial incidents and thus inflating the seriousness of the problem, to the annoyance of coastal states.

These contrasting IMO and IMB definitions of piracy, each with their limitations, underlined the difficulties of relying on a quantitative analysis of piracy/sea robbery. However, a 'work-around' was eventually reached, whereby the IMO has since 2010 introduced the more comprehensive category of "armed robbery against ships" to capture attacks on shipping within internal waters, the territorial sea and archipelagic water, with the practical objective of harmonising reporting standards<sup>2</sup>. The classification of incidents by other reporting institutions has also become more sophisticated. The Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP), for example, applies a 3-tier category to distinguish between serious and less serious incidents (on grounds of violence, scale and commercial loss), as well as a separate category of 'petty theft'.

Times have changed, however. Attacks on shipping in SE Asia have generally diminished since 2005. This is unarguably the case, in terms of the levels of violence and organisation involved. Quantitatively, reporting statistics from ReCAAP etc suggest a more qualified picture, since 2008 at least. Predations on shipping have certainly not been eliminated from SE Asian waters. There was a spike in piracy attacks in the southern part of the South China Sea, around Pulau Mangkai and Anambas, as recently as 2009-10. But the overall trend is for the better: a total of four incidents have been reported to the ReCAAP in the Straits of Malacca and Singapore in the first quarter of 2012, a drop from the ten cases reported last year. All four cases involved tug boats. For Malaysia, the number of incidents over the same period has been reduced from seven to one with no incident reported off Tanjung Ayam, a well-known trouble spot in Johor. No incidents in the South China Sea were reported to ReCAAP in the first quarter of this year. (See RECAAP ISC reports)

#### **Mitigated causal factors**

The drivers and enablers of attacks on shipping and other manifestations of maritime crime in SE Asia reasons are multi-faceted, and differ for opportunistic and more organised attacks. I'll come to the influence of direct policy responses shortly. But it is important to emphasise that the

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<sup>2</sup> "Piracy and armed robbery against ships", [www.imo.org/OurWork/Security/PiracyArmedRobbery/Pages/Default.aspx](http://www.imo.org/OurWork/Security/PiracyArmedRobbery/Pages/Default.aspx), accessed 21 May 2012.



improvement in maritime security could not have occurred without progress on mitigating the drivers of the threat, including (but not limited to):

- 1. A broad and sustained improvement in economic conditions, political stability and governance across Indonesia, since 2004.
- 2. The resolution of the Aceh conflict, in 2005, in particular.

That the improved security situation around the Straits of Malacca owes so much to generalised factors, bears out the well-worn maxim that the key to counter-piracy lies primarily *on land*.

### Response factors

So, what about the response side? I would identify three key elements to this:

- 1) ASEAN states' enhanced "national resilience" in the maritime domain, and better cooperation between littoral states.
- 2) self-help responses in the shipping industry .
- 3) political pressure and capacity building from external maritime states.

1. The advent of the Malacca Straits Patrols and Eyes in the Sky, from 2004, is the most visible element to littoral states' cooperation. It is probably most important as a symbol at political level. At the operational level, the MSPs have led to few (if any?) interceptions of pirate boats, but have nonetheless served a deterrent function. Increased maritime enforcement presence cannot have gone unnoticed by pirates, those abetting them, and wavering recruits. Bilateral hot pursuit arrangements, although far from complete, have been important for demonstrating that maritime law enforcement extends to boundary areas in dispute, where pirates have previously been well aware of their value as sanctuaries<sup>3</sup>. Coordination has also extended to improvements in maritime information sharing across the SoM, between Indonesia and Malaysia and Indon-Singapore. 'National resilience' in the maritime domain has also made marked, if uneven improvements, within the ASEAN area.

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<sup>3</sup> For example, Bakorkamla permitted Malaysian naval vessels to enter Indonesia's EEZ enabling them to respond to a hijacking incident involving the Nautical Johor Bahru, in October 2011.

Malaysia's success in developing the Malaysian Maritime Enforcement Agency (MMEA) is probably the stand-out example. Critically, the MMEA's new capacity has been match by the Malaysian judicial authorities' ability to bring successful prosecutions, suggesting a concerted across-government approach<sup>4</sup>. Indonesia has introduced a coordinating agency, Bakorkamla, to address the debilitating overlap created by the existence of as many as 15 separate government organs sharing a maritime purview, including the recently established coast guard. The Philippines should also be mentioned as a continuing 'hot-spot' for predations on shipping. Manila is seeking to make good on long-planned but unrealised capability investments to patrol and monitor archipelagic waters, second only to Indonesia in size. As in Indonesia, there has historically been a higher national premium put on internal security and safeguarding fisheries than on countering sea robbery. Moreover, the Philippines' current maritime security preoccupation is probably the protection of its offshore resources and territorial claims in South China Sea.

2. Maritime security in SE Asia has reaped the benefits of the shipping industry's efforts to improve vessel security and better situation awareness among seafarers since the introduction of the ISPS Code in 2002, and especially the introduction of Best Management Principles (BMP) - currently in its fourth edition - as a direct response to piracy in the western Indian Ocean<sup>5</sup>. As a result, fewer merchant vessels on inter-regional transit through SE Asian waters have been attacked in recent years. The vessels at higher risk of being boarded are tugs and barges<sup>6</sup>. This is not to say that vulnerabilities have been eliminated. The global industry is suffering from chronic over-capacity – the 'double-whammy' result of over-hanging investment from the great shipping boom that followed China's accession to the WTO, and contraction in Asia's traditional export markets, in Europe and North America<sup>7</sup>. It should also be highlighted that the shipping industry's resort to self-help security measures, where this extends to armed guards and private military security companies (PMSC) carries negative implications for most SE Asian states. Although the use of firearms and armed guards arose as a response to the deteriorating situation in the

<sup>4</sup> For example, seven Indonesia nationals were tried and convicted of robbery, and sentenced to 12 years imprisonment, following arrests made by MMEA personnel during an attempted robbery of the Marshall Islands registered *Front Queen*, off Tanjong Ayam in March 2011. A similar of arrests and successful prosecutions followed thereafter. Various presentations from the April 2011 ReCAAP ISC Piracy and Sea Robbery Conference, Singapore.

<sup>5</sup> NATO Shipping Centre, Best Management Practices 4: [www.shipping.nato.int/Pages/BMP.aspx](http://www.shipping.nato.int/Pages/BMP.aspx), accessed 21 May 2012.

<sup>6</sup> Strategic Insights: Global Maritime Security Analysis, No.37, December 2011, Risk Intelligence.

<sup>7</sup> Euan Graham, "Shipping Glut Portends Piracy, Safety Risks", RSIS Commentary, No 143, 7 October 2011 ([www.rsis.edu.sg/publications/Perspective/RSIS1432011.pdf](http://www.rsis.edu.sg/publications/Perspective/RSIS1432011.pdf))



western Indian Ocean, most states in SE Asia are opposed to them entering their territorial waters and ports. Moreover, a significant minority of flag states do not permit the use of armed guards onboard vessels under their registry. In March 2012, the fatal shooting of two Indian fishermen by Italian marines guarding an Italian-flagged chemical tanker just outside India's territorial sea, off Kerala, has strengthened doubts about the policy. Some in the shipping industry are also concerned that operators may view armed guards as a panacea and relax their implementation of BMP<sup>8</sup>.

3. External pressure and capacity assistance, from the US and Japan in particular, also played its part in galvanising the littoral states' responses since the middle of last decade. The reported US military interest in a direct security role in the Malacca Straits, in 2004, was rebuffed equally by Malaysia and Indonesia. But 'external encouragement', according to senior policymakers involved at the time, catalysed the process culminating in MALSINDO/MSP. Japan's role was directly helpful, in terms of Tokyo's efforts to promote both an anti-piracy agenda and burden-sharing arrangements on maritime safety and navigation effectively through the IMO, while at the regional level the establishment of ReCAAP in 2006 was another Japanese -led initiative. Japan also advanced ad hoc capacity building with regional coast guards, including recipients, whose sovereignty concerns kept them formally outside of the ReCAAP framework.

It should be mentioned that many attacks on shipping continue to go unreported, including by the many small fishing vessels that operate in or near contested waters in SE Asia: for too long they have been the hidden victims of piracy and maritime crime in the region. Yet the underlying trend is that the typology of attacks between GoA and SE Asia continues to diverge. Most of the enabling factors in Somalia are either absent or less serious in SE Asia, where states are stronger and economic alternatives to the piracy 'business model' are both available and preferred. The use of crews as hostages for ransom demands, which is central to the modus operandi of piracy off the Horn of Africa, is entirely absent in SE Asia. Levels of violence in Southeast Asian incidents are significantly lower. The main 'growth area' in maritime crime in SE Asia currently concerns thefts and attempted boardings of merchant vessels at ports and anchorages, especially in Indonesia, which accounted for half of all such cases, as reported to ReCAAP's ISC in 2011. The Indonesian government is promoting new construction of new ports nationwide, partly to redress the concentration of existing infrastructure in the western half of the archipelago. This new port capacity may be beneficial for

<sup>8</sup> NATO Shipping Centre, presentation to the ReCAAP ISC Piracy and Sea Robbery Conference, 26 April 2012.

Indonesia's long-term economic prospects, but short term it may add to the risk of maritime crime targeting the smaller, older and more vulnerable classes of vessels that tend to frequent smaller, feeder ports, rather than the more secure hub ports of Tanjung Priok, Tanjung Pelepas, Port Kelang, or Singapore<sup>9</sup>. The problem of thefts from vessels in and around ports is not limited to Indonesia. Bangladesh has a persistent problem, while in Vietnam, incidents have recently migrated north from the Vung Tau area, to the waters off Haiphong. But in essence, this is a problem closer akin to land-based theft and armed robbery: a legitimate law and order issue but hardly an issue of international security.

### **Western Indian Ocean**

While SE Asia's problems with maritime crime pale in comparison with the western Indian Ocean, there is a useful overlap on the response side. ReCAAP, for example, helped to provide a template for the Djibouti Code of Conduct (DCoC), signed in January 2009. This has provided a foundation for information sharing, a review of legal frameworks, training, and capacity-building in the region affected by Somali piracy. Furthermore, since November 2011, ReCAAP has been embedded into the DCoC information-sharing network.

However, even with this improved level of coordination, there is a growing realisation that the international naval coalition assembled in the Indian Ocean can only deal with the recurring symptoms of state failure in Somalia and incipient state failure in Yemen, rather than tackle its causes, where they originate, on land. This is not an intellectual failure – the problem is well understood, it simply reflects the limits of political will among the major contributor states to take on more costly and messy security commitment to reconstructing weak and failed states.

If strategic success is still elusive, it is more difficult to gauge the current level of tactical success for sea-based anti-piracy responses in the western Indian Ocean, since the evidence is conflicting. Thus far in 2012, there have been over 166 attacks with 7 ships being detained plus 210 seafarers held hostages along the coast of Somalia<sup>10</sup>. While this figure dwarfs the problem in SE Asian waters, it does represent a significant reduction in the number of ships in detention off Somalia from 2011,

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<sup>9</sup> Sam Bateman, 'Maritime security implications of the international shipping recession', *Australian Journal of Maritime and Ocean Affairs* (2009), Vol. 1(4), pp. 112-120.

<sup>10</sup> Torben Skaanild, Secretary General, BIMCO, Opening Remarks at the ReCAAP ISC Piracy and Sea Robbery Conference, 26 April 2012.



when over 30 vessels were being held. The total of actual and attempted pirate attacks also decreased considerably in the last half of 2011. This trend has continued in the first quarter of 2012.

NATO attributes the decline to a combination of factors, including the effectiveness of naval patrols – through the Internationally Recommended Transit Corridor (IRTC) and beyond – and efforts by the international shipping community to implement BMP, the construction of ‘citadels’, on-board secure areas in which the crew can hide and continue to control the ship in case of pirate attack, as well as the use of private armed security guards. However, the contravening evidence is that fishing vessels are increasingly being targeted, some of which are then re-used as mother-ships to extend the range of pirate attacks into open ocean areas.

In an implicit recognition that the current sea-based strategy is inadequate to check piracy at its source, there has been significant shift in EU-NAVFOR rules of engagement, to permit limited military intervention on land, as signalled by a recent raid on a suspected pirate base in Somalia. Although few details have been released, the raid was apparently designed to be non-lethal and directed at disrupting pirate infrastructure, such as fast boats and fuel<sup>11</sup>. At the same time, there is an increasing recognition that an enduring solution must involve a significant capacity building effort with regional coast guards. To this end, the UN Secretary General, Ban Ki-Moon, has agreed that capacity-building in Somalia and neighbouring countries should be enhanced through cooperation between the IMO, the UN and its specialised agencies, and other international organisations<sup>12</sup>. Efforts are also under way through the “Kampala” process to help Somalia to accede to major maritime conventions such as the Suppression of Unlawful Acts at Sea (SUA) and the International Shipping and Port Security (ISPS) Code.

At first sight, the increasing tendency of shipping firms to take on armed guards is another manifestation of the inability of the three-pronged naval coalition in the Gulf of Aden to provide adequate security outside of the narrow confines of the (IRTC)<sup>13</sup>. Yet on a closer reading, there are other factors that may explain this latter phenomenon, including the correlation with lower insurance premiums being offered to shipping operators with armed guards aboard their vessels, the beneficial effects on crew morale, perhaps even the aggressive drive by some PMSCs to drum up

<sup>11</sup> ‘Fighting piracy on land is now inevitable, says law firm’, Lloyd’s List, 01 May 2012.

<sup>12</sup> IMO Secretary General Koji Sekimizu, Address at the ReCAAP ISC Piracy and Sea Robbery Conference, April 2012.

<sup>13</sup> See for example, ‘Maersk to employ armed guards on tankers at risk of hijacking’, Lloyd’s List, 14 October 2011.

new business as the western draw-downs in Iraq and Afghanistan take effect. The greatest risk resides with questionable PMSCs that fail the due diligence test<sup>14</sup>.

Without any end in sight to the problem, NATO and EU-NAVFOR face budgetary challenges to sustain their presence, as well as competing demands of responding to other contingencies, first from Libya and prospectively Iran. In a tough fiscal climate in which the navy is often the most vulnerable service, the requirement to resource the counter-piracy mission in the Indian Ocean could actually work to the advantage of CTF-151 and EU-NAVFOR commanders, though at some stage contributor fatigue is likely to set in. Hence, the importance of non-NATO contributors, such as Singapore, Malaysia and Thailand will be vital for sustaining the coalition.

#### **Independent naval contributors: Value-added for the PLA-N?**

What of the 'independent' contributors, drawn from the much larger navies of India, China and Japan? China's decision to participate in counter-piracy operations in the Gulf of Aden, from 2009, the first operation of its kind in the PLAN's history, was authorised by China's political leadership, rather than its military high command. As such, the mission can be assumed to serve political and diplomatic goals, including the need to demonstrate China's willingness to take part in global peace-keeping missions with a UN mandate as well as Beijing's ability to secure its national interests remotely (De Xin Hai, a Chinese bulk carrier, was pirated in October 2009). Neither should the operational value to the PLA-N of its first, real long-range naval mission be overlooked. For China, in particular the Gulf of Aden operation offers a valuable 'laboratory' for distant naval operations. This has three key aspects:

- i. Although deployed under independent command, China's anti-piracy contingent engages regularly in information sharing, through China's participation in the Contact Group on Piracy off the Coast of Somalia (CGPCS) and the Shared Awareness and Deconfliction (SHADE) meetings on a monthly basis, in Bahrain."<sup>15</sup> Long-term deployments in proximity to other navies inevitably necessitates other unscripted exchanges. PLA-N vessels and commands have also been rotated to ensure that both South and East China Sea fleet units gain experience.

<sup>14</sup> "A ship is no place for armed security 'cowboys'", Lloyd's List, 29 July 2011.

<sup>15</sup> Susanne Kammerling and Franz-Paul van der Puten, Journal of Chinese Current Affairs, Vol 40, No. 4, 2011, pp 119-46.



- ii. The PLA-N has also developing close coordination with China's merchant fleet, for which it has direct escort responsibility. This has enable China's navy to develop specialised skills, including convoy – on a track north and parallel to the IRTC. This has wider significance in the context of China's dependence on Indian Ocean sea lines of communication for its energy imports, which are increasingly borne by Chinese-flagged VLCC tankers. Chinese naval ships have also reportedly escorted Taiwanese merchant vessels passing through the risk area, giving further political value to the exercise.
- iii. Deploying for long duration, at extreme range for the PLA-N's undeveloped logistical capabilities, has also necessitated local arrangements for re-supply, making use of China's commercial port investments around the Indian Ocean Rim, including Karachi where ship repair facilities are available<sup>16</sup>. These fall short of 'strategic' basing arrangements, in the sense that they draw from civilian, commercial infrastructure, but state direction nonetheless ensures that the PLA presence in the western Indian Ocean is supported. COSCO, the steel manufacturer, thus assisted China's advance preparations for the GoA deployment.

However, there are limits on how far China can stretch such cooperation in the absence of more comprehensive naval staging and re-supply arrangements, as suggested by last December's reported agreement with the Seychelles government. Japan's experience is worth comparing in this regard since the Maritime Self Defence Force (MSDF) has operated a surface contingent more or less continuously in the Indian Ocean since 2001. Yet Japan's Ministry of Defence – despite the high bar of Constitutional constraints – felt it necessary to open the SDF's first overseas support facility, in Djibouti in 2011, to support the anti-piracy contingent in the GoA.

#### Conclusions:

'Piracy and sea robbery' is progressively being taken out of the maritime security equation in SE Asia, and replaced by a lower-order if still persistent and irksome problem of maritime crime. The contrast with the situation in the Gulf of Aden and off Somalia, where strategic progress in counter-piracy remains elusive, fundamentally reflects the gulf in state capacity, stability and economic development between the western and eastern portions of the Indian Ocean Rim. Specific responses from within the Southeast Asian region, improved shipping industry 'self-help'

<sup>16</sup> Ibid. p 131.

measures and external pressure and capacity provision have also played a useful part. This is also paying off in terms of shared experience, as the western Indian Ocean littoral states gradually acquire their own maritime law enforcement capabilities and cooperation forums.