Maritime Security: Challenges and Opportunities for EU-GCC Cooperation

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Introduction

The notion of maritime security covers different elements, ranging from freedom of navigation, to the ability to counter threats posed by piracy, terrorism, drug trafficking, trafficking in persons and the proliferation of weapons of mass destruction (WMD). Marine pollution should be added. It goes without saying that freedom of navigation is paramount.

The GCC is fully aware of the potential threats to maritime security harbouring off the coasts of its members. In fact, recent developments in maritime security concern the Gulf region in a specific manner, most notably due to piracy, drug trafficking and to some extent trafficking in persons. Alongside these non-state actor threats, there are risks associated with state issues, in particular regarding the Strait of Hormuz and the controversy over Abu Musa and the other islands between the UAE and Iran. To meet these threats, the GCC countries are determined to enhance their naval capability. For instance, on 29-30 April 2012, naval exercises were held in the Gulf to flag that GCC Member States are ready to build up a naval force. [1]

Legal issues are the necessary point of departure for a sound assessment of maritime security. For this reason, the present paper focuses on legal problems involved in sea use and management. After having assessed the regulatory framework of maritime security, we will concentrate on issues of particular relevance for the Gulf, taking into account piracy, including the establishment of ad hoc tribunals for the punishment of pirates/terrorists, the maritime relevance of the proposed WMD Free Zone in the Middle East for the GCC, the settlement of current maritime controversies and other soft security threats such as drug trafficking and trafficking in persons. Given the narrow limits of the Gulf and the fragile ecosystem, marine pollution is another source of concern for the Gulf states. At the end, some concrete lines of policy action for GCC-EU cooperation will be suggested, taking the GCC-EU Joint Action programme as the starting-point.

1 For a comment on GCC naval capability, see the interview with Kristian Coates Ulrichsen, "Global Insider: With Gulf Tensions High, GCC Naval Capabilities Remain Limited", *World Politics Review*, 1 May 2012.

The Regulatory Framework of Maritime Security

The main instrument in this connection is the 1982 United Nations Convention on the Law of the Sea (UNCLOS). It has been ratified by most of the international community. However, even those states which are not party consider the main UNCLOS provisions to be declaratory of customary international law, creating duties and rights for non-contracting states as well. This is particularly true for norms on rights of navigation on the high seas, innocent passage through territorial waters and passage through international straits. All GCC states except the UAE have ratified UNCLOS. The UAE has only signed it.

Innocent Passage through the Territorial Sea

Both the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone and UNCLOS allow innocent passage through the territorial sea, but do not specify whether warships may engage such passage. Since both Conventions contain rules on measures which may be taken against warships violating the rules on passage, they would be deprived of their purpose if passage were denied in this way. It is however controversial whether the passage of warships is made conditional upon the consent of the coastal state or, at a minimum, whether previous notification is required. The existence of a right of passage for warships under customary international law is likewise controversial. The point was not clarified by the International Court of Justice (ICJ) in its judgment in the Corfu Channel case (1949), since the Court dictum refers only to the right of passage through an international strait and does not consider the right of passage through territorial waters.

Third world countries continue to assert that passage is subject to the consent or previous notification of the coastal state. According to a learned opinion, which had already been stated in the Sixties,[2] a norm of customary international law allowing the passage of warships trough territorial waters is already in existence, or at least emerging. Consequently, a number of states has changed its position. However, Oman and the UAE still require prior permission for the innocent passage of warships.

Innocent Passage through Straits

Article 16(4) of the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone grants a right of passage in straits used for international navigation connecting two parts of the high seas, or one part of the high seas and the territorial sea of a foreign state. Passage cannot be suspended. Overflight is not allowed without the consent of the riparian state/states, unless specifically granted, as is stated by the 1979 peace treaty between Egypt and Israel, which preserves the right of navigation for all flags through the strait of Tiran and the Gulf of Aqaba, the waterway allowing entry into the Israeli port of Eilat. Freedom of passage is enjoyed both by merchant vessels and warships, and this rule – as far as straits connecting

2 M.S. McDougal and W.T. Burke, *The Public Order of Oceans. A contemporary International Law of the Sea*, New Haven, Yale University Press, 1962, p. 221.

two parts of the high seas are concerned – is a codification of customary international law, as can be inferred from the Corfu Channel judgment referred to above.

UNCLOS, while introducing the regime of transit passage for straights connecting two parts of the high seas or two Exclusive Economic Zones (EEZs), or an EEZ and the high seas, maintains the regime of innocent passage with no suspension for international straits connecting the territorial sea and the high seas, or the territorial sea and an EEZ.

Transit Passage through International Straits and Archipelagic Waters

UNCLOS is highly innovative as concerns passage through international straits connecting two parts of the high seas, or two EEZs, or an EEZ with the high seas. Transit passage allows for more navigational rights than innocent passage, since it allows: a) an unimpeded right of transit for both civilian ships and warships; b) the right to overfly the straits with civilian or military aircraft; c) the right of submarines to submerged passage along all the waters of the strait. Ships and aircraft in transit should refrain from any threat or use of force, and in general from any activity not directly connected to their normal mode of operation. The normal mode of operation of warships entails transit singularly or in squadron. Aircraft carriers are allowed to transit, and aircraft on board may take off and deck during transit.

The Strait of Hormuz, which is the only waterway allowing entry into the Persian Gulf, should be subject to the regime of transit passage. However, one of the states bordering the Strait (Iran) is not party to UNCLOS, and does not recognize the regime of transit passage as belonging to customary international law. Consequently, Iran claims that its territorial waters lying in the Strait are only subject to the regime of innocent passage, and warships are admitted to passage only after having duly notified the Iranian authorities. In times of crisis, Iran has threatened to close the Strait, or at least the part belonging to its territorial waters. During the Iran-Iraq war (1980-1988), Iran initially declared that it would leave the Strait open to navigation. Subsequently it changed policy, and declared the part lying within its territorial waters to be a war zone, thus obliging neutral states to navigate along the coastal belt lying under Oman's sovereignty. Threats by Iran to close the Strait of Hormuz are often repeated, even recently, but not implemented.

It should be noted that the right of transit passage was inserted into UNCLOS as a result of the need to allow for the mobility of fleets, and was promoted by the then superpowers. It serves their interests, and is recognized, together with other military navigational rights, by the US, even though it is not party to UNCLOS.

The Proliferation Security Initiative

The Proliferation Security Initiative (PSI) is a soft law instrument aimed at countering the proliferation of WMDs by sea, land and air. The PSI is a Bush-era initiative which has been endorsed by President Obama. With a few exceptions, all PSI states are parties to UNCLOS. According to its Statement of Principles, PSI states should take action in the following

sea areas: internal waters, including ports used for transhipment, the territorial sea, the contiguous zone and the high seas. Action should be taken to the extent allowed under international law, including UN Security Council resolutions.

The inspection of ships in the ports of the territorial state does not raise any particular problem of international law, unless the foreign ship is a warship. But this would not be the case in point, since the PSI is aimed at merchant vessels, and warships are allowed in port only after admission by the port state. The case contemplated by the PSI is that of transhipment, an activity usually carried out by merchant vessels anchored in a port or in a sea terminal.

The same rules apply, *mutatis mutandis*, to vessels entering or leaving internal waters or the territorial sea. Suspected vessels should be subject to boarding, search, and the seizure of prohibited cargo.

A problem arises when a ship enters a territorial sea with the intention of traversing it without proceeding into internal waters or into a port of the territorial state. The ship is in lateral passage, and the question then is whether it may be stopped by the coastal state. This depends on whether transit with a PSI-prohibited cargo is considered contrary to the rules of innocent passage on the grounds that the activity is prejudicial to the peace, good order and security of the coastal state. A number of authors, while recognizing that the transport of WMDs is not an activity listed in Article 19(2) of UNCLOS, which exemplifies activities in contravention of innocent passage, argue that UNSC Resolution 1540 has rendered the proliferation of WMDs and their means of delivery a threat to international peace and security, with the consequence that the peace and security of the coastal state are also threatened. [3] This conclusion is not exempt from criticism. In effect, while it is true that the preamble to Resolution 1540 deals with the proliferation of WMDs without specification, in its operative part it addresses "non-State actors". Following this line of reasoning, a cargo destined for a non-state actor should be considered a threat to peace, while a cargo destined for a state should not. Moreover, it has rightly been stated that it is difficult to see a latent threat, constituted by a cargo destined elsewhere, as a threat to the security of the coastal state,[4] in particular when the cargo is made of "related materials", for instance schedule 3 chemicals under the 1993 Chemical Weapons Convention (CWC), which are usually employed in agriculture.

The above conclusion should be applied, *a fortiori*, to transit passage and archipelagic passage, both of which give the coastal state fewer rights of interference. In these cases as

3 W. Heintschel von Heinegg, "The Proliferation Security Initiative: Security vs. Freedom of Navigation?", in T.McK. Sparks and G.M. Sulmasy (eds.), *International Law Challenges. Homeland Security and Combating Terrorism*, Newport, Naval War College, 2006, p. 64-65, http://www.usnwc.edu/getattachment/e72cbc46-8888-4217-867b-9c12d4d77dc5/The-Proliferation-Security-Initiative--Security-vs.aspx.

4 D. Guilfoyle, "Maritime Interdiction of Weapons of Mass Destruction", *Journal of Conflict & Security Law*, Vol. 12, No. 1, Spring 2007, p. 16-17.

well, a latent threat cannot be considered an actual threat against the sovereignty, territorial integrity or political independence of the territorial state, such as would allow it to take action (Article 39(1)(b) of UNCLOS). The question of transit or archipelagic passage is not addressed by the PSI principles.

On the contrary, the contiguous zones of those states that have instituted them are taken into consideration. States are requested to take action. According to Article 33 of UNCLOS, states are allowed, within their 24-mile contiguous zone, to exercise the control needed to prevent infringement of their customs, fiscal, immigration or sanitary regulations within their territory or territorial sea, and to punish any infringement of those regulations committed within their territory or territorial sea. Even though the power of exercising control is less than stopping a ship and bringing it into port, the majority of states consider the contiguous zone a zone with special rights of jurisdiction, where the power of boarding, inspection and seizure can be exercised against foreign vessels.[5] On this point, the PSI principles, which call upon participant states to stop and search vessels and to seize prohibited cargoes, are in keeping with international law.

The Statement of Interdiction Principles does not address EEZs. For the purposes of the Interdiction Principles, this is a zone of the high seas, and states are not allowed to take action against foreign vessels, unless an exception to the freedom of the high seas can be invoked. Article 110 of UNCLOS, which lists those exceptions, is not of much help. The only two relevant exceptions are related to ships without nationality and the right of approach (*vérification du pavillon*), with the latter giving only limited rights unless it is discovered that the ship is without nationality or has the same nationality as the visiting ship. The right of hot pursuit should be added (which pursuit may start from internal waters, the territorial sea or the contiguous zone).

Terrorism and WMD proliferation are not valid excuses for boarding a foreign vessel transporting a PSI-prohibited cargo on the high seas. Terrorism cannot be equated to piracy, and proliferation is not contemplated as an autonomous exception. The Protocol additional to the SUA Convention, for instance, which will be considered below, does not list the transport of nuclear material as an exception to the freedom of the high seas. UNSC Resolution 1540 does not grant the right to board foreign vessels, and Resolutions 1718 (2006), concerning North Korea, and 1737 (2006), concerning Iran, do not confer the right to stop North Korean and Iranian vessels on the high seas. The same is true of Resolutions 1874 (2009) and 1929 (2010), concerning again North Korea and Iran respectively, which allow states to visit ships suspected of having a prohibited cargo only with the consent of the flag state. Consent of the holder of jurisdiction is a valid title for boarding a vessel.

On the high seas, consent should be given by the flag state, and may be expressed *ad hoc* or consigned by an international agreement. For instance, the United States has concluded

5 I. Brownlie in J. Crawford (ed.), *Brownlie's Principles of Public International Law*, 8th ed., Oxford, Oxford University Press, 2012, p. 268-269.

several treaties with states having large numbers of merchant shipping without a genuine link for the attribution of their nationality (states having an open registry policy and flag of convenience). The states that have concluded boarding agreements account for over 60% of world tonnage.[6] The PSI counts about a hundred participants, including all permanent members of the Security Council except China, which considers the PSI to be at variance with the law of the sea.

It is not permitted to enter foreign territorial waters to carry out police operations. Such an activity would run counter to the provisions on innocent passage that allow states to enter territorial waters only in order to traverse the territorial sea. This is equally true for warships, even though they are entitled to exercise the right of passage. Consent of the coastal state is required in order to carry out a police activity in foreign territorial waters. Moreover, a foreign vessel may be arrested as long as it is in violation of the right of innocent passage, for instance if a ship in the hands of terrorists performs any activity prejudicial to the costal state.

As at 20 November 2012, all six GCC states were PSI members, and some have joined PSI exercises in the Gulf with the US. The US and the UAE took part in operation Leading Edge in 2010, which was a PSI exercise. The US naval presence is centred around the Fifth Fleet, based in Bahrain, which covers the areas of the Arabian Gulf, the Arabian Sea and the Gulf of Oman.

Maritime Terrorism

The 1988 Convention for the Suppression of Unlawful Acts of Violence against the Safety of Maritime Navigation (SUA Convention) was negotiated in Rome under the auspices of the International Maritime Organization (IMO) with the 1985 *Achille Lauro* incident in mind. It covers acts of maritime terrorism. The Rome Conference negotiated not only the SUA Convention, but also a Protocol on Fixed Platforms. All GCC Member States have ratified the SUA Convention and the Protocol on Fixed Platforms. This is very important for oil platforms in the Gulf. Oil platform are very fragile, as shown by an accident which occurred to an Iranian platform on 11 February 2012, which sank in a few seconds. A terrorist attack would result in a major disaster. Neither instrument properly covered WMD terrorism, so an Additional Protocol was negotiated to fill that lacuna. The Additional Protocol does not deal only with nuclear weapons, but also with all three classes of WMDs: bacteriological, chemical and nuclear weapons (BCN weapons).

6 The boarding agreements dictate a standard procedure for arresting the vessel, with some small differences. If a US warship encounters a suspected ship on the high seas, it may ask the flag state to confirm the ship's nationality. The requested party, once nationality has been established, may decide to inspect the ship, or may authorize the requesting party to board and visit it. The procedure is rapid. Each party designates the authority competent for administering the procedure, which should be concluded in two hours. If the requesting party receives no answer, consent is presumed to be given, and the requesting party may proceed to arrest and inspect the suspected vessel. The boarded vessel remains under the jurisdiction of the flag state, which may renounce jurisdiction in favour of the boarding state.

The Additional Protocol establishes a number of offences that states are obliged to insert into their penal codes, and contains provisions on legal cooperation, such as extradition. The use of a BCN weapon against or on a ship, causing or likely to cause death or serious injury or damage, is considered an offence "when the purpose of the 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". This motive is not required when BCN weapons are transported on board a ship. The mere transport is in itself an offence, provided that it is carried out "unlawfully and intentionally". In addition, the transport of fissile material constitutes an offence if that material is destined to build nuclear weapons or to be employed for any other nuclear activity not allowed under the International Atomic Energy Agency (IAEA) safeguard agreement. Transport in compliance with the Non-proliferation Treaty (NPT) is not an offence: the shipment of fissile material coming from or destined for an NPT state is not forbidden.

The Additional Protocol does not apply to the activities of armed forces in time of armed conflict or of peace, and thus military transport does not fall within its scope. The Additional Protocol does not add new causes for boarding besides those established by the traditional law of the sea. Boarding thus requires the consent of the flag state, and a mechanism to facilitate consensus has been drafted. Rules have also been developed to ensure that boarding takes place in conformity with human rights provisions, and to provide for the possibility ask for compensation if the visit does not uncover any prohibited items.

Bringing Terrorists to Justice: National/International/Hybrid Tribunals

International terrorism is not a crime which falls *per se* under the jurisdiction of the International Criminal Court (ICC). The lack of general definition of it made it impossible to insert it in the Rome statute on the ICC. Acts of terrorism constituting war crimes or crimes against humanity do, however, fall under the jurisdiction of the ICC.

The same applies to maritime terrorism. There is no international criminal court which deals with maritime terrorism, and in this author's view an ad hoc tribunal or a hybrid tribunal should not be established for this purpose, as this would increase the proliferation of international courts, a phenomenon which is also affecting criminal tribunals. The current discussion on the institution of international/hybrid criminal tribunals is related to piracy and not to maritime terrorism.[7] It should also be pointed out that there is no consensus to treat terrorism as a crime falling under the principle of universal jurisdiction, which empowers any state to punish the crime, even if there is no connection between the crime and the legal order of the state that intends to punish the wrongdoer.

Acts of terrorism regulated by international treaties are considered as treaty crimes, and they are prosecuted by the national jurisdictions, unless the territorial state, i.e. the state

7 See the report by the UN Secretary-General on *Possible options to further the aim of prosecuting and imprisoning persons responsible for acts of piracy and armed robbery at sea off the coast of Somalia…*, S/2010/394, 26 July 2010, http://undocs.org/S/2010/394.

where the wrongdoer is present, prefers to extradite the wrongdoer to a requesting party claiming jurisdiction, i.e. its competence to the bring the wrongdoer to trial.

The model adopted by the maritime terrorism conventions is the following: under the 1988 IMO Convention, the offences established therein are deemed to be extraditable offences, and the state party in the territory of which the offender is located is obliged to extradite the wrongdoer to the requesting state. If the extradition is not carried out, the state of refuge is obliged to submit the case to the competent authorities for prosecution, even though the offence was not committed in its territory.[8] The obligation to extradite or prosecute is also set out under the 2005 Additional Protocol to the SUA Convention.[9] Needless to say, the correct application of the two instruments requires the enactment of the proper legislation at the domestic level.

NW/WMD Free Zones: Maritime Issues

All Nuclear Weapons Free Zone (NWFZ) treaties have as states parties littoral or archipelagic states (e.g. the Treaty of Tlatelolco, 1967; the Treaty of Rarotonga, 1985; the Treaty of Bangkok, 1995; the Treaty of Pelindaba, 1996), with the exception of the Treaty of Semipalantisk (2006) relating to the Central Asia states, which comprise only inland countries. These treaties forbid states parties to install nuclear weapons on their territories, including their territorial and archipelagic waters. Problems may arise as regards the navigational rights of third states' vessels having on board nuclear armaments in the zone covered by the NWFZ treaty, in particular when the zone in question encompasses archipelagic states or states that control important international straits. As a rule, NWFZ treaties guarantee freedom of navigation for third states' vessels which are carrying nuclear weapons. The Treaty of Pelindaba, however, prohibits the transportation of nuclear weapons in inland waters. Overflying of EEZs by NWFZ states is covered by the freedom of the seas, and thus is also allowed for aircraft with nuclear weapons. The same is true for those marine areas where transit or archipelagic transit is allowed, since this also covers air transit (Article 5 of the Treaty of Rarotonga; Article 2 of the Treaty of Bangkok; Article 2 of the Treaty of Pelindaba). The overflying of territorial waters and of straits not subject to transit passage is conditional upon the consent of the territorial sovereign. Usually NWFZ treaties authorise littoral states to allow overfly.

A new idea is the establishment of a Weapons of Mass Destruction Free Zone (WMDFZ), encompassing all three categories of WMDs: biological, chemical and nuclear. A WMDFZ has been envisaged for the Middle East. The idea dates back to 1974 and UNGA Resolution 3263 of 9 December 1974. It was endorsed by the 1995 NPT review and extension Conference, and again by the 2010 review Conference and the appointment of a Facilitator, the Finnish Ambassador Jaakko Laajava. One of the problems with this idea is the geographical reach of the zone. There is no doubt that all six GCC countries should be part of it, and they were the addressees of a communication sent to this effect by the UN Secretary-General. The

8 Article 10 of the SUA Convention.

9 See Articles 10, 11 and 13.

maritime aspects of a WMDFZ in the Middle East have not yet been adequately examined in the relevant fora. A Conference on WMDFZ in the Middle East was scheduled to take place in Helsinki in 2012, but this date passed without it being convened. The Syrian conflict and the question of the use by Iran of its nuclear facilities to build a nuclear arsenal did not help, and these issues are still a major source of concern. Nevertheless, the idea of a Conference on WMDFZ in the Middle East has not yet been discontinued, and the Facilitator is continuing his consultations with the Middle Eastern capitals. Should the idea of such a Conference fail, this would create a major problem for the next NPT Review Conference, scheduled to be held in 2015. The EU Non-Proliferation Consortium held two Conferences in Brussels, in 2011 and 2012, with the participation of interested stakeholders. The GCC countries took part in both Conferences, even though the second one was not attended by Egypt or the Arab League. The collaboration between the EU and the GCC should continue, and be implemented with regional conferences and seminars. For instance, the GCC countries might host a track-two conference/seminar devoted to the problem of the maritime aspects of a future WMDFZ in the Middle East. A more ambitious plan might be a unilateral declaration proclaiming the GCC a zone free from WMDs, a good-will move that could enhance the prospects for a Conference in 2103, as well as a positive outcome therefrom.

Confidence and Security Building Measures (CSBMs) and Maritime Security

Navigation and military exercises are often sources of naval incidents. Thus, "rules of the road" for navies are important. The most relevant document in this field is the US-Soviet Treaty of 25 May 1972. This model was followed by subsequent treaties concluded with the Soviet Union by the UK (1986), France (1989) and Italy (1989). After the brief parenthesis of Russia's absence from the Mediterranean, those treaties have regained their strategic importance. Greece and Turkey concluded a memorandum of understanding concerning military activities on the high seas and in the international airspace in 1988. Two agreements were concluded between Italy and Tunisia on 10 November 1988: an Executive Protocol on cooperation between the Italian navy and the Tunisian navy, and Technical Arrangements on practical measures, which aimed at avoiding incidents at sea and facilitating cooperation between the Italian and Tunisian navies. For the Middle East, maritime CSBMs were envisaged in the context of the Arms Control and Regional Security Working Groups (ACRS), which followed the Madrid Plan of Action aimed at the settlement of the Palestinian-Israeli conflict. Given the intractability of the conflict, the ACRS has not met since 1995. However, its findings may be studied in order to see if they can be applied to maritime security.

CSBMS might play an important role in the Persian Gulf. Up till now, no treaty or memorandum of understanding regulating rules of the road for navies has been agreed. The GCC countries could examine the rules already in existence in other waters to see whether it is possible to apply them to the Gulf.

Enclosed and Semi-Enclosed Seas and the Persian Gulf

The notion of enclosed and semi-enclosed seas is an innovation of UNCLOS. According to Article 122 thereof, there are two definitions. The first takes into account geographical factors, and defines an enclosed or semi-enclosed sea as "a gulf, basin or sea surrounded by two or more States and connected to another sea or the ocean by a narrow outlet". The second definition given by Article 122 takes into account legal elements, defining an enclosed or semi-enclosed sea as a gulf or sea "consisting entirely or primarily of territorial seas and exclusive economic zones of two or more coastal States".

The Gulf falls under the first definition since it is connected to the Indian Ocean by a narrow outlet, i.e. the Strait of Hormuz. UNCLOS refers to economic cooperation as a field of action of littoral states, and lists as examples of economic cooperation such items as living resources, the marine environment and scientific research. The list is merely illustrative; however, arms control and military issues in general are not necessary ingredients of the generic duty of cooperation which littoral states are obliged to fulfil under Article 123 of UNCLOS. EEZs have been established in the Gulf by Iran, Oman and the UAE.

The notion of enclosed or semi-enclosed seas does not encompass, as a necessary ingredient, the institution of a zone of peace. This was proposed by the Soviet Union for the Mediterranean in an attempt to secure the removal of the US navy. This idea was never implemented for obvious reasons. Iran would like to remove outsider naval powers from the Persian Gulf, a proposal that runs counter to the defence agreements concluded with the Gulf states.[10] Moreover, foreign navies are not ready to abandon the Gulf, given the strategic and commercial importance of the region.

The formal endorsement of the notion of a zone of peace goes back to UNGA Resolution 2831 (XXVI) of 16 December 1971, which declared the Indian Ocean a zone of peace. It was repeated in subsequent resolutions. The latest resolution was adopted on 2 December 2011,[11] and it was decided to include an item entitled "Implementation of the Declaration of the Indian Ocean as a zone of peace" on the provisional agenda of the 68th session of the General Assembly.

Though there is not only one notion of a zone of peace, its implementation would entail a prohibition on granting military facilities and the exclusion of fleets not belonging to the littoral states, or at least their limitation in number. As a rule, a zone of peace should also be a nuclear weapon free zone. The proposal to institute zones of peace has been in principle opposed by the major naval powers, since its enforcement would curtail the principle of

10 M. Alani, "Toward a Comprehensive Maritime Security Arrangement in the Gulf", in E. Laipson and A. Pandya (eds.), *The Indian Ocean. Resource and Governance Challenges*, Washington, Stimson Center, 2009, p. 39-40, http://www.stimson.org/images/uploads/research-pdfs/Indian_Ocean-Chapter_3_Alani.pdf.

11 UN Assembly, *Implementation of the Declaration of the Indian Ocean as a Zone of Peace*, A/RES/66/22, 2 December 2011, http://undocs.org/A/RES/66/22.

freedom of navigation on the high seas, as well as that of collective self-defence. For non-littoral states, the freedom of the high seas would be limited to non-military navigation. This is why France, the United Kingdom and the United States, which have naval interests in the Indian Ocean, voted against UNGA Resolution 47/59, while the positive vote of the Russian Federation was nothing but lip-service to the idea of zones of peace. In 2012, Sri Lanka announced that it would like to pursue a new approach to turning the Indian Ocean in a zone of peace. The proclamation of the Indian Ocean as a zone of peace would have a negative impact on the security of the Gulf and GCC countries, since the Gulf is separated from the Indian Ocean by a narrow outlet. It would impede Western navies from honouring their defence commitments with the states bordering the Gulf countries. As we shall see, the same negative result would be achieved by transforming the Gulf into a zone of peace.

Maritime-Territorial Controversies

As land dominates waters, so do territorial controversies have an impact on maritime delimitations. One prominent controversy belonging to that category concerns sovereignty over Abu Musa, which is claimed both by the UAE and Iran. The island was occupied by the UK in 1921, and was subsequently given in administration to the Emirate of Sharijah. In 1971 a memorandum of understanding was signed by Sharijah and Iran, establishing a joint administration, and oil revenues were equally shared by the two parties. Contrary to the memorandum, Iran occupied the island. In April 2012 it was visited by a high-profile Iranian parliamentary delegation and the Iranian President. These events raised protests from the UAE. Therefore it can be seen that there is no acquiescence to Iranian occupation on the part of the UAE, and the UAE's claim has not been dismissed, but indeed has been reiterated several times. On 17 April 2012, the GCC Member States condemned Iran's continued occupation of Abu Musa, Greater Tumb and Lesser Tumb.[12]

The dispute should be solved in a peaceful way under Chapter VI of the UN Charter. Article 33 thereof lists a number of methods, ranging from negotiation to judicial settlement. Article 36 gives preference to the ICJ for the settlement of legal disputes. Ad hoc arbitration, however, should also be taken into consideration, since it would also allow for a solution to the controversy. While the UAE is ready to bring the matter before the ICJ, Iran has refused this option.

The Delimitation of Sea Areas

The Gulf states abide in principle by the law of the sea conventions, even though they are not all parties to UNCLOS. This is why the main provisions on sea limits and the delimitation of sea areas derive from customary international law. The same is true for outside users, for instance the US, which is not party to UNCLOS. The delimitation of sea areas in the Gulf is very important, since its maximum width (coast to coast) is about 210 nautical miles. As

12 "Q&A: Iran president's controversial visit to Abu Musa", *BBC News*, 23 April 2012, http://www.bbc.co.uk/news/world-middle-east-17770111.

has been said, all GCC states with the exception of the UAE have ratified UNCLOS. The UAE has only signed it. Iran has also signed but not ratified UNCLOS. A number of provisions are abided by as a matter of customary international law. Gulf countries have a territorial sea of a width of 12 nautical miles, and also a contiguous zone. Saudi Arabia and the UAE have also established a security zone beyond the territorial sea (of respectively 18 and 24 nm). They have also drawn straight baselines. Iran established a system of a straight baseline along its coast in the Persian Gulf and Gulf of Oman, bringing protests from the US. As far as the delimitation of the continental shelf is concerned, the six countries have concluded delimitation agreements: UAE-Qatar (1969: Abu Dhabi-Qatar), Kuwait-Saudi Arabia, Bahrain-Saudi Arabia (1959), and Oman-Yemen. The maritime frontier between Bahrain and Qatar was defined by the ICJ by judgment given in 2001. The delimitation followed the principle of the median line, adjusted according to the existing special circumstances. This criterion is generally applied in the other delimitation agreements referred to. Delimitation agreements have also been concluded by Iran with Bahrain, Qatar, Saudi Arabia and Oman. A partial agreement has been concluded between Iran and the UAE, a full agreement being impossible to reach pending resolution of the controversy over the sovereignty of Abu Musa. It is also worth noting that some of these delimitation agreements have also solved sovereignty disputes concerning territory (for instance islands) covered by the maritime delimitation in question.

In the words of Stuart Kaye, in his conclusion in an article devoted to the entire Indian Ocean but which may also be applied to the GCC Member States, "[w]hat may be described as unusual is the fact that periodic disputes and poor relations do not appear to have impeded the majority of states from concluding maritime boundaries. What may also be remarkable is the proportion of regional states who purport to restrict freedom of navigation in some fashion. Were all of these claims to be actively asserted, they might restrict international trade to a not insignificant extent".[13]

Piracy

Piracy is an old crime committed against commercial shipping. The law on piracy belongs to customary international law and has been codified both in the 1958 Geneva Convention on the High Seas and UNCLOS (Articles 100-107 and Article 110(1)(a)). By definition, piracy is a crime committed on the high seas. If committed in territorial waters, it should be qualified as armed robbery.

The elements of the crime of piracy are the following:

- An illegal act of violence or depredation committed by the crew of one ship against another ship (two-ship requirement);
- The act of violence or depredation should be committed for private ends. This distinguishes piracy from terrorism, even if nowadays the distinction is often blurred.

13 S. Kaye, "Indian Ocean Maritime Claims", *Journal of the Indian Ocean Region*, Vol. 6, No. 1, June 2010, p. 127, http://dx.doi.org/10.1080/19480881.2010.489674.

By definition, an act of piracy cannot be committed by a warship, unless the crew has mutinied and fitted the warship to conducting acts of piracy.

On the high seas, every state has jurisdiction over piracy. It is entitled to capture a pirate ship, to seize the goods on board and to punish pirates. Only warships, or other ships clearly marked and identifiable as being on government service and authorized to that effect, are entitled to seize a pirate ship.

There is a duty of cooperation in the repression of piracy. There is a right to visit a ship suspected of engaging in piracy. However, if the suspicion proves to be unfounded, the ship should be compensated for any damage sustained. The law of the sea gives the power to seize a pirate ship only on the high seas. In territorial waters the consent of the coastal state is needed. An authorization by the UN Security Council may replace the consent of the coastal state, or supplement the consent by a government the powers of which are merely nominal, as happened in the case of Somalia. A number of Security Council resolutions have been passed since 2008, giving the power to outside navies to enter Somali waters. Resolution 1851 (2008) authorizes, in its paragraph 6, Member States to take action on land in order to suppress pirates' sanctuaries. These resolutions have not change the law of piracy. China, for instance, pointed out at the time of voting that entering foreign territorial waters was permitted only by Security Council resolutions, and that the traditional law of piracy was not changed.

Piracy has become a real danger for commercial trafficking and oil exporting countries. It is mostly concentrated in the Indian Ocean, but this criminal phenomenon is expanding to other areas, for instance the Gulf of Guinea. According to statistics given by the International Maritime Bureau (IMB), there were 406 piracy attacks in 2009 (world-wide), 219 in 2010, and 236 in 2011, the years in which piracy reached its peak. Since 2012 piracy has been decreasing. This is due to the success of counter-piracy measures, such as dispatching navies to the hot spots, and fitting ships with armed personnel on board.

States may operate either singly or under the aegis of an international organization or under the leadership of a naval power.

- China, the Russian Federation and other states have dispatched ships to the Indian Ocean on anti-piracy missions;
- Combined Task Force 151 operates under US leadership, and it is stationed in Bahrain;
- Operation Ocean Shield is conducted under the aegis of NATO;
- Operation Atalanta is a European Union mission in the Indian Ocean, authorized by the Council of the European Union to take action on the Somali coastline in order to destroy pirate shipping.

In an interview reported by *The National* on 5 July 2012,[14] Rear Admiral Ibrahim Al Musharrakh of the UAE naval staff said that the Joint Peninsula Shield, mainly based on land forces, should have a naval component, ready to patrol the shipping lanes of the Arabian sea against pirates. The GCC countries appear to be very concerned by piracy, and want to play an active role. The UAE organized the first Counter Piracy Conference in 2011 and a second in 2012, while a third is planned for 2013.[15]

Hostage-Taking

The International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on 17 December 1979, which now counts 167 parties, is also relevant. All GCC countries are parties. Modern piracy differs from the older version. There is no more gold bullion to take, and the capture of the crew proves to be a lucrative affair. The Convention applies whenever the crime has a transnational feature, and does not apply in the case of domestic hostage-taking. According to Article 1, the crime is committed whenever a person seizes or detains and threatens to kill, injure or continue to detain another person in order to compel a third party, namely a state, an international intergovernmental organization, or a natural or legal person or group of persons, to do or to abstain from doing any act as an explicit or implicit condition for the release of the hostage. Taking hostages in order to compel a shipping company to pay a ransom falls within the scope of the Convention. States parties are obliged to enact penal legislation in order to implement the Convention, to cooperate as far as extradition is concerned, and to make hostage-taking an extraditable offence. If a ransom is paid, the state where the ransom is located is obliged to return it to the legitimate owner. The Convention does not prohibit ransom-paying. In order to do so, an amendment to the Convention, or a Security Council resolution, is required. However, up till now ship-owners have opposed such a policy.

Bringing Pirates to Justice

One of the most serious problems in fighting piracy is the punishment of offenders. Often pirates are captured and subsequently abandoned on the coast, since the capturing vessel is unwilling to keep them in custody or hand them over to the authorities of the flag state. Pirates, after having been left free, engage again in criminal enterprises. Cooperation with bordering states is essential. One possibility for GCC countries might be to set up a regional tribunal to try pirates captured by navies operating in the Indian Ocean and the Gulf of Aden. Up till now such an idea has not yet been developed. The Final Statement of the second UAE Counter Piracy Conference held in Dubai (2012) recognized the need to strengthen the judicial response to piracy. However, it did not raise the idea of setting up regional international tribunals. It commended Kenya and the Seychelles on their readiness to try

14 A. Mustafa, " UAE Navy chief seeks GCC alliance on piracy", *The National*, 5 July 2012, http://www.thenational.ae/news/uae-news/uae-navy-chief-seeks-gcc-alliance-on-piracy.

15 UAE Counter Piracy Conference, *A Regional Response to Maritime Piracy: Enhancing Public-Private Partnership and Strengthening Global Engagement*, http://www.counterpiracy.ae.

captured pirates, and also underlined the efforts of Mauritius and Tanzania in ensuing that pirates face trial.[16]

The Djibouti Code of Conduct

The Djibouti Code of Conduct is one of the most prominent instruments adopted by the states of the region in order to fight piracy. Even if it is not a treaty but only an instrument of soft law, the Code, which was adopted in January 2009, establishes a number of measures that states may adopt. It was concluded under the auspices of the IMO and defines piracy and armed robbery against ships, enacting provisions against piracy on one hand and armed robbery on the other. The establishment of a special regime for armed robbery is important, since this is lacking from UNCLOS. Measures adopted against piracy include:

- Incident reporting;
- Sharing and reporting relevant information;
- The protection of ships;
- Prosecuting pirates;
- Law enforcement officers on board ships;
- Review of national legislation;
- Setting up coordination and information centers.

The signatory states are free to draft legal instruments providing for more stringent measures.

Oman, Saudi Arabia and Yemen, together with other Indian Ocean states and France, are signatories to the Djibouti code of conduct. The UK and the US are observer states.

The Privatization of Maritime Security

I have addressed the issue of Private Military and Security Companies (PMSCs) in an article published in a book on PMSCs edited by myself and a colleague.[17]

The main findings were as follows:

- After the 1856 Paris Declaration on the abolition of privateering, control of violence at sea is in the hands of states;
- Both the 1958 Geneva Convention on the High Seas and UNCLOS entrust the function of policing the seas to warships and other government vessels licensed to perform such services. The conventional provisions are regarded as declaratory of customary

16 UAE Counter Piracy Conference, *Final Ministerial Statement*, 28 June 2012, http://www.counterpiracy.ae/media.

17 N. Ronzitti, "The Use of Private Contractors in the Fight against Piracy: Policy Options", in F. Francioni and N. Ronzitti (eds.), *War by Contract. Human Rights, Humanitarian Law, and Private Contractors*, Oxford, Oxford University Press, 2011, p. 37-51.

international law;
- International law prohibits arming private vessels for pirate-hunting. To do so, a private ship should be converted into a warship in accordance with the requirements established by Hague Convention No. VII of 1907. However, in this case, a fully-commissioned officer should be in command, and the crew should be under military discipline;
- The above provisions regard the law of armed conflict at sea, including the law of neutrality;
- However, the monopoly of force by states in counter-piracy operations has been reaffirmed both by the Geneva Convention on the High Seas and by UNCLOS;
- There are no specific prohibitions against the use of security guards for protecting private shipping and using force in self-defence;
- This affirmation, which opens the way for employing PMSCs against pirates, should be reconciled with the law of the sea and the possibility for PMSCs to be on board private ships in territorial waters – when such ships are in innocent passage through the territorial sea or international straits – or on the high seas. An additional question is whether it is possible to dispatch an escorting vessel with PMSCs on board in order to protect transiting private shipping.

I answered these questions in the following way in the article:

- A merchant ship with an armed team on board is entitled to traverse foreign territorial waters, and the presence of the armed team does not constitute an infringement of the rules on innocent passage;
- The same is true (and even more so) for transit passage through an international strait;
- PMSCs are forbidden to arm vessels for pirate-hunting. However, they are permitted to arm a vessel to escort merchant shipping. If attacked by pirates, they are entitled to react;
- The rationale for using force is the law of self-defence.

UNCLOS establishes a duty of cooperation in fighting piracy on the high seas, and states are the holders of rights and obligations in this regard (Article 100). The provisions on the right of visit impose duties in the case of the unjustified stopping of a vessel suspected of piracy. Provisions are set out as regards the right to punish pirates and the restitution of property to its lawful owners.

There is no international convention regulating PMSCs. There is however an instrument of soft law, i.e. the Montreux Code of Conduct, which addresses this important issue.[18] The Montreux document is not tailored to the employment of PMSCs at sea. The same is true for the International Code of Conduct for Security Companies (ICoC) adopted on 9 November 2010 under the auspices of the Swiss Government, even though a broad reading of this document may lead to a different conclusion. The draft convention on PMSCs currently

18 *Montreux Document on Pertinent International Obligations and Good Practices for States Related to Operations of Private Military and Security Companies during Armed Conflict*, Montreux, 17 September 2008, http://undocs.org/A/63/467.

being negotiated within the Human Rights Council does not seem to be an instrument applicable to PMSCs providing security services at sea.

The use of armed personnel on board private shipping to fight piracy is gaining currency among shipping companies. Some flags employ private guards, while others employ military personnel. Spain only allows private guards, while French trawlers stationed in the Seychelles have military people (*fusiliers marins*) on board. Italian law allows both the use of military teams and private guards (*guardie giurate*).[19]

The IMO was initially against the employment of armed personnel on board ships, and was of the opinion that non-lethal defences were preferable (for instance, barbed wire along the external side of the ship, powerful hydrants, water cannons, a citadel where the crew could seek refuge pending the intervention of a warship in the vicinity). The International Parcel Tanker Association (IPTA), an umbrella organisation for ship owners, has requested the IMO safety Committee to enact provisions concerning the employment of armed guards on board commercial shipping. The IMO has published three circulars clarifying, however, that it does not officially endorse the practice of having armed personnel on board.[20] States and ship owners are invited to set out proper rules if they deem it necessary to employ Privately Contracted Armed Security Personnel (PCASP), the jargon used for armed guards on board instead of the acronym PMSCs. The latest IMO circulars are 1405/rev. 2 and 1443, both of 25 May 2012.[21] The latter contains "Interim Guidance to Private Maritime Security Companies Providing Privately Contracted Personnel on Board Ships in the High Risk Area". The Baltic and International Maritime Council (BIMCO) has published a model contract for the employment of security guards (Guardcon), which includes *Guidance on the Rules for the Use of Force* (*RUF*), released in 2012.[22] There is, therefore, enough material for drafting a code of conduct along the lines of the Montreux document, including a commentary and a collection of best practices. Uniform rules on self-defence, the master's responsibility, rules of engagement, the stowing of weapons, the status of armed guards at ports of call, and the custody of captured pirates during navigation and their handing over to coastal states would need to be clarified. The issue of self-defence deserves to be accurately assessed. The relevant law is that governing police action at sea, rather than the right of self-defence as embodied in Article 51 of the UN Charter. In this connection one very important point to be clarified is whether self-defence may be resorted to only for protecting persons from attack, or also to protect property, for instance, the ship and the cargo on board. It is necessary to

19 See Article 5 of Law No. 130, 2 August 2011, http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:2011;130.

20 MSC.1Circ./1405/Rev. 1, 1406/Rev. 1, and 1408, of 16 September 2011. See documents in the IMO webpage on piracy: http://www.imo.org/OurWork/Security/PiracyArmedRobbery/Pages/Default.aspx

21 Ibidem.

22 BIMCO, *Guidance on the Rules for the Use of Force (RUF) by Privately Contracted Armed Security Personnel (PCASP) in Defence of a Merchant Vessel (MV)*, March 2012, https://www.bimco.org/Chartering/Documents/Security/~/media/Chartering/Document_Samples/Sundry_Other_Forms/Sample_Copy_Guidance_on_the_Rules_for_the_Use_of_Force.ashx.

compare domestic legislations in order to find a common approach. The use of lethal force should be avoided and used only as a last resort. This is stated, for instance, in the BIMCO document, which contains detailed provisions on the issue. Reference should also be made to a number of relevant instruments, including law of the sea conventions (for instance, Article 22 of the 1995 UN Fish Stocks Agreement), soft law documents (for instance, the ICoC) and the case law of the Law of the Sea Tribunal.

Another important issue is the status of military personnel on board private shipping. As mentioned earlier, France employs military personnel on board fishing boats, and Italian law allows both military teams and private contractors to be on board. Do military personnel enjoy functional immunity/immunity *ratione materiae* - which I would deem to be the case - on the grounds that they have the status of law enforcement officers (under Italian law) and are performing a task in the interests of the international community? The issue is the crux of a dispute between Italy and India in connection with the incident which took place involving the *Enrica Lexie* transiting off the coast of Kerala. In addition, the responsibility of states to license private armed guards should be clarified. Is there is an obligation of due diligence incumbent on the licensing state, even when the armed team is made up exclusively of private persons who are not state officials?

Drug Trafficking and Trafficking in Persons

Both are criminal phenomena, but are not considered international crimes as piracy is. Coastal states are entitled to stop ships engaged in these kinds of trafficking in their territorial sea or in the contiguous zone, but not on the high seas if the ship is flying a different flag from that of the boarding vessel. However, states may conclude agreements for stopping their vessels.

As regards drug trafficking, the 1988 Vienna Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances does not regulate maritime issues. Article 108 of UNCLOS only establishes a duty of cooperation in the suppression of the illicit traffic in narcotic drugs or psychotropic substances. This duty of cooperation should be implemented by bilateral or regional agreements. One example of such is the treaty concluded between Italy and Spain on 23 March 1990 allowing both parties to stop each other's vessels which are suspected of being engaged in drug trafficking. The US and other Central America states have concluded the 2003 Caribbean Maritime and Counter Narcotics Agreement, which allows US coastguards to stop foreign vessels with the consent of the flag state.[23] As for the Gulf region, the First Regional Anti-Narcotics Conference was held in Kuwait in March 2006.[24] According to research carried out by the Gulf Research Center, "the Gulf states have traditionally been a hub for illicit transit trafficking of opiates and cannabis intended for European markets".[25] The

23 See the list of bilateral agreement concluded by the US in J.A. Roach and R.W. Smith, *Excessive Maritime Claims*, 3rd ed., Leiden and Boston, Nijhoff, 2012, p. 583.

24 F. Leghari, "Narcotics Trafficking to the Gulf States", *Security & Terrorism Research Bulletin*, No. 4, November 2006, p. 19, http:// www.grc.net/download_generic.php?file_name=MjU5NTE%3D.

25 Ibidem.

UAE, for instance, has become the hub of transhipment of drugs coming from Afghanistan via Iran and Pakistan. A sound counterdrug policy requires strict cooperation with the relevant international agencies. The UN Office on Drugs and Crime (UNODC) has divided the Arab states into three sub-regions, one of which is composed of the Gulf states. Its draft regional programme for 2011-2015 addresses all GCC countries.

As far as trafficking in persons is concerned, Article 99 of UNCLOS embodies the time-honoured prohibition on the transport of slaves. More pertinent is the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the 2000 UN Convention against Transnational Organized Crime. The Protocol entered into force in 2004, and has been ratified by Bahrain, Oman and Saudi Arabia. States parties are obliged to establish the smuggling of migrants and producing false travel or identity documents as criminal offences. Measures may be taken against traffickers by warships or other governmental vessels. Stopping foreign vessels is permitted only by the flag state or by the state of permanent residence. Otherwise consent is required. The Protocol provides for a mechanism to facilitate consensus. Each state party should re-establish a focal point to which the request may be addressed. Another important provision is that on returning immigrants (Article 18). Migrants should be returned to their country of nationality or permanent residence. It is to be noted that the Protocol is aimed at preventing smuggling and punishing persons committing this crime, and not at eliminating illegal immigration. For instance, it does not regulate the question of the right of asylum and the status of refugees. There is an obligation on states parties to accept the return of their nationals or of persons having permanent residence in their territory. The return should be carried out in orderly manner and with due regard for the safety and dignity of persons. UNODC has issued a Model Law Against the Smuggling of Migrants that might be a voluntary source of inspiration for national legislations. The EU Member States, and in particular the Mediterranean Member States, have considerable experience in combating illegal immigration. For instance, Italy has concluded repatriation agreements with Albania and Libya, as has Spain with Morocco, while Malta has also engaged in bilateral talks with its neighbours. These policies fall within the competence of the EU, namely Article 79 of the Treaty on Functioning of the European Union. The EU *acquis* includes a number of directives, which should be implemented by Member States, as well as a number of re-admission agreements concluded with countries from which illegal immigration occurs. The EU agency competent for implementing a common policy at the maritime borders is Frontex. Frontex carries out joint operations to combat illegal immigration at sea, and also cooperates with UNODC in connection with the issue of the smuggling of migrants. It signed a working arrangement with the UN Agency on 17 April 2012.

Marine Pollution

The Gulf is one of the busiest sea routes in the world due to its energy-related shipping. Oil spills have contributed to the increased levels of pollution, which are also due to land sources. The legal landscape aimed at the prevention of pollution is both universal and regional. The 1973 London Convention for the Prevention of Pollution from Ships (MARPOL)

has widely been ratified, and all GCC countries are party to it. Moreover, the Convention contains six annexes dealing with special causes of pollution. Annexes I and II deal with oil and other dangerous substances. Special areas designated by the Marpol system include the Oman area of the Arabian Sea.

Oil spills are one of the major dangers. For instance, the EU has adopted regulations obliging oil tankers to be built with a dual hull, which apply to EU flag ships and foreign shipping calling at EU ports or off-shore terminals. UNCLOS contains numerous provisions regulating the protection and preservation of the marine environment. They are contained in its Part XII, and Article 192 lays down the general principle according to which "States have the obligation to protect and preserve the marine environment".

There are two provisions which may be a source of contention. The first is Article 221 of UNCLOS, which authorizes coastal states to take unilateral measures on the high seas against foreign ships to avoid pollution arising from maritime casualties. The consent of the flag state is not required. The second is military navigation. According to Article 236 of UNCLOS, the provisions regarding the protection and preservation of the maritime environment do not apply to warships. Generally speaking, military activities are not regulated by marine conventions.

Wrecks on the sea-bed may be both a source of pollution and a danger for navigation. This is particularly true of the Gulf, after the Iran-Iraq war. The 2007 Nairobi International Convention on the Removal of Wrecks contains provisions on the removal of wrecks resulting from a maritime casualty. The definition given by the Nairobi Convention is very broad. It refers to sunken and stranded ships, to any objects that are or have been on board, and even to ships that are adrift at sea and ships expected to sink or to strand. However, the definition is centred around the notion of the ship, and consequently fixed platforms and installations as well as pipelines are excluded. The Convention has not yet entered into force, since ten ratifications are necessary. As of 31 May 2012, only five states had ratified, including Iran, but not Iraq.

The 1991 Gulf war caused a huge oil spill off the Kuwaiti coast, which polluted the Saudi Arabian coastline and other regions of the Gulf. Oil spills are the major concern. Other sources of pollution include the high degree of urbanization in coastal regions, as well as desalination plants. Regional cooperation is not lacking. In 1978, the Kuwait Regional Convention for Co-operation on the Protection of the Marine Environment from Pollution was agreed, and five related Protocols have been concluded. The Regional Organization for the Protection of the Marine Environment (ROPME) has been created. Its membership includes Bahrain, Iran, Iraq, Kuwait, Oman, Saudi Arabia and the UAE. Pollution is a very serious problem for a fragile environment such as the Gulf, with its scarcity of fresh water. A major incident might cause great harm to the desalination plants and endanger their production. The autonomy of the reservoirs in the region is very low.

Conclusion

The Joint Action Programme (2010-2013) for Implementation of the GCC-EU Cooperation Agreement of 1988 (JAP) lists several areas of cooperation. With the exception of one, they are not specifically devoted to the maritime security, even though they may be adapted to cover it.

Item N. 5 (Transport) is dedicated to cooperation in maritime affairs, specifically as regards passengers, vessel inspection, maritime legislation, safety regulations and navigation security. The other items in by the JAP deserve a broad interpretation and should also cover maritime issues. For instance, item No. 8, concerning money laundering and terrorist financing, should be enlarged to address specific issues related to maritime crimes, particularly piracy.

An enhanced EU-GCC cooperation in the field of maritime affairs should in particular cover the following sectors:

1 - Maritime Transport and Marine Affairs

EU Member States have respectable commercial shipping, and both the EU and its Member States have adopted a wide range of legislation covering all aspects of maritime transport. The legislation is reviewed and revised if the need arises. It has been adopted either autonomously or in order to implement the international conventions to which the EU Member States are parties. It consists of national and EU legislation (directives, regulations and decisions). The EU could help the GCC countries to draft maritime legislation, including the laws and regulations necessary to implement the relevant international conventions. It could act in cooperation with other international organizations, for instance the IMO and the International Labour Organization (ILO). Pollution is an issue of major concern for the GCC countries. A significant maritime collision could create problems for drinking water, which depends on the desalination plants. Fresh water reserves would last for a short time. The EU has experience in dealing with pollution in semi-enclosed seas like the Mediterranean, and a number of conventions have been concluded in this regard under the auspices of the Council of Europe. The EU could advise on coastguards and help to train personnel and integrate naval resources. This aim could also be met for the blue navy, drawing on EU experience. Other possible areas for collaboration are assistance in establishing and consolidating coastal state maritime zones and in implementing international legislation originating both from treaty law (UNCLOS) and customary international law, including in relation to navigation through territorial seas, contiguous zones and EEZs.

Drug trafficking and trafficking in persons also are potential areas for cooperation. As far as the former is concerned, the GCC countries could benefit from the experience of the bilateral treaties concluded between EU Member States, such as the Treaty between Italy and Spain of 1990; as regards the latter, the GCC countries should benefit from the experience of the Frontex and the measures that EU Member States have taken in the Mediterranean to deal

with illegal immigration. Collaboration with UNODC to implement the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the 2000 UN Convention against Transnational Organized Crime, is of paramount importance. The GCC countries could benefit from EU experience in this connection as well. The experience of EU Member States in implementing the PSI should also be taken into account.

2 - Piracy

Piracy is still an issue of major concern for the international community, even though the threat has recently decreased. The Indian Ocean and the Gulf of Aden remain the most dangerous areas. Oman, Saudi Arabia and particularly Yemen are the countries most involved on account of their coastlines and sea routes. Cooperation between the GCC and the EU in combating piracy could take various forms.

In 2009, eleven states from the Gulf and the Red Sea agreed to establish a Joint Navy Task Force. However, this experiment lasted just one year and was discontinued. Action is currently being taken by Saudi Arabia and Yemen, mostly with coast guards. The GCC countries are not taking part in the operations off the Somali coast, as they lack a blue navy. However, they do support the trust fund for Somalia with financial help.

Taking as a starting-point the proposals presented by Real Admiral Ibrahim Al-Musharrakh at the 2011 Counter Piracy Conference in the UAE,[26] the EU could cooperate with GCC in helping:

- In establishing a GCC Counterpiracy Force;
- In providing expertise on how sea-lane communications can be protected;
- In providing the appropriate technology for the protection of merchant vessels from assault by pirates;
- In providing examples of legislation regulating the carrying of vessel protection detachments (VPDs) or contractors on board GCC commercial flags or foreign flags requesting the necessary assistance.

Bahrain already hosts an information–sharing center. This could be strengthened, and EU companies could provide the relevant technology (as for instance Selex, an Italian company, is doing in Yemen).

EUCAP Nestor is a capacity building mission which has been providing assistance with the maritime security of states in the Horn of Africa and Western Indian Ocean since mid-July 2012 as part of the EU's Common Security and Defence Policy. In itself EUCAP Nestor is not tailored to the GCC countries. However, a similar mission could be conceived for the GCC.

26 I. Al Musharrakh, "Constructing a Robust GCC Response at Sea: Reviving the Arab Counter-piracy Force", *UAE Counter Piracy Conference Briefing Papers*, May 2012, http://www.counterpiracy.ae/upload/Briefing/Ibrahim%20Al%20Musharrakh-Essay-Eng-2.pdf.

Hostage-taking and ransom requests have proven to be a lucrative affair for pirates. The GCC and the EU should cooperate in changing this state of affairs, and collaborate effectively to exhaust the finances of pirates.

3 - Security at Sea and Counterterrorism

Cooperation is already in existence with Combined Task Force 152 created in 2004 and operated in the framework of Enduring Freedom. At present its task is to promote security and counterterrorism surveillance in the Gulf , but its role should be increased both in terms of ships and missions. It is made of the GCC countries assisted by the US and the UK. The EU countries might have a say.

4 - WMDFZ in the Middle East

Last but not least, the EU could advise on the maritime issues involved in a WMDFZ in the Middle East. On that point, Europe has taken the lead. The Facilitator appointed by the UN Secretary-General is a Finnish diplomat. The EU holds a number of regional seminars, and two seminars attended by diplomats and scholars of the Middle East region have been hosted in Brussels at the initiative of the EU. The maritime issue is of vital importance, covering aspects such as the passage of nuclear-powered ships and warships carrying nuclear armaments through the Strait of Hormuz; overflying the Strait with aircraft carrying nuclear weapons; and warships with nuclear armaments traversing the Suez Canal. A track-two regional seminar on these topics could be held in one of the GCC capitals.

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ABOUT SHARAKA

Sharaka is a two-year project implemented by a consortium led by Istituto Affari Internazionali (IAI).

The project, partially funded by the European Commission, explores ways to promote relations between the EU and the Gulf Cooperation Council (GCC), through the implementation of policy-oriented research, outreach, training and dissemination activities. The overall project aim is to strengthen understanding and cooperation between the EU and the GCC, with particular attention to the strategic areas identified in the Joint Action Programme of 2010, such as trade and finance, energy, maritime security, media and higher education.

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