Chapter Five

The Indian Ocean, South Asia and Maritime Cooperation
Introduction

One of the ways in which the global and regional maritime security concerns regarding China’s maritime strategy in the Indian Ocean and South Asia can be dealt with is through multilateral maritime cooperation in those regions. Therefore this chapter will examine the development of such cooperation.

The waters of the Indian Ocean connect four major land bodies: Africa, Asia, Australia and Antarctica. The Indian Ocean ‘rim’ consists of 29 littoral countries and 6 island countries. The Indian Ocean ‘region’ can either be limited to the ‘rim’ countries mentioned above or it can be expanded to include land-locked countries dependent on the Indian Ocean. Thus the number of states that comprise the Indian Ocean ‘region’ can vary from a minimum of 35 ‘rim’ states to a maximum of 52 states when all the landlocked countries who already are, or could become, dependent on the Indian Ocean are included (Roy-Choudhury 1997: 117). East Timor, which had been a part of Indonesia, emerged as an independent state in 2002. The United Kingdom (UK) and France have territorial possessions in the Indian Ocean (Schofield 2007: 3, Endnote 3).

South Asia can be seen as a continental sub-region of the Indian Ocean maritime region.

The Indian Ocean encompasses an enormous maritime space with considerable marine resources. Substantial swaths of the Indian Ocean are subject to extensive national claims to maritime jurisdiction. These claims provide coastal states with access to the

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1 The 29 littoral countries are: Australia, Bahrain, Bangladesh, Djibouti, Egypt, Eritrea, India, Indonesia, Iran, Iraq, Israel, Jordan, Kenya, Kuwait, Malaysia, Mozambique, Myanmar, Oman, Pakistan, Qatar, Saudi Arabia, Singapore, Somalia, South Africa, Sudan, Tanzania, Thailand, United Arab Emirates (UAE), and Yemen. If the Red Sea is not considered part of the Indian Ocean, the number of littoral countries would be reduced to 23. The 6 island countries are: Comoros, Madagascar, the Maldives, Mauritius, Seychelles and Sri Lanka (Roy-Choudhury 1997: Note 4).

2 The 12 land-locked countries that have been traditionally dependent on the Indian Ocean are: Afghanistan, Bhutan, Burundi, Ethiopia, Lesotho, Malawi, Nepal, Rwanda, Swaziland, Uganda, Zambia and Zimbabwe. In addition, the 5 Central Asian republics- Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan- could also be included in this list (ibid.).

3 The UK’s British Indian Ocean Territory (BIOT) comprises the Chagos Archipelago. France’s Indian Ocean territorial possessions include Reunion Island, Tromelin Island, Mayotte Island, Bassas da India, Europa Island, Oloroso Islands, and Juan de Nova Island (Schofield 2007: Endnote 4).

4 This distinction between continental region and maritime region is taken from K.R. Singh (2004: 195).
living and non-living resources of the Indian Ocean through the sovereignty and sovereign rights within their claimed zones of maritime jurisdiction and these claims therefore represent tremendous potential maritime opportunities. However there are considerable challenges to contend with in terms of realizing these opportunities. The resource-related economic benefits that it was generally anticipated would flow on from these broad maritime claims made by the predominantly developing Indian Ocean coastal states have largely not lived up to initial expectations (ibid.: 1).

The Indian Ocean is also a vital link in the global shipping network. Important shipping across the Indian Ocean include 'Round the World' container services and oil routes from the Red Sea and the Persian Gulf to Asia via the Malacca or Lombok Straits, and to Europe via the Suez Canal or the Cape of Good Hope. In 1995 an estimated 713 million tons, about half the world seaborne trade in crude oil, was shipped from the Middle East, from which about 99.6 million tons or 14% was bound for Europe, 87.4 million tons or 12% for North America, and 265 million tons or 37% for Japan (Norges Rederiforhund 1995, cited in Bateman 2002: 355). Therefore the safety and security of Indian Ocean shipping is a vital concern for many countries around the world. Maritime access to the Indian Ocean is via access waterways in the Northeast and the Northwest, and from South of Australia and Africa. From the Northeast access is via Singapore and the Malacca Straits or several routes through the Indonesian archipelago. From the Northwest access is via the Bab el-Mandeb strait and the Strait of Hormuz. All of these are major 'choke points' due to the high density of shipping traffic, and their potential for closure either by the adjacent coastal states or by a maritime superpower and/or a coalition of powerful naval forces. They are susceptible to mining and the 'focal areas' in their approaches offer hunting grounds for submarines. The Mozambique Channel, the Maldives and Laccadive Islands, and the area off Cape of Agulhas, the southernmost point of Africa, are the other 'choke points' in and around the Indian Ocean (Bateman 2002: 355-356).

The strategic architecture in South Asia has undergone a major transition as trends in economic development have produced new regional economic/military powers,
providing the resources for extensive defence modernization and fundamentally changing the character of security concerns. New areas of potential conflict, such as disputes over competing sovereignty claims, repressed by the superpower rivalry and other Cold War dynamics, now demand consideration on a priority basis. The prospects for conflict and/or cooperation in the Indian Ocean are affected by many factors, and these prospects have a direct influence on the security environment of the Indian Ocean littoral and island states of South Asia. Earlier attempts to improve the Indian Ocean security environment through the ideology of non-alignment, regional cooperation and adherence to the U.N. Charter have not been very successful. With the passage of time the security environment can be expected to deteriorate, turning the area into a ‘zone of conflict’ rather than a ‘zone of peace and cooperation’. According to a study of more than 175 armed conflicts between 1945 and the mid-1980s, Europe and North America were largely free of them, the majority of them taking place in Third World countries, mostly on the continents of Asia and Africa (Jasjit Singh 1984: 1, cited in Alam 1997: 20). However the developed countries play a considerable indirect role in these armed conflicts, in the form of arms supplies, political moves or the use of force without active participation. The demise of the bi-polar world has generated more factionalism and strife in Africa and Asia due to sub-nationalism, ethnic cleansing, religious extremism, famine and environmental degradation. The South Asian littoral and island states of the Indian Ocean have been particularly vulnerable since most of them are brittle underdeveloped countries with little financial or industrial stamina to withstand the dictates of the developed nations. The need for regional maritime cooperation in South Asia also merits serious attention in view of transnational threats such as narco-terrorism, sea piracy, smuggling and illegal fishing. These peace-time operations include: monitoring non-military threats; delineation of maritime boundaries; prevention of illegal migration; and keeping a close watch on the scramble for marine resources such as oil and fish. South Asian countries will need to look more and more to regional maritime powers for cooperation in marine affairs, and for support in ensuring the integrity of their respective Exclusive Economic Zones (Alam 1997: 19-21).
Maritime cooperation is not only a long-term policy for states to follow if perceived necessary, but also an obligation undertaken by them in the new international law of the sea and successive international conventions. The United Nations Convention on the Law of the Sea (UNCLOS) which opened for signature in 1982 and entered into force on November 16, 1994, places considerable emphasis on regional and international cooperation in maritime affairs. Among Indian Ocean states only Comoros was not a member of the IMO by the late 1990s. While all Indian Ocean states may not have adopted, or implemented, all the conventions of the IMO, their membership indicates a common understanding and acceptance of its importance. In addition the Regional Seas Programme (RSP) of the United Nations Environment Programme (UNEP) is also of direct relevance to maritime cooperation. From the 13 regional seas of the RSP 5 are located in, or involve, the Indian Ocean. The South Asian Seas Programme involves the participation of India, Bangladesh, the Maldives, Pakistan and Sri Lanka. An Action Plan for the protection and management of the marine environment in the South Asian Seas was adopted in March 1995. Its priority projects included the development of national and regional oil and chemical spill contingency plans, and the protection of the marine environment from land-based activities. However despite the institutional framework for maritime cooperation at the international level, intergovernmental and other formal arrangements for maritime cooperation in the Indian Ocean have been somewhat lacking (Roy-Choudhury 1998b: 259-261).


The international law rules concerning baselines, maritime claims and governing the delimitation of maritime boundaries are largely codified in the UNLOSC, and its predecessors, notably the 1958 Geneva Conventions. From among the Indian Ocean’s coastal states, twenty three have signed and ratified the UNLOSC and three have not.

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6 The 23 that have signed and ratified UNCLOS are: Australia, Bangladesh, Burma/Myanmar, Comoros Islands, Djibouti, France, India, Indonesia, Kenya, Madagascar, Malaysia, Maldives, Mauritius, Mozambique, Oman, Pakistan, Seychelles, Somalia, South Africa, Sri Lanka, Tanzania, the United
The Indian Ocean littoral states have been enthusiastic in terms of their maritime jurisdictional claims, particularly the EEZ. However, a number of the maritime claims articulated by the Indian Ocean coastal states are questionable or potentially problematic. These include arguably excessive and inappropriate claims to straight baselines and excessive claim to maritime jurisdiction. Additionally, unilateral claims to maritime jurisdiction and those based on historical rights are potentially problematic. The Indian Ocean is also host to a number of sovereignty disputes over islands, which inevitably have an associated maritime jurisdictional dimension. These problematic claims have given rise to international protests. Such protest often emanate from neighboring states keen to protect their own national interests offshore. However, in some cases neighboring states opt to remain silent in the face of arguably excessive maritime claims, which may be due to fear of aggravating bilateral relations as well as to their own questionable practice. The world’s pre-eminent maritime power, the United States, is also particularly vigilant and routinely protests against any practice excessive or contrary to the provisions of UNLOS, as interpreted by the United States. This is achieved through the United States Freedom of Navigation Programme, which was established in 1979. The rational for these actions is that, as a maritime nation, the national security of the United States “depends on a stable legal regime assuring freedom of navigation on, and over flight of, international waters” and that in view of this, the United States will respond to what it views as excessive maritime claims in order to preserve the “careful balance of coastal and maritime state interests” enshrined in UNLOS. The Freedom of Navigation Programme provides for thee types of responses-diplomatic representations in the form of formal protest notes, (notes verbale or aides memoire); “operational assertions” where by United States air and naval forces undertake missions designed to emphasize freedom of over-flight or navigation in a “low-key and non-threatening manner but without attempt at concealment”; and through bilateral and multilateral consultations (Roach and Smith 1996: 3-13, cited in Schofield 2007: 4-5; Schofield 2007: 4-5).

Kingdom, and Yemen. The 3 that have not are: Iran, Thailand and the United Arab Emirates (Schofield 2007: 4).
The establishment of baselines is an essential precursor to the precise definition of zones of maritime jurisdiction as it is essential to determine the points from which the breadth of such zones are measured. Under usual circumstances according to UNLOS Article 5, a coastal states baseline is defined as "the low-water line along the coast as marked on large-scale charts officially recognized by the coastal State." This type of baseline, referred to in UNLOS as the 'normal' baseline, is the predominant. Such normal baselines account for the majority of the baselines applicable around the Indian Ocean. It is worth noting in this context that normal baselines can change significantly over time and this necessarily has an impact on the generation of the outer limits of claims to maritime jurisdiction. The tsunami of December 2004 has in many cases had a significant impact on the normal baselines of many Indian Ocean states, in addition to the other serious impacts associated with it. Where specific coastal geography exists, UNLOS Article 7 allows states to depart from the application of the normal baseline, and measure maritime jurisdictional zones from 'straight' baselines drawn along selected parts of their coastlines. In particular, Article 7 (1) allows the application of straight baselines in localities where "the coastline is deeply indented and cut into, or if there is a fringe of islands along the coast in its immediate vicinity." Although the intention of UNLOS Article 7 to deal with complex coastal geography is clear, the imprecise nature of the provisions of Article 7 and the lack of any objective test for validity of a particular straight baseline system, has led to wide interpretation in state practice and a significant number of what might be termed excessive claims. One of the earliest straight baseline claims in the region is that of Madagascar, articulated through a Decree of 23 February 1963. The claim comprises a continuous series of straight baselines form the northern tip of Madagascar, around the entirety of the island’s western and southern coast. Approximately two-thirds of the eastern coast is composed of normal baselines before straight baselines recommence to front Madagascar’s northeastern coastline. The straight baseline system so defined totals 1,577.3nm of a total baseline calculated to be 2,029.3nm in length. However the entire coastline in question is not deeply indented enough or fronted by islands to justify the application of straight baselines. Additionally, the claim includes some arguably overly long straight baseline segments, the longest being 123.1nm. Having apparently been constructed using a small scale chart,
inconsistencies also arise when the coordinates recorded in the Decree are transposed to a large-scale chart, including straight baselines apparently cutting across land territory. Another early claim to straight baselines was that made by Portugal on behalf of Mozambique, dated August 22, 1966. The straight baselines in question encompass a substantial portion of Mozambique's coastline, totaling 453.4nm in length. The baselines are divided into five distinct sections, two of which link fringing islands and reefs to the mainland coast whilst the remaining three close indentations or bays along the coast. The longest straight baseline segment claimed is 60.4nm long with an average segment length of 19.7nm. As such these straight baselines compare favourably with those of Madagascar on the opposite shore of the Mozambique Channel. Burma claimed a system of straight baselines on November 15, 1968 through an official notification. Aside from an approximately 30nm long section of normal baselines extending southwards from the terminus of Burma's land boundary with Bangladesh, Burma employs straight baselines along the remainder of its coast. These straight baselines total 826.4 nm. The claim includes a single baseline segment across the Gulf of Martaban which is 222.3 nm in length—the longest single straight baseline segment claimed worldwide. Despite Burma's justification of these straight baselines "by reason of geographical conditions prevailing" on the coastline in question together with the need to "safeguard the vital economic interest of the inhabitants of the coastal regions" this claim resulted in US protest (Roach and Smith, 1996: 123-124, cited in Schofield 2007: 7). This protest was made partially on the basis of the manner in which the Gulf of Martaban closing line deviates from the general direction of the coast. Most protests against the Burmese straight baseline claim tend to focus on the extraordinarily and excessively long Gulf of Martaban closing line. This is not surprising as it has been observed that at one point along this line, the nearest Burmese land territory is over 75nm away whilst the mouth of the Sittang River is over 120nm distant. However, other sections of the Burmese claim, for instance the most northerly segment, are also of questionable merit. In a similar fashion, both Iran and Pakistan have defined straight baselines along the entirety of their coastlines, apparently without regard for whether the coastline in question is deeply indented or cut into or, alternatively, fronted by a fringe of island in the immediate vicinity of the coast, as is required under UNLOS Article 7. Iran first established straight baselines in 1959 and
these baselines were revised in 1973. However Iran’s currently claimed straight baseline system relies on a comprehensive Marine Areas Act of May 2, 1993. As noted, Iran’s claimed baselines stretch along almost the entire length of the Iranian coastline in the Arabian/Persian Gulf and eastwards into the Gulf of Oman. These claims have been subject to international protests. While Kuwait and Saudi Arabia’s protest merely noted that parts of Iran’s 1993 Act were inconsistent with international law and did not single out Iran’s straight baselines for adverse comment, it is likely that these baselines were among the aspects of the Iranian claims of concern to these neighbouring states. In contrast to Kuwait’s and Saudi Arabia’s somewhat circumspect comments, the United States issued a detailed protest dated January 11, 1994. In particular the US objected to Iran’s straight baselines on the basis that the Iranian coastline is only ‘rarely’ deeply indented or fringed by islands and that several of the baseline segments are ‘excessively long’. Like Iran, Pakistan, through a notification of September 10, 1996, has claimed a system of straight baselines extending 396 nm through nine segments, fronting the entirety of its coast. As the Pakistani coastline is also predominantly smooth and lacking in deep indentations or a fringe of offshore islands, it has likewise been subject to international protest. The US State Department’s analysis of the Pakistani claim observes that Pakistan’s coastline “does not meet either of the two LOSC geographic conditions required for applying straight baselines”, i.e., a deeply indented coastline or a fringe of islands in the immediate vicinity of the coast. The analysis went on to argue that “for the most part” the waters enclosed by the new straight baseline system do not have a close relationship with the land such that “it would be more appropriate to use the normal baseline”. A further curious feature of these straight baseline claims is that both the eastern end of the Iranian claim and the western end of the Pakistani claim end at ‘floating’ points out to sea at the entrance to Gwadar Bay, offshore the terminus of their land boundary on the coast, rather than on land. It appears that the two adjacent straight baseline systems are meant to join up. Whilst this type of arrangement is not unique, it is rare and rather unconventional. It is unclear whether the two straight baseline systems connect with one another. It is also notable that, at their eastern end, Pakistan’s straight baselines terminate 5 nm beyond the line of equidistance off the coast of India. This serves to complicate the already politically fraught delimitation picture between Pakistan
and India. Bangladesh is located at the head of the Bay of Bengal. As Bangladesh’s coastline is predominantly concave in configuration, the application of equidistance lines as a method of maritime boundary delimitation would render Bangladesh shelf-locked or zone-locked. A strong case can be made that such a distribution of maritime entitlements would not only be highly disadvantageous to Bangladesh but also would be inequitable. In an apparent attempt to compensate for this geographically disadvantaged position Bangladesh has claimed some highly problematic straight baselines. UNLOSC Article 7(2) does provide rules relevant to deltas—such as that at the mouth of the Ganges/Brahmaputra Rivers, which forms Bangladesh’s coastline. In fact, these provisions were introduced into the convention with Bangladesh’s circumstances in mind. However, Bangladesh’s claims appear to go well beyond baselines that could be justified under these provisions of UNLOSC. This is so because Bangladesh’s claimed straight baselines, which measure 221 nm in length, do not, in fact, touch land at any point. Indeed, aside from one area in the vicinity of a deep landward indentation, the baselines appear to follow the 10 fathom (18 metre) isobath. The consequence of this extraordinary claim is that Bangladesh’s claimed baselines are located up to 50 nm offshore. Bangladesh justifies its claims on the basis that special circumstances exist in the offshore area of the Ganges/Brahmaputra delta. In particular, the highly unstable nature of the coastline in question leads to significant and frequent changes in the low-water line and the shallow nature of the waters concerned presents a major challenge for traditional hydrographic surveying of these baselines. Despite these problems, it nonetheless seems excessive for Bangladesh to claim baselines anywhere up to 50 nm from the nearest coastal point. Rather unsurprisingly, therefore, Bangladesh’s claims have been subject to international protests, including from its immediate maritime neighbours, Burma and India in April 1982 and from the United States in April 1978. The straight baselines claimed by Djibouti and Oman have also been criticized. Djibouti claimed straight baselines in the vicinity of the south-western shore of the Bab al-Mandeb at the southern entrance to the Red Sea, extending from the mainland coast and enclosing the Sawbi (Seba) Islands. It has been noted that this island group “run virtually perpendicular to the mainland coastline” and, as such, “do not fringe the coast”, though it was acknowledged that the claimed straight baselines do not impact on the definition of Djibouti’s territorial
sea limits. As a result this claim has been subject to international protest. Although parts of Oman’s coastline are deeply indented and justify the application of straight baselines, notably parts of the Musandam Peninsula on the Strait of Hormuz, parts of Oman’s four separate sets of claimed straight baselines, defined through Decree No.28/82 of June 1, 1982, front relatively smooth coastlines lacking deep indentations or rely on isolated islands rather than fringing islands. As a result the United States has issued a diplomatic note protesting against a significant proportion of Oman’s claimed straight baselines system. The claims of Malaysia and Thailand relevant to the Indian Ocean, have escaped serious international protest. In the former’s case, this is in large part due to the fact that Malaysia has not formally publicized its straight baselines claim. The location of Malaysia’s straight baselines can, however, be deduced, particularly from a map issued by the Malaysian Directorate of National Mapping on 21 December 1979 illustrating Malaysia’s agreed maritime boundaries and maritime claims. Although no baselines are shown on these maps, the outer limit of the Malaysian territorial sea claim is marked with straight lines, a configuration only possible if these limits were constructed from straight baselines. The location of Malaysia’s straight baselines can therefore be determined with reasonable accuracy by drawing lines parallel to the outer limit of the Malaysian territorial sea claim but 12 nm landward of that line. With regard to Malaysia’s claims in the Indian Ocean, essentially bordering the Malacca Strait, it is clear from this exercise that Malaysia has been liberal in its application of LOSC Article 7. These claimed but not publicized straight baselines are therefore likely to complicate further maritime boundary delimitation with Indonesia (regarding EEZ rights) and be subject to international protest as and when they finally emerge in the public domain. In contrast to most of the aforementioned claims to straight baselines, Thailand’s 1970 claim to straight baselines off its Andaman Sea coast (Area 3) had attracted favourable comment. The US State Department’s office of the geographer’s analysis noted that the Thai claim, the longest segment of which measures 16.2 nm and which has a low average segment length of 6.8 nm, “encloses a large number of scattered islands which are situated relatively close to the mainland” and that due to the “significant number of excluded islands, seawards of the straight baselines system, the straight baselines do not extend the territorial sea appreciably”. Similar conclusions were reached when this analysis was updated in 2000.
Consequently, this portion of the Thai straight baselines claim has not elicited international protest. Australia proclaimed straight baselines in 1974 but this was subsequently overtaken by Proclamation of February 4, 1983. This proclamation defined a total of 396 straight baselines, including 297 baseline segments around the mainland coast. These claims have, however, been generally regarded as reasonably conservative in character and have not excited international protests. The Indian Ocean is also host to four archipelagic states in accordance with UNLOSC Article 46: Comoros, Indonesia, Maldives, Seychelles. These states can apply the provisions relating to archipelagic straight baselines contained in UNLOSC Article 47. The five key conditions laid down in Article 47 are: that the claimant state’s “main islands” must be included within the archipelagic baseline system; that the ratio of water to land within the baselines must be between 1:1 and 9:1; that the length of any single baseline segment must not exceed 125nm; that no more than three percent of the total number of baseline segments enclosing an archipelago may exceed 100nm; and, that such baselines “shall not depart to any appreciable extent from the general configuration of the archipelago”. The law of the sea rules relating to archipelagic baselines are technically reasonably robust, particularly when compared with those dealing with straight baselines contained in UNLOSC Article 7. While the concept of an archipelagic state was codified in UNLOSC in 1982, Indonesia was a key pioneer of the archipelagic concept having first claimed archipelagic-type baselines through Law No.4 of 1960. With emergence of East Timor Indonesia is currently in the process of revising its archipelagic baselines but thus far has only provided for a partial re-designation of new archipelagic baselines. The Maldives has claimed archipelagic baselines through the Marine Zones of the Maldives Act (No.6/96) which took effect on 27 June 1996. The US State Department analysis of this claim notes that while the UNLOSC Article 47(2) provides that only three per cent of baseline segments may exceed 100 nm in length, in the case of the Maldives claim, 3 out of 37 segments exceed 100 nm. Both the Comoros Islands and the Seychelles, the other two Indian Ocean states potentially able to claim archipelagic baselines in accordance with UNLOSC Article 47 have given indication that they intend to make such claims, but have yet to do so (Schofield 2007: 5-12).
All but two of the Indian Ocean littoral states claim 12nm territorial seas and 200 nm breadth EEZs. The exceptions are Somalia and the United Kingdom in respect of the British Indian Ocean Territory (BIOT). Somalia claims a territorial sea ‘to the extent of 200 nautical miles’ and no EEZ. This claim is, of course, not in accordance with the international norm of 12nm set down in LOSC, Article 3. This excessive territorial sea claim has resulted in international protest on the part of the United States. It is notable, however, that Somalia’s 200nm territorial sea claim predates UNLOSC and Somalia’s signature and ratification of that Convention. The UK has claimed a 3nm territorial sea and 200nm fishery zone on behalf of BIOT. While the majority of the Indian Ocean states’ maritime claims are in accordance with UNLOSC in terms of their breadth (the only exception being Somalia), a number of Indian Ocean states have claimed rights within their national maritime zones that other maritime states, notably the United States, deem to be excessive and beyond those provided for under UNLOC. Such claimed rights often relate to security and the right of foreign naval vessels to undertake the right of innocent passage through the territorial sea or conduct military data gathering or other military activities such as conducting exercises in the EEZ. For example, the US had protested against aspects of Iran’s 1993 Marine Areas Act, notably Iran’s claiming of the right to establish ‘safety zones’ around artificial structures such as oil platforms, to control the laying of submarine pipeline and cables and to control over ‘any kind of research’ within the EEZ. The US had also objected to Iran’s interpretation of the regime of innocent passage and prohibition on military activities of foreign states within its EEZ. Other Indian Ocean coastal states claiming similar kinds of jurisdiction, arguably contrary to the terms of UNLOSC include: Bangladesh, Burma, India, Mauritius, Pakistan, Sri Lanka, the Seychelles and the UAE. With regard to sovereign rights over the continental shelf, it is worth noting that, in accordance with UNLOSC article 77(3), continental shelf rights “do not depend on occupation, effective or notional, or on any express proclamation” and coastal states therefore possess the rights regardless of them having been formally claimed or not. A few Indian Ocean states have, in a similar fashion to rights claimed within the other zones of maritime jurisdiction mentioned above, made claims to jurisdiction on the continental shelf arguably beyond that provided for under UNLOSC. These states include India, Pakistan, Mauritius and the Seychelles. Several
Indian Ocean coastal states may also be able to make claims to continental shelf rights beyond 200nm from their baselines, in accordance with UNLOSC Article 76. It establishes that the continental shelf of a coastal state comprises the seabed and subsoil of submarine areas “throughout the natural prolongation of its land territory to the outer edge of the continental margin” or to a distance of 200 nm from relevant baselines. Article 76 provides a series of complex provisions relating to the coastal state establishing the location of the outer edge of the continental margin where that margin extends beyond 200 nm from its baselines, as well as imposing some constraints on coastal state claims. Such claims must be submitted to the UN’s Commission on the Limits of the Continental Shelf (CLCS). The deadline for such submissions is ten years following the adoption of the CLCS’s guidelines and is therefore set at 2009. There are four continental margins that extend beyond 200 nm from the coast in the Indian Ocean that may well generate such claims. These are: the area located to the south of the Mozambique channel, potentially of interests to Madagascar, Mozambique and South Africa and also, potentially, France through its island territories in this area; the area off the northeast coast of Africa, potentially of interest to Kenya, the Seychelles, Somalia and Tanzania; the area offshore the Indus river in the Arabian sea, potentially of interest to India and Pakistan; and the Bay of Bengal which is underlain with deposits associated with the Ganges/Brahmaputra river system (ibid.: 12-14).

While most Indian Ocean coastal states have tended to advance only general proclamations regarding their claims to maritime jurisdiction, a few have made more specific claims. Such unilateral claims can prove problematic and give rise to disputes and examples exist within the Indian Ocean. Kenya has defined a unilateral EEZ limit that runs due east along the 1038° south parallel. This lines lies substantially to the north of a theoretical equidistance line between Kenya and Somalia which, because of the configuration of the coastline and the presence of small Somali islands in the vicinity of the terminus of the land boundary on the coast, tends in a south-easterly direction. Whilst a maritime boundary dispute as such has not arisen, largely due to instability in Somalia, it can be anticipated that as and when a Somali government does emerge from the Somali conflict, a dispute will arise over this unilateral maritime claim on the part of Kenya. In
addition to its unique straight baselines claim, Bangladesh has allegedly made unilateral claims to maritime jurisdiction. Although these claims have not been fully disclosed in the public domain, they have served to complicate maritime boundary delimitation negotiations in the Bay of Bengal. This is largely because the Bay of Bengal is understood to be prospective in terms of seabed oil and gas resources. The littoral states have sought to gain access to these resources, and simultaneously bolster their maritime claims, by issuing hydrocarbons exploration licenses. As a result it has become plain that maritime claims in the Bay of Bengal overlap and a contentious trilateral maritime boundary dispute exist involving Bangladesh, India and Myanmar. The delimitation scenario in the Bay of Bengal is further complicated by the dispute over the South Talpatty or New Moore/ Purbasha Island between Bangladesh and India. Malaysia’s publication of the limits of its territorial sea and continental shelf claims through a 1969 map could also be construed as a unilateral claim. In the Indian Ocean however Malaysia’s unilateral claims have been largely overtaken by maritime boundary agreements with neighbouring states in the Malacca Strait. The Maldives also advanced unilateral EEZ claims on the basis of a ‘constitutional rectangle’ whereby, according to its 1964 constitution, the Maldives was defined as the islands, air and sea within a rectangle formed by parallels of latitude and meridians of longitude. This controversial claim was abandoned as a result of the adoption of the Marine Zones of the Maldives Act of 27, June 1996 (ibid.: 14-15).

On June 26-28, 1974 India and Sri Lanka agreed on maritime boundary delimitation through their claimed historic waters in the Palk Strait and Bay. This body of water measures approximately 74nm north-south and 76nm east-west and, despite of numerous islands, parts of it would fall beyond 12 nm – breadth territorial seas claimed from the baselines of the two states. Unlike most other historic water claims which tend to relate to the water contained within a so-called ‘historic bay’ and largely surrounded by the territory of the claimant state, the Palk Strait and Bay area involves two states and the maritime area claimed as historic waters lies between the mainland and islands coasts of the two states, with multiple entry points to the wider ocean. Despite its unusual character, the claim to historic waters status for Palk Strait and Bay is backed by
considerably evidence. The issue was subject to legal proceedings before the Appellate Criminal Division of the Indian High Court in Madras in 1903-04 when both India and Sri Lanka (Ceylon) formed part of the British Empire. The court ruled that the Palk Bay was:

"...landlocked by his majesty’s dominions for eight-ninths of its circumference...[and] effectively occupied for centuries by the inhabitants of the adjacent districts of India and Ceylon respectively... [w]e do not think that Palk’s Bay can be regarded as being in any sense the open sea and therefore outside the territorial jurisdiction of his Majesty".

This led to the view being expressed that there "seem to be strong reasons for considering these areas historic waters" (Charney and Alexander 1993: 1, 410, cited in Schofield 2007: 16). This evidence did not, however, prevent the US from protesting this claim in a note directed to India’s Ministry of External Affairs dated 13 May 1983 (Schofield 2007: 15-16).

A further problem can arise in terms of overlapping claims and maritime boundary disputes as a consequence of disputes over the precise location of the land boundary on the coast. For example, the boundary between India and Pakistan reaches the Indian Ocean at the mouth of the Sir Creek. The two countries dispute over the Rann of Kutch was settled by an internal tribunal in 1968. However, the 1968 tribunal did not consider the continuation of the boundary down the Sir Creek to the sea. At the core of the dispute is India’s contention that the boundary lies in the middle of Sir Creek and Pakistan’s contention that the boundary instead lies on the Creek’s eastern bank and that, therefore Sir Creek as a whole belongs to Pakistan. The starting point of the India-Pakistan maritime boundary is dependent on determining the terminus of the land boundary. The dispute over Sir Creek therefore compromises efforts towards maritime boundary delimitation between India and Pakistan offshore. Similarly, debate over the precise delimitation and re-demarcation of the land boundaries between East Timor and Indonesia, including the four land boundary termini on the coast, has helped to delay the initiation of bilateral maritime boundary delimitation negotiations between them (ibid.: 16-17).
A number of contentious sovereignty disputes over islands complicate maritime jurisdiction claims and efforts towards the delimitation of maritime boundaries in the Indian Ocean. Although Madagascar gained independence from France in 1960 and Comoros in 1975, France retained control over a number of small island territories in the Madagascar Channel, namely Bassas da India, Europa Island, the Glorioso Islands and Juan de Nova Island. Collectively these features are referred to by the French as the îles Eparses (or îles Eparses de l'Ocean Indien), or the 'Scattered Islands' in English. Bassas da India appears to be a low-tide elevation, no point of which is above water at high-tide. In accordance with UNLOS Article 121 (2), an island can generate a full suite of maritime zones in an identical fashion to mainland coasts. In contrast, a low-tide elevation, in accordance with UNLOS Article 13, may only be used as a territorial sea base point, if it falls wholly or partially within the breadth of the territorial sea measured from another island or mainland baselines. As Bassas da India is located as it is beyond 12nm from the nearest island or mainland baseline, it consequently has no capacity to generate claims to maritime jurisdiction. Europa Island, Juan de Nova Island and the Glorioso Islands are, unlike Bassas da India, all small islands possessing point above water at high tide and so may well be capable of generating claims to, at the least, territorial seas. The extent to which continental shelf and EEZ claims may be made from these small features or would be given weight in the context of the delimitation of maritime boundaries is, however, open to question. If these small islands are give full effect in the construction of strict equidistance lines, the maritime spaces associated with them has been estimated to be as follows: Europa Island – 66,300 nm squared, Juan de Nova Island – 18,700 nm squared and the Glorioso Islands – 12,870 nm squared. A delimitation exercise is, however, off the agenda at present as the islands are subject to a sovereignty dispute between France and Madagascar. Madagascar claims sovereignty over the islands on the grounds of historic title and geographical proximity, and has sought support from the UN General Assembly which passed resolutions in 1980 calling on France to negotiate on the return of the islands to Madagascar. France bases its claim on first discovery and its history of occupation and administration over them. The islands are significant in that sovereignty over them offers claims to maritime space encompassing the southern two-thirds of the Mozambique Channel. In 1974, when the Comoro Islands
were on the verge of independence from France, the population of one of the islands making up the Comoros archipelago, Mayotte, voted in favour of remaining under French jurisdiction. Despite the referendum, the Comoros claims sovereignty over Mayotte and has been backed in its claim by the Organization of African Unity and the UN General Assembly, which declared the vote on Mayotte to be null and void. France, however, maintains that the island will remain under its sovereignty for as long as its population wishes for this to be the case and, if anything, the relationship between Mayotte and France appears to be strengthening.

Tromelin Island, located approximately 280 nm east of Madagascar and around 340 nm north of Mauritius and Reunion, has a potential claim to maritime jurisdiction of approximately 80,160 nm squared. No sovereignty dispute over the feature emerged until the middle of the twentieth century, largely due to the island’s remote location, difficulties of access from the sea, lack of water and perceived lack of value. France established a meteorological station on the island in 1954, apparently with British permission, the UK having administered the island from Mauritius. Five years later Mauritius informed the World Meteorological Organization Congress that it regarded Tromelin as part of its territory on the grounds that it was part of Mauritius under British rule – a claim rejected by France which claims sovereignty on the basis of first discovery of the island by a French explorer in 1722 and more recent occupation and administration of the island. The claim by Mauritius in turn prompted Madagascar, from which Tromelin had been previously administered by France, on independence in 1960 to assert its sovereignty over the island. Subsequently in 1976, Madagascar waived its claim in favour of Mauritius and in 1980 Mauritius added Tromelinto the list of its dependencies contained in its constitution. Diego Garcia is the principal island of the Chagos Archipelago which consists of six major islands and numerous associated islets, rocks and reefs. The Chagos group is located approximately 1,000 nautical miles south of India, 2,000 nautical miles southeast of the Arabian Peninsula and 1,200 nautical miles northeast of Mauritius. Quite apart from the maritime areas that may be claimed by whichever state that has sovereignty over the archipelago, in the Indian Ocean it represents an important strategic asset, and Diego Garcia is home to a major military base leased by the British authorities to the United States. From the end of the Napoleonic period to 1965 the Chagos group, which remained under British
control, was administered from Mauritius. However, with the building of the military base, the population of the islands was forcibly transferred, chiefly to Mauritius, and the archipelago became part of the BIOT along with the Seychelles and associated islands. With independence for the Seychelles in 1976, the BIOT consists solely of the Chagos archipelago. In 1980 Mauritius demanded the return of the archipelago to its control. The dispute is complicated by the ongoing campaign on the part of the 3000-4000 descendents of the original Chagos inhabitants (the Ilois), who were removed during 1965-73, to win the right to return to the islands. Given its remote and isolated location, sovereignty over the Chagos archipelago confers rights over huge maritime areas in the central Indian Ocean. These maritime claims overlap with those from the Maldives. A simplified line of equidistance however may have been arrived at between the British and Maldives authorities at a technical level. Maritime boundary negotiations between Bangladesh and India in the Bay of Bengal have been complicated by a dispute over a newly emergent island in the estuary of the Haribhanga and Raimongal Rivers, which forms the terminus of the land boundary between the two countries. The island in question, known as South Talpatty to Bangladesh and New Moore/Purbasha to India, emerged in 1971. The dispute centres around the question of whether the boundary river flows to the east of the island (as India claims) or to the west (according to Bangladesh). Approximately 1,300nm squared of maritime space is found to be at stake when strict equidistance lines are constructed. This is a potentially significant issue given that the areas offshore the Ganges-Brahmaputra delta in the Bay of Bengal are believed to be potentially oil-rich (ibid.: 17-20).

Schofield (2007: 3, 20-22) argues that the eastern and western halves of the Indian Ocean are geographically distinct. The eastern Indian Ocean is characterized by major archipelagos, most notably that of Indonesia, but also the Andaman and Nicobar Islands group. These island groups are predominantly located towards the Indian Ocean's mainland margins and there are relatively few isolated islands. In contrast, the western part of the Indian Ocean features predominantly smooth continental coastlines, coupled with numerous small isolated islands and groups of islands such as the Comoro Islands group and islands scattered through the Mozambique Channel, the Seychelles, the
Maldives, the Chagos Archipelago, Reunion and Mauritius. He goes on to argue that in addition to the contrast between the eastern and western parts of the Indian Ocean in terms of coastal geography, there is also a marked contrast between these two sectors of the Indian Ocean with regard to maritime boundary delimitation. While in the east over twenty maritime boundary agreements have been concluded and the maritime boundary mosaic is largely complete with the exceptions of the Bay of Bengal and boundaries associated with the recently independent East Timor, in the west only seven maritime boundaries have been delimited since 1976. In his view this contrast cannot be attributed completely to the impact of differing coastal geography. Political factors have tended to play a dominant role. Significant civil unrest, in for example, Mozambique, Somalia and Yemen, has tended to push maritime boundary delimitation to the background in a number of cases in the western portion of the Indian Ocean. Similarly, the sovereignty disputes over islands outlined above are concentrated in the western part of the Indian Ocean, notably in the Mozambique Channel. These contentious disputes over territory necessarily need to be resolved as a precursor to the delimitation of the associated maritime boundaries. Other important factors that have hampered maritime boundary delimitation, particularly in the western Indian Ocean, include problematic claims to straight baselines and maritime jurisdiction, unilateral claims at odds with equidistance, and disputes over the terminus of the land boundary on the coast. He observes that, where boundaries have been in dispute, innovative and conciliatory practice has delivered equitable and mutually acceptable maritime boundary agreements. This is exemplified by the progress that has been achieved in the Andaman Sea. Despite the existence of island groups fronting the mainland coast and thus potentially severely restricting the claims of mainland states and the presence of questionable claims, especially excessive straight baseline claims, the maritime boundary delimitation picture is, with the exception of the Bay of Bengal, near complete. In part this is perhaps because conflicting claims have tended to even out – for instance the fact that India’s Andaman and Nicobar groups are relatively compact and thus present a reasonably continuous coastal front, helps to balance these islands out against the mainland coastlines, of, for example, Burma and Thailand. Nonetheless, in order to achieve such agreements, considerable negotiating flexibility had to be demonstrated, for example, in respect of claims from straight
baselines. Another notable feature of maritime boundary delimitation practice in the eastern part of the Indian Ocean is the presence of innovative practice in the shape of separate boundaries for seabed and water column, and alternatives to maritime boundary delimitation lines. With regard to the former, Australia and Indonesia have concluded a series of agreements over the years which has led to this situation, largely as a result of the way in which the international law relating to the delimitation of maritime boundaries has evolved over time, whereby Australian seabed rights are overlaid by Indonesian jurisdiction over the water column. Concerning alternatives to the delimitation of maritime boundary lines, Australia has been involved in several agreements establishing maritime joint development zones in respect of roughly the same maritime space with two different countries. Firstly, Australia and Indonesia in 1989 concluded a treaty relating to a Zone of Cooperation for the so-called ‘Timor Gap’. Following the independence of East Timor, a fresh agreement was required and through the Timor Sea Treaty which took effect on May 20, 2002, the day East Timor gained independence, a joint petroleum development area (JPDA) coinciding with the central part of the Timor Gap treaty area was established. Furthermore, on February 23, 2007, the agreement between Australia and East Timor relating to the sharing of the Greater Sunrise complex of fields and other matters, the Treaty on Certain Maritime Arrangements in the Timor Sea (CMATS), came into force. According to Schofield these agreements illustrate that viable, cooperative and mutually beneficial alternatives to maritime boundary delimitation exist, even if a particular boundary dispute appears to be deadlocked, if the requisite political will to reach agreement is present.

The strategic importance of shipping using the Indian Ocean and the high number of ‘choke points’ make navigation rights and freedoms an important issue for the region. The free movement of shipping is a common interest of both littoral and island countries of the region, as well as of other countries in the Asia-Pacific and Europe. Depending on the route chosen, ships transit the Indian Ocean either on the ‘high seas’ or through waters under some form of jurisdiction of one or another coastal state. Different navigational rights and obligations apply to the various zones of coastal state jurisdiction.

Under the 1982 United Nations Convention on the Law of the Sea (LOSC) ships of all states enjoy the right of ‘innocent passage’ through the territorial seas of other states. Innocent passage is the most restrictive of the passage regimes and can be suspended under certain circumstances. Submarines exercising the right of innocent passage must travel on the surface and show their flag, and ships doing so are prevented, among other things, from operating organic aircraft. Many countries still regard the obligation to allow foreign ships right of innocent passage through their territorial sea as a significant limitation on their sovereignty over, and a potential threat to, their national security. Some coastal states require ‘prior notification’ or ‘prior authorization’ for the innocent passage of certain kinds of ships, such as for example, nuclear-powered ships and warships. Twelve Indian Ocean countries place restrictions on warship innocent passage 8 (Roach and Smith 1994: 158-159, Table 10, cited in Bateman 2002: 357). Neither ‘prior authorization’ nor ‘prior notification’ of innocent passage is a requirement explicitly included in the LOSC. The United States sees such a requirement as incompatible with the freedom of navigation and the spirit of the LOSC. ‘Prior authorization’ would be specifically contrary to the LOSC Article 24 that prohibits coastal state regulation that hampers, denies or impairs the right of innocent passage. An argument for ‘prior notification’ has some merit, although not necessarily in legal terms, but at least politically, because for example, secrecy of movement may be seen as incompatible with the processes of maritime confidence and security building and transparency. The straits transit passage regime, established by LOSC Part III, applies when a strait used for international navigation is wholly or in part contained within the territorial sea of one or more states. The straits in the Indian Ocean region where this regime applies include Bab el-Mandeb, Hormuz, Singapore and Malacca. In effect this regime establishes a new maritime zone for the waters within an international strait, although there is no precise means of establishing its geographical limits. The straits transit passage regime applies to “straits which are used for international navigation between one part of the high seas or an exclusive economic zone and another part of the high seas or an exclusive economic zone.”

8 The 12 Indian Ocean countries that place restrictions on warship innocent passage are: Bangladesh, Burma, India, Indonesia, Iran, Maldives, Mauritius, Oman, Pakistan, Seychelles, Sri Lanka and Yemen (Roach and Smith 1994: 158-159, Table 10, cited in Bateman 2002: 357).
zone” (LOSC Article 37), or in order to enter or leave a state bordering the strait, and is available to all ships and aircraft. While transit passage may not be suspended, transiting ships must comply with generally accepted international regulations, procedures, and practices for safety at sea and for prevention, reduction, and control of pollution from ships. The states bordering such straits may introduce appropriate regulations but be non-discriminatory in their application. Maritime jurisdiction associated with transit passage is complex and problems can arise if coastal states extend controls over shipping beyond those regarded as acceptable by the major maritime powers. Ships exercising the right of transit passage pass through several different jurisdictional zones, possibly under the jurisdiction of different coastal states. By definition the strait contains territorial waters, and to enter and leave the strait a ship must pass through the EEZ of one or more coastal states. Several legal and practical problems can be identified with the application of the straits transit passage regime. The ‘extent’ of a strait, and consequently of the area where the regime applies, is vague. There is no limit on the choice of route through the strait, vessels can enter or leave an international strait at any point on the 24-mile closing line, and enter or leave the strait by any route, and hence transit passage cannot be confined to the area of water where an international strait is entirely enclosed by the adjacent territorial sea. Coastal states adjoining an international strait have considerable service responsibilities for vessels transiting the strait, but the LOSC makes no provision whatsoever regarding any form of cost-recovery. States which have sought to place restrictions on the straits’ transit passage regime include Iran, Oman, Spain and Yemen, and the US has protested all these claims and conducted operational assertions of rights. The regime of the archipelagic state was established by Part IV of the LOSC. This allows states constituted wholly of one or more groups of islands and meet certain other criteria to draw archipelagic baselines joining the outermost islands and drying reefs. The Maldives and Indonesia are archipelagic states in the Indian Ocean. According to LOSC Articles 53 (1), (2), and (3) archipelagic states exercise full sovereignty over their archipelagic waters qualified only by the regime of ‘archipelagic sea lanes passage’ (ASL passage), which allows ships of all nations the right of “continuous, expeditious and unobstructed transit” through archipelagic waters along sea lanes which may be designated by the archipelagic state. If sea lanes are not designated, the right of ASL
passage may be exercised through the routes normally used for international navigation. Outside ASLs ships of all nations have the right of innocent passage only and must abide by the more restrictive provisions of that regime, including recognition of the principle that the archipelagic state may temporarily suspend innocent passage. Archipelagic states have been firmly of the view that the ASL passage regime applies in their straits into or within their archipelago rather than the straits transit passage regime. The right of ASL passage and over-flight is restricted to particular routes and a particular route axis, while in comparison there is no similar requirement for ships and aircraft in the straits transit passage regime. The Exclusive Economic Zone (EEZ), established by Part V of the LOSC, grants coastal states rights over the living and non-living resources of the 200 nautical mile EEZ but also imposes certain obligations on them to protect and preserve the marine environment. With regard to international navigation the high seas freedoms of navigation are considered to prevail. The LOSC Article 220 however grants certain enforcement powers to coastal states with regard to the prevention, reduction and control of pollution by vessels. This can lead to laws and regulations that infringe upon navigational rights and freedoms, such when the United States introduced legislation in its Oil Pollution Act 1990 (OPA 1990) to restrict oil tanker operations in its EEZ. As discussed in chapter five, an important area of disagreement about the EEZ regime relates to the ability of a coastal state to introduce regulations that have the effect of denying freedoms of navigation and over-flight in all or part of its EEZ. The maritime powers argue that, subject to the resource-related rights and environmental protection obligations of a coastal state, the freedom of navigation and over-flight in the EEZ are the same as those on the high seas. This is in accordance with LOSC Article 58, which states that in the EEZ, all states enjoy those freedoms referred to in Article 87 “of navigation and over-flight and of the laying of submarine cables, and other internationally lawful uses of the sea related to those freedoms, such as those associated with the operation of ships, aircraft and submarine cables and pipelines, and compatible with other provisions of this convention”. At the Third UN Conference on the Law of the Sea (UNCLOS III) proposals to restrict the holding of military exercises in the EEZ were unsuccessful. Contrary to these arguments, some coastal states have declared security zones that extend into the EEZ, or have claimed that other states are not authorized to conduct military
exercises or maneuvers in the EEZ without their consent. Indian Ocean countries that apply these restrictions include Bangladesh, India, Malaysia, Myanmar, Pakistan, Sri Lanka and Yemen (Bateman 2002: 357-361).

The main ‘choke points’ and focal areas of the Northwest Indian Ocean are the Bab el-Mandeb, Strait of Hormuz, Maldives and Dondra Head, while those of the Northeast Indian Ocean are the Malacca and Singapore Straits, and the Sunda and Lombok Straits. The Bab el-Mandeb is the entrance into the Red Sea from the Gulf of Aden. Its riparian states are Djibouti and Eritrea to the west and Yemen to the east. The strait is about 14.5 nautical miles wide at its narrowest. Oil traffic from Saudi Arabian ports in the Red Sea heading towards East Asia and the Cape of Good Hope, and from ports in the Persian Gulf heading towards the Mediterranean and Western Europe through the Suez Canal, have to pass through the Bab el-Mandeb. The Suez Canal, at the northern end of the Red Sea, has a depth limitation of 58 feet and Panamax-size vessels are the largest vessels that can use it. Very Large Crude Carriers (VLCCs) and Ultra Large Crude Carriers (ULCCs) cannot use the Suez Canal. Such vessels loading at Saudi Arabian ports in the Red Sea must use the Bab-el-Mandeb and transit around the Cape of Good Hope if heading for North America or Western Europe. The Egyptian government plans to widen and deepen the Suez Canal so that by 2010 it will be able to accommodate VLCCs and ULCCs. Total oil traffic through the Bab el-Mandeb was estimated to be 3.2-3.3 million barrels per day in 2000 (US Energy Information Administration 2001, cited in Bateman 2002: 362). Its closure would prevent tankers from the Persian Gulf from reaching the Red Sea and divert them around the Cape of Good Hope, which would greatly add to transit time and cost, and effectively tie up spare tanker capacity. It could be by-passed by northbound traffic by utilizing the East-West oil pipeline that traverses Saudi Arabia. Southbound oil traffic however would still be blocked. Oil tankers constitute about one-fifth of all shipping traffic through the Suez Canal. Closure of the Bab el-Mandeb would also block all non-oil shipping from using the Suez Canal. The Strait of Hormuz connects the Persian Gulf with the Gulf of Oman and the Arabian Sea. It’s riparian states are Oman to the west and Iran to the east. Although the area of overlap between the territorial seas of the two riparian states is relatively small the regime of
straits transit passage applies. The interpretation of that regime in the Strait of Hormuz however has been the subject of diplomatic exchanges between the US and Iran. The strait comprises of two-mile wide channels for inbound and outbound tanker traffic, as well as a two-mile wide buffer zone. This is the world’s most important oil choke point, with an oil flow estimated in 2000 to be 15.5 million barrels per day (ibid.). Closure of the Strait of Hormuz would have a huge strategic impact on Northeast Asia, North America and Western Europe. Therefore it is not surprising that the US has attached such importance to navigation rights through the strait, and has based warships at Bahrain in the Persian Gulf. There is practically no alternative for tankers to get oil to East Asia, and there is only a rather complicated alternative for getting oil to North America using a combination of tankers and pipeline which would involve increased transportation costs. East-West shipping transiting between the Red Sea or the Persian Gulf and Southeast Asia has to pass through a barrier of islands stretching over 700 nautical miles from roughly 12 degrees North to the equator. This barrier of islands comprises of the Laccadive Islands under Indian sovereignty, and the Republic of Maldives. The options for passing through are the Nine Degree Channel within the Indian EEZ, the Eight Degree Channel partly within the EEZ of India and partly within that of the Maldives, and the One and a Half Degree Channel within the EEZ and archipelagic waters of the Maldives. The choice of route will depend on the strait to be used for transiting Southeast Asian waters. From October to November, taking account of the prevailing Northeast monsoon, ships heading towards the Sunda and Lombok Straits are likely to prefer the One and a Half Degree Channel. In 1986 the Maldives declared an EEZ which was rectangular in shape based on a ‘picture frame’ claim to territorial sea. This claim was unacceptable under modern international law and Maldives has moved to claim status as an archipelagic state under the LOSC. Base points were established for archipelagic baselines and it passed relevant domestic legislation in 1996. While by 2002 no action had been taken to declare ASLs through the Maldivian archipelago, such action would be advisable, particularly through the One and a Half Degree Channel, Kardiva Channel, and the Equatorial Channel. After clearing the Laccadive/Maldives island chain shipping has to pass through the territorial sea or the EEZ of Sri Lanka, again, depending on which strait they intend to use for transiting Southeast Asian waters. If they are heading towards
the northern entrance to the Malacca Straits ships may have to pass through the territorial sea of Sri Lanka exercising the right of innocent passage, while if heading toward Sunda or Lombok Straits they are likely to be passing through the EEZ of Sri Lanka. The area off Dondra Head, the southernmost point of Sri Lanka, is a focal area and constitutes a significant choke point for shipping transiting between the Suez Canal or the Persian Gulf and the Malacca Strait. From north to south, the area between Singapore and Darwin in northern Australia, and from west to east, the straits between the Indian and Pacific Oceans through the Indonesian archipelago, constitute one of the most significant shipping bottlenecks in the world. The vessels passing through this area carry much of the sources of energy (oil, LNG and LPG) and raw materials essential for China, Japan, South Korea and Taiwan, as well as the container traffic on the main around the world route linking Europe to East Asia. The value of this trade totaled nearly a trillion US dollars in 1994 (Kenny 1996: 16, cited in Bateman 2002: 364), and over half the world's shipping capacity at the time was required to move it (Noer and Gregory 1996: 8, cited in Bateman 2002: 364). The Malacca and Singapore Straits at its narrowest in the Phillips Channel is 2.5 nautical miles wide. These straits provide the most direct route through the bottleneck, and are regarded as the key choke point in Asia. If these straits were closed nearly half the world's shipping would be required to sail further, which would result in a substantial increase in global demanding for shipping. More than 50,000 vessels transit these straits annually. India has demonstrated its interest in the safety and security of shipping through the straits by assisting the US with the escort of selected high value ships through these straits, protecting them from the risk of piratical attacks and terrorism. Japan contributes financially to the maintenance of navigational aids and hydrographic surveys in the Malacca Strait, and it has also provided ships and aircraft from the Japan Coast Guard to assist in anti-piracy measures in Southeast Asia. The least depth in these straits is about 25m. Ships require an under the keel clearance of 3.5m as stipulated by the International Maritime Organization Rules for Vessels Navigating through the Straits of Malacca and Singapore. Oil tankers over about 250,000 dwt are likely to be outside these draft limitations, and would therefore have to use the Lombok and Makassar Straits further eastward even though this adds about one thousand nautical miles and three days steaming to the journey. The states bordering the Malacca Strait
have contemplated compulsory pilotage schemes as part of their ability to control certain aspects of navigation that could affect the marine environment. However such schemes had not been introduced by 2002. Refusing access to the strait on the grounds that a vessel does not accept a pilot would amount to hampering transit passage and be contrary to LOSC Article 44 in particular. Indonesia may prefer the compulsory re-routing of larger tankers through the Lombok Strait. Indonesia and Singapore have backed Malaysia's insistence that Japanese plutonium shipments should not be routed through the Malacca Strait. The IMO has introduced a mandatory ship reporting scheme for the Malacca and Singapore Straits, and Indonesia, Malaysia, Singapore and the IMO have also agreed to go ahead with the establishment of a Marine Electronic Highway for these straits. This integrated system will include electronic nautical charts, positioning systems, automatic ship identification (AIS) transponders, as well as the provision of meteorological, oceanographic and navigational information. It will provide an essential tool for marine pollution prevention and control, marine environmental planning and management, as well as safety of navigation. It will also allow maximum information to be made available to ships as well as shore-based users such as the vessel traffic control systems managed by the coastal states adjacent to the straits. As mentioned in chapter five, in the early 1990s Indonesia put forward proposals for designating three north-south ASLs. This led to detailed analysis and discussion at the IMO and the eventual approval in 1998 of the General Provisions on the Adoption, Designation and Substitution of Archipelagic Sea Lanes (GPASLs). The three ASLs adopted were the Sunda Straits (Karimata Strait in the western part of the archipelago), the Lombok Strait (Makassar Strait in the central part), and the Banda Sea (Moluccan Sea in the eastern part). The Sunda Strait between Sumatra and Java offer the most direct route from the Indian Ocean to the Java Sea. But its least depth is 27m and the area is relatively poorly charted. It is only an alternative for ships that could use the Malacca and Singapore Straits in any case. Vessels with a deeper draught would have to use the Lombok Strait between islands of Bali and Lombok, and then proceed northwards by the Makassar Strait east of Borneo. The Lombok and Makassar Straits are wide, deep and navigationally straightforward. Indonesia is reported have closed the Sunda and Lombok Straits for a period of time in 1988, leading to strong diplomatic protests from the US, Australia and other countries.
although the circumstances of the closure and the intentions behind it remain unclear (Bateman 2002: 361-366).

**Indian Ocean Zone of Peace (IOZP) Initiative**

The Indian Ocean Zone of Peace (IOZP) initiative was first mooted at the Non-Aligned Movement (NAM) conference at Cairo, Egypt in 1964 by Sri Lanka’s Prime Minister Sirimavo Bandaranaike. This occurred at a time when Cold War rivalry was spilling over into the Indian Ocean from the Atlantic and Pacific Oceans. The NAM was concerned about this spill-over and the Cairo conference called for an ‘atom-free zone’ in the Indian Ocean. Subsequently the Lusaka Summit of NAM in September, 1970 defined the IOZP idea and incorporated it into its final declaration. In 1971 with the support of NAM Sri Lanka brought it up in the UN General Assembly and it was passed as Resolution 2832 (XXVI) in December that year. In 1972 the UN General Assembly created the Ad Hoc Committee on the Indian Ocean. K.R. Singh (1986: 128-129, 132-133) has argued that the following three conditions: nuclear weapons free zones in the littoral countries of the Indian Ocean; mutual arms reduction among the regional countries; and a mechanism for ensuring regional peace and conflict resolution, were not there in the UN General Assembly Resolution of 1971 and that they were only introduced subsequently. His contention is that the original purpose of the IOZP initiative was to halt the growing military presence of extra-regional powers in the region. However, John House (1984: 19) has argued that the 1971 proposal tabled at the UN appeared to include arms limitation among littoral states. According to K. R. Singh the three conditions relevant to the littoral states mentioned above were debated and incorporated in the Final Declaration of the Meeting of the Littoral and Hinterland States of the Indian Ocean in 1979, and were accepted and incorporated by the UN General Assembly in its Resolution 3480 of 11th December 1979. If the purpose of the IOZP was to exclude external powers from the region, the external powers argued that it amounted to a transgression of the ‘freedom of the seas’ principle and prevailing international laws of the sea, and contended that a “group of states in any region cannot establish a separate legal regime
for the high seas in the region” (SIPRI Yearbook 1972: 551). Garver (2001: 277-279) has portrayed the Indian support for the IOZP and expulsion of extra-regional military presence from the Indian Ocean as part of an Indian effort to become the pre-eminent power in the region. While the United States and the Soviet Union may have been India’s prime targets in this effort, according to Garver (2001: 279), Indian representatives at the UN had specified that the term ‘great powers’ referred to by the UN General Assembly Resolution of December 1971 included all permanent members of the UN Security Council, China being one of them. For its part, China became a member of the UN Ad Hoc Committee set up to pursue the IOZP proposal, and during the 1970s and early 1980s China had occasionally supported India’s criticism of US and Soviet military activity in the Indian Ocean. However as India’s position in the Indian Ocean grew stronger towards the late-1980s China began to show signs of apprehension. K. R. Singh’s (1986: 129) argument is that by insisting that the regional states themselves implement what they sought to impose on extra-regional states, the latter divided the former and diverted the IOZP from its original intention. House (1984: 19) has indicated however that regional states such as Sri Lanka may have wanted of their own accord to include conditions such as arms limitation among regional states due to fear of Indian hegemony. By the mid-1980s discussions on the IOZP had become extremely contentious, with the ‘bone of contention’ being not only between the regional states and extra-regional states, but also among the regional states themselves.

**Indian Ocean Marine Affairs Cooperation (IOMAC)**

A remarkable aspect of the Third United Nations Conference on the Law of the Sea (UNCLOS III) was the marshalling of multi-disciplinary expertise through national delegations for confronting a myriad of assorted problems and issues in areas such as fisheries, oceanography, geology, geography, marine technology, finance, and economics - apart from the central legal discipline. Articles 275-277 of the 1982 Convention contains an acknowledgment of the role of marine science and technology. At the end of

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8 This section, pp. 162-171, is primarily based on Jayawardene (1994).
the conference, 'science and technology' was seen as the essential discipline as emphasized in the Group of 77-inspired Resolution on the Development of Marine Scientific and Technological Capabilities, one of the resolutions appended to the Final Act of the Conference as Annex VI. While some grappled with nomenclature such as 'oceanology', it was left to developments in the aftermath of the conference to give recognition to the broader concept of 'marine affairs' as the general discipline on which ocean management of the future was to be founded. The International Ocean Institute (IOI) training programmes in marine affairs for developing countries and Indian Ocean Marine Affairs Cooperation (IOMAC) were perhaps the forerunners of this new approach to the oceans. The subsequent designation of the Office/Division of Ocean Affairs and Law of the Sea under the Secretary-General of the United Nations not only gave high-level status to the Law of the Sea and related matters, it also gave the formal endorsement of the United Nations to the new management concept for the oceans. 'Marine Affairs' was seen as encompassing the range of ocean-related disciplines in an interdisciplinary framework. However, there was no precise content of general acceptability, the scope being left to be determined by a particular mandate. In the case of IOMAC, six main areas of activity were identified: marine science, technology and ocean services; living resources; non-living resources; ocean law, policy and management; marine transport and communications; and the marine environment. By design, the IOMAC mandate was limited to the peaceful uses of the ocean (Jayawardene 1994).

The IOMAC framework developed from informal consultations in the closing stages of the third UN Conference on the Law of the Sea (UNCLOS III) regarding developing country perspectives on the follow-up to the conference and realization of its aims for their benefit. Many countries were slow to recognize that mere assertion of rights in respect of vast sea areas and offshore resource potential would not endow them with those benefits. The principal challenge was the effective integration of the marine dimension in national development strategies. In the Indian Ocean there was, initially, a need to assess the state of activities and identify national priorities and requisite measures for advancement in the marine sector. Above all, there was a necessity to determine a suitable forum for such deliberations. Several rounds of initial discussions in the Asian-
African Legal Consultative Committee (AALCC) which provided the only appropriate general forum spanning the Indian Ocean - soon revealed the need for a dedicated forum within which Indian Ocean marine affairs could be properly addressed. With encouragement from a core-group of countries pledging their support for an Indian Ocean Conference, the Government of Sri Lanka which had initiated the discussions and studies on the Indian Ocean in AALCC in 1981, announced the convening of the First Conference on Economic Scientific and Technical Cooperation in the Indian Ocean in Marine Affairs in the context of the New Ocean Regime (IOMAC-I) in Colombo in July 1985. The Conference was preceded by an inter-agency consultation convened in May 1985 by the Special Representative of the Secretary-General of the United Nations for the Law of the Sea for coordinating UN agency support to the conference, and an Intergovernmental Preparatory Meeting in Colombo in June 1985. IOMAC was founded on the following three basic objectives which guided the First Conference:

a) create an awareness regarding the Indian Ocean, its resources and potential for the development of the states of the region, and furthering cooperation among them, as well as with other states active in the region, bearing in mind the new ocean regime embodied in the 1982 United Nations Convention on the Law of the Sea;

b) provide a forum where Indian Ocean states and other interested nations could review the state of the economic uses of the Indian Ocean and its resources and related activities, including those undertaken within the framework of intergovernmental organizations, and identifying fields in which they would benefit from enhanced international cooperation, coordination, and concerted actions;

c) adopt a strategy for enhancing the national development of the Indian Ocean states through the integration of ocean-related activities in their respective development process, and a policy of integrated ocean management through a regular and continuing dialogue and cooperative international/regional action with particular emphasis on technical cooperation among developing countries (ibid.).
The Arusha Agreement on the Organization for Indian Ocean Marine Affairs Cooperation tabled at the Second Conference on IOMAC (IOMAC-II) held in 1990 at Arusha, Tanzania attempted to formally establish IOMAC as an organization. The Arusha Agreement on IOMAC declared its primary objective to be:

"....to create an awareness regarding the Indian Ocean, its resources and potential for the development of the states of the region, and promoting cooperation among them, as well as between them and other states, bearing in mind the ocean regime embodied in the United Nations Convention on the Law of the Sea" (Uniting an Ocean: IOMAC 1992, cited in Roy-Chaudhury 1998b: 261).

Participation in IOMAC since the First Conference was guided by criteria based on the practice of the UN General Assembly Ad Hoc Committee on the Declaration of the Indian Ocean as a Zone of Peace. This provided for the following categories: Indian Ocean states – a) littoral states, and b) hinterland states; and major maritime users (MMUs). Considerable debate and discussion took place with regard to the inclusion of the category of MMUs. Since the area coming within the purview of the organization extended beyond the limits of national jurisdiction to encompass the high seas, it was arguable that an effort to move to coastal state management of the ocean as a whole, while excluding other users with legitimate rights therein, would tend to go in the direction of creeping jurisdiction and a revival of *mare clausum*. At the same time, there was some concern that developing country interests would be subjugated in a framework also accommodating developed countries making up the category of MMUs. The issue was also cast in the context of strategic perceptions. On their part some MMUs argued that the MMU claim of interests may not only be equal to, but could even surpass that of coastal states in terms of areal extent and intensity of user activities. The concern regarding MMUs however appeared to greatly diminish in the light of the reality of day-to-day intercourse between developing and developed countries, the growing realization of the need for shedding post-colonial antipathy, interdependence, reduction of international tension, and building mutual confidence through cooperation. IOMAC went some way towards building such confidence through the mechanism of the Technical
Cooperation Group (TCG). In the mid-1990s 21 states were participating in the TCG\(^9\) (Jayawardene 1994).

The institutional framework of IOMAC comprised of the following elements: the Conference which functions as the plenary; the Standing Committee which is the executive body; the Technical Cooperation Group (TCG) providing for cooperative exchanges with developed countries from outside the region; and the Secretariat which performs the regular functions of such a body. In addition, IOMAC put into place a Network of IOMAC Focal Points in governments within the region and outside, as well as in participating international organizations (ibid.).

The meetings of the Standing Committee, held on an annual basis, created a regional forum which brought together a growing number of delegates and experts from Asian, Arab and African states regularly, and helped create new professional and personal ties within the region. Its deliberations provided participating states and other entities an opportunity to review and maintain an overview of activities in the respective sectors of marine affairs in the region, and to plan, implement, and monitor various cooperative activities. The concurrent meetings of the Technical Cooperation Group (TCG) also served to focus greater attention on the meetings and work of the Committee. Since the Preparatory Phase of the First Conference the government of Sri Lanka provided host facilities for the Secretariat. The participating states of IOMAC were requested to designate and notify other participating states the national entity primarily responsible for coordination of its marine activities and the maintenance of marine affairs cooperation on the regional and global levels through a network of such entities. This process of establishing an international network of focal points within the Indian Ocean and globally was initiated following the First Conference in 1987. Both states and international organizations responded to the formal communication from the Secretariat requesting the early designation of focal points. The Secretariat maintained regular

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\(^9\) These 21 states were: Australia, Bangladesh, China, Egypt, France, Germany, India, Indonesia, Iran, Iraq, Kenya, Malawi, Malaysia, Mauritius, Myanmar, The Netherlands, Nepal, Norway, Pakistan, Romania, Saudi Arabia, Seychelles, Sri Lanka, Tanzania, Thailand, United Kingdom, United States, and the Commonwealth of Independent States (CIS) (Jayawardene 1994).
contact with governments through their respective national focal points. Communications relating to the announcement of IOMAC meetings, workshops, training programmes and other activities, were regular items of such contact. Since the inter-agency consultations in Geneva in May 1985 which preceded even the First Conference, the IOMAC process evolved in very close cooperation with international organizations concerned with marine activities, in particular, the United Nations (ibid.).

The IOMAC programme of cooperation was developed on the basis of the identification of national priorities at the Preparatory Meeting in June 1985, and deliberations thereon at the Consultative and Final Phases of the Conference in July 1985 and January 1987. In view of the considerable range of varying national requirements and wide scope of activities envisaged, it was found necessary to draw from the programme salient items of common interest which were brought together in a more focused plan of action. For purposes of practical implementation the Secretariat undertook to prepare and implement a work programme under the guidance of the Standing Committee. The programme of cooperation was based on the deliberations of the Consultative Phase of the First Conference and provided an identification of areas for cooperation in respect of each of the principal sectors of IOMAC activity: marine science, technology and ocean services; living resources; non-living resources; ocean law, policy and management; marine transport and communications; and the marine environment. The Second Conference reviewed the programme of cooperation and provided an appraisal and supplementary guidelines for future activities. In the plan of action, specific areas of cooperation were identified for implementation on an immediate, medium- or long-term basis. The First Conference noted that certain items for immediate implementation could of necessity also have a medium- and/or long-term character. It was further provided that elements of the programme of cooperation would be drawn on from time to time in the context of implementation of the plan of action for purposes of further elaboration and augmentation thereof under the aegis of the Standing Committee and in the context of the framework for cooperation. The rapid implementation of a wide-ranging work programme was a major achievement of IOMAC. Initiation of a number of new activities in areas not fully addressed by earlier and existing programmes as well as organizational
mandates served to demonstrate the usefulness and effectiveness of a collective regional undertaking committed to serving national needs. IOMAC organized comprehensive programmes of activity in each of the principle sectors through expert meetings followed by practical measures. Up to the mid-1990s the following were the salient aspects of IOMAC activities:

1) **Marine Science, Technology and Ocean Services:** On a proposal made by Tanzania, the Conference adopted the Resolution on a New Era of Indian Ocean Exploration which called for a systematic, coordinated long-term collective international effort to explore the Indian Ocean along the lines of the International Indian Ocean Expedition (1962-1965). This new effort however was required to concentrate on near-shore areas and to give emphasis to the needs of developing states, as well as to secure their participation. Taken in the light of the seaward extension of national jurisdiction and the new framework for the conduct of marine scientific research under the Law of the Sea Convention of 1982, the IOMAC Declaration of a New Era of Indian Ocean Exploration was expected to go some way in providing reassurance to developed nations conducting marine scientific research, as much as to strengthen the capabilities of developing Indian Ocean states in this field. A major IOMAC international marine science symposium was held in 1992. This provided an opportunity to review existing programmes, national priorities and new avenues for cooperative activities in the region. In addition to the important IOMAC-UN Technical Workshops held in Colombo (1986) and in Karachi (1989) on space technology applications, IOMAC prepared a manual on Remote Sensing Applications for the Indian Ocean region, began initiating a number of pilot projects, and held a training workshop in the region in 1992.

2) **Living Resources:** The IOMAC I Preparatory Meeting as well as the First Conference at its Consultative Phase in 1985, and the Final Phase in 1987, for the first time took cognizance at intergovernmental level of the rapid development of a major industrial-scale distant water tuna fishery in the Indian Ocean in the early 1980s, and called for the early establishment of an appropriate regulatory body for management of Indian Ocean tuna. Subsequent IOMAC meetings, especially at the Standing Committee, have kept relevant developments under review, and acted as a catalyst for deliberations on the
establishment of such a body expected to emerge under the auspices of the FAO in the form of the proposed Indian Ocean Tuna Commission (IOTC). In January 1989 a group of IOMAC fisheries and legal experts met in Jakarta to prepare common positions for intergovernmental deliberations on the subject. In this context, IOMAC had consistently maintained the importance to be attached to the participation of distant water fishing nations (DWFNs) in a future management regime that would ensure its effectiveness, as well as emphasized the importance of providing for the increased participation of developing Indian Ocean states in harnessing the resource. Furthermore, the Seventh Meeting of the IOMAC Standing Committee adopted a Declaration banning the use of large-scale drift nets in the Indian Ocean.

3) Non-Living Resources: In July 1988 the IOMAC Meeting on Offshore Prospecting for Mineral Resources in the Indian Ocean hosted by the Government of Pakistan in Karachi, generated a strong intergovernmental mandate for initiating a programme of cooperation in this field, with the collaboration and assistance of states with technologically advanced capabilities in this field.

4) Ocean Law, Policy and Management: IOMAC regularly conducted marine affairs management training in collaboration with the International Ocean Institute (IOI). The annual IOMAC-IOI Marine Affairs Training Programmes were held in Arusha, Kuala Lumpur, Cairo, and Mauritius. Each 10-week course accommodated 25 participants from developing Indian Ocean states and provided training in integrated ocean/marine affairs management to mid-level career officers responsible for managing marine activities in their countries.

5) Maritime Transport and Communications: The Second Conference endorsed a number of proposals made by the IOMAC Meeting of Experts in Shipping and Port Development hosted by the Government of Kenya and held in Mombasa in August 1990. In July 1991, the Seventh Meeting of the Standing Committee adopted and recommended for governmental approval, terms of reference for the IOMAC Association of Shipping and Port Authorities. It was envisaged that some of the cooperative measures identified would be taken up for implementation by the Association.
6) **Marine Environment**: Dumping of hazardous waste and toxic materials, pollution of the sea by oil, and potential adverse impact on the marine environment of proposed deep seabed mining were the issues taken as relevant. In 1988, the Third Meeting of the IOMAC Standing Committee reviewed these specific aspects of concern to Indian Ocean countries and recommended that the Secretary-General identify an effective mechanism to monitor and develop regional capabilities of coastal states for prevention of such environmental hazards with assistance from the competent international agencies. Following consultations between IMO and the IOMAC Secretariat, the Seventh Meeting of the Standing Committee requested the Secretariat to take necessary steps in consultation with the IMO, UNEP and other interested entities for the early establishment of an Indian Ocean network. In the mid-1990s preparatory work was under way for the convening of an Indian Ocean Environment Conference which was expected to review the health of the Indian Ocean, identify environmental problems, and determine a common programme for cooperation in this field.

7) **Interests and Needs of Land-Locked States**: Accommodation of the interests of land-locked nations in the context of marine affairs was recognized very early by IOMAC as a logical corollary to the rights of land-locked countries in respect of access to living resources, and access to and from the sea. Although a technical meeting on the subject was planned under the joint coordination of Uganda and Nepal, this was deferred in favour of an expert study on key issues and current trends.

8) **Training, Information and Other Fields Relevant to Cooperation in Marine Affairs**: Work on the establishment of an Indian Ocean Marine Affairs and Aquatic Resources Information System (IO-MAARIS) commenced in 1987, at the Second Meeting of the Standing Committee. The Committee reviewed and endorsed the IOMAC/ UNCTAD/ UNDP sponsored Mission Report which detailed three major components of the proposed system: the institutional element involving the creation of three nodes in the region as a first step; a training and educational element; and an outputs element. The IOMAC Information Workshop held in Jakarta in February 1990 reviewed and identified a number of practical measures for putting into operation the proposed information system.
Furthermore the Secretariat published an Indian Ocean Newsletter which provided an update on IOMAC activities and other related developments (ibid.).

By 1998 however, only six states (Indonesia, Kenya, Mauritius, Mozambique, Pakistan and Sri Lanka) had ratified the 1990 Arusha Agreement (IOMAC II), even though a further three (Iran, Nepal and Tanzania) had signed it. In accordance with Article 16 of that agreement it required ratification by a minimum of eight states to enter into force. Moreover major Indian Ocean states such as India, Australia and South Africa had not become members of IOMAC for a variety of political reasons (Roy-Choudhury 1998b: 262).

**Indian Ocean Rim-Association for Regional Cooperation (IOR-ARC)**

The dismantling of superpower rivalry and the globalization of international market forces in the 1990s compelled the countries of the Indian Ocean region to redefine their foreign and economic policies. Super power rivalry, which had come to be seen as a major threat to peace in the Indian Ocean, was replaced by the might of the sole super power. Paralleling the emergence of unipolarity in the international system was globalization. The conclusion of the Uruguay Round of global multilateral trade negotiations empowered the global trade regime, the General Agreement on Tariffs and Trade (GATT), with a greater scope and mandate, and created the World Trade Organization (WTO) to monitor it. The strengthened GATT regime embodied in the WTO had significant implications for the Indian Ocean region, which contained many of the world's developing societies. Third World countries which had earlier eschewed the bi-polar divide by espousing alternative models of peace (non-alignment) and economic cooperation (New International Economic Order, NIEO) had little choice but to accept the forces of global integration. In this context existing regional economic arrangements were recast and new forms of economic linkages were fostered. The new economic arrangements were more trans-regional and outward-looking than earlier forms, the Asia-Pacific Economic Cooperation (APEC) forum being one of the best examples. Other
developments in the 1990s which further encouraged the development of ‘new regionalism’/ ‘open regionalism’ in the Indian Ocean region were India’s adoption of market friendly reforms, the end of apartheid rule in South Africa and Australia’s emphasis on closer economic links with countries to its west (Rao 1997: 1).

The idea of bringing together the countries of the Indian Ocean rim in a new kind of economic framework was first mooted by Mauritius. As explained by its foreign minister in August 1992, it had initially favoured “moving through sub-regions rather than getting stuck- because all the elements are not there for forward movement in the whole of the Indian Ocean region” (as cited in The Hindu, August 8, 1992, cited in Rao 1997: 1). In January 1994, the Mauritian Prime Minister, called for an Indian Ocean rim trading arrangement “at the level of economic cooperation and integration between Asian and African countries, as also Australia”, and offered to host a meeting of rim countries to discuss the idea. He saw the change of government in South Africa and India’s economic reforms as developments which would create new opportunities for both intra-regional and international trade, and reasoned that Mauritius could be an important business bridge between India and Africa (as reported in The Economic Times, January 26, 1994, cited in Rao 1997: 2). Throughout the early 1990s dignitaries from Mauritius visiting India, including its President, reiterated India’s crucial importance in Mauritius’s Indian Ocean rim idea. Another country which actively canvassed the Indian Ocean rim idea at the time was the new government in South Africa. During a visit to India in May 1993 chief of South African Trade and Investment called for India and South Africa to take the lead in developing the Indian Ocean rim idea. In June that year during a visit to South Africa, a delegation of the Federation of Indian Exports Organization (FIEO) also called for an Indian Ocean rim trading arrangement consisting of India, South Africa, Sri Lanka, Maldives, Seychelles, Madagascar, Comoros, and the Reunion Islands. It was of the view that South Africa’s well developed ports were an attractive transit point for India’s exports to the hinterland countries of Southern Africa, as well as to South America. With regard to India’s exports to South America, such a facility would reduce shipping time and cost compared to the time-consuming passage through the congested Suez Canal. In late 1993 the Indian government lifted the embargo on trade with South
Africa and opened shipping routes between the two countries. Full diplomatic relations between South Africa and India were established in November 1993 coinciding with the visit of South African foreign minister Pik Botha to India. During this visit he proposed an economic grouping of Indian Ocean countries covering East Africa, the Persian Gulf, India and Pakistan, which could initially take-up environmental, marine and similar issues and later move on to trade. He felt that such a grouping was necessary in a world of powerful economic groupings led by Japan, the European Community and China, and expressed the hope that India would cooperate in holding the first meeting of an Indian Ocean grouping. The foreign minister’s advocacy of the Indian Ocean rim idea was reinforced by the President of South Africa, Nelson Mandela, during a visit to India in January 1995 on the occasion of India’s Republic Day ceremonies. Addressing the Indian parliament, he said:

“It would be proper in this gathering and on this day to ask ourselves if our shared heritage does not confer upon our two countries a special responsibility to jointly commit ourselves to contributing to the emergence of a new world order in which democracy, peace and prosperity prevail everywhere. ...The unique and special relationship between South Africa and India is above all, premised on building of a future that will benefit our people and the nations of the Indian Ocean Rim” (as reported in, The Hindu, January 27, 1995, cited in Rao 1997: 3).

In March 1995 the Indian Ocean Rim Initiative (IORI) International Meeting of Experts, was held at Port Louis, Mauritius, with the participation of delegations from Australia, India, Kenya, Mauritius, Oman, Singapore and South Africa. An important feature of this meeting was that the delegation of each country comprised of representatives of government, business and academia. According to the Joint Statement released by this meeting, the Indian Ocean Rim initiative “in the spirit of open regionalism seeks to build and expand understanding, mutually beneficial cooperation through a consensus-based, evolutionary and non-intrusive approach”. It recognized the liberal international trading system, a growing trend towards regionalism and increasing adoption of market friendly economies ushered in by the GATT regime. Since the Indian Ocean region is also vitally interested in the expansion of trade and investment, it expressed the “conviction that closer cooperation is needed to utilize more effectively the human, natural and other resources of the Indian Ocean region so as to attain sustained
and accelerated growth of its economies and improve the economic and social welfare of its peoples”. This could be pursued through a regional forum, tripartite in nature, bringing together representatives of government, business and academia, for promoting economic cooperation. The main objectives of the initiative were to:

1) promote the welfare of the peoples of the participating countries through carefully designed programmes to improve their standards of living and quality of life;

2) promote the sustained growth and balanced development of the region and of the member states;

3) formulate and implement programmes for economic cooperation, including, inter alia, expansion of trade, tourism, direct investment, scientific and technological exchanges and human resource development;

4) reduce impediments and lower tariff barriers towards free and enhanced flow of goods, services, investment and technology within the region;

5) encourage close interaction of trade and industry, academic institutions, scholars and the peoples of the member countries in international fora on global economic issues; and

6) promote cooperation in development of human resources, through closer linkages among training institutions, universities and other specialized institutions.

The IORI was not conceived as a closed trading bloc, a preferential trading area, or a free trade zone. It was to be essentially an intergovernmental framework in which decisions are reached through a tripartite consultation process involving business, government and academia. Bilateral and other issues likely to generate controversy were to be excluded from the scope of the initiative. This initial meeting also agreed to keep membership open (Rao 1997: 3-4). The IORI International Meeting of Experts, also referred to as the first IORI inter-governmental meeting (IGM), set-up a Working Group, chaired by Mauritius,
comprised of the representatives of the seven participating governments to formulate ideas on the establishment of an association for economic cooperation, as well as a Work Programme to achieve its objectives. It also welcomed the proposals of the representatives of business and academia to set-up Indian Ocean Rim Business Forum (IORBF) and Indian Ocean Rim Academic Group (IORAG) networking mechanisms (Roy-Choudhury 1997: 119).

Meanwhile, in June 1995 Australia held an International Forum on the Indian Ocean Region (IFIOR) in the Western Australian city of Perth, which was attended by representatives from 23 countries. It adopted a ‘second track’ approach in the sense that deliberations on regional cooperation were conducted among ‘non-governmental’ participants representing the business community, academia and government officials in a personal capacity. IFIOR was preceded by a tour of eight Indian Ocean countries by the foreign minister of Australia, Gareth Evans. During his visit to India he argued that prospects for exploring regional cooperation were better than at any time since World War II and cited Indian liberalization as one of the factors most conducive for such an effort. Explaining the rational of ‘open regionalism’ he pointed out that different regional groupings are not mutually exclusive, that they are linked together by overlapping membership, and that the linkages produced in this way should be seen as a source of strength and openness in each respective grouping, ensuring that these do not become inward-looking. He opined that Indian Ocean states should become outward-looking, and deregulate their economies and capture the growth potential that interaction with other states offer (The Times of India, May 8, 1995, cited in Rao 1997: 4). Taking cognizance of Indian sensitivity to discuss security issues he sought to underplay the security component of IFIOR. He is understood to have repeated the exercise in the other countries which were a part of this tour in preparation for IFIOR at Perth (Nayar 1995, cited in Rao 1997: 4). Addressing the IFIOR delegates at Perth, the Australian foreign minister, while admitting that the sense of community among the Indian Ocean countries was weak and that their differences over economic and security issue made it difficult to develop a dialogue, had argued that the Indian Ocean countries were nevertheless in need of regional cooperation since many states have come to recognize that it can be effective.
in advancing a broad range of national interests. He also emphasized the Asian and Indian Ocean orientations of Australia’s foreign policy. With regard to the purpose of the forum he said that it was meant to set in motion a process of dialogue in search of an approach to cooperation appropriate to the Indian Ocean region (Australian Foreign Affairs and Trade Department 1995, cited in Rao 1997: 5). At its conclusion the IFIOR resolved to: develop a sense of community among countries of the Indian Ocean region; to identify and explore opportunities for closer trade and investment and prospects for enhanced regional cooperation in a wide range of areas; and to explore interest in the development of networks among business and academia in the region. It set-up two Working Groups and two Consultative Networks to follow-up and deliberate on a regular basis the areas identified for exploring cooperative possibilities. The Economic Working Group was mandated to look into existing and potential levels of cooperation in business facilitation, visas, taxes, currency convertibility, trade promotion, technology transfer, telecommunications, human resource development, financial services, and educational and research exchanges. The Other Issues Working Group was mandated to: advise on educational institutional cooperation in teaching and research; identify environmental issues facing the region; explore new ways of maritime cooperation drawing on existing structures, especially IOMAC; cooperate on maritime natural disasters; look at issues of literacy, legal rights, health and economic opportunities for women in the Indian Ocean region; and consider comprehensive security approaches and their applicability to the IOR (Australian Report to the Mauritius Working Group 1995, cited in Rao 1997: 5). The two Consultative Networks set-up were the Consultative Business Network (CBN) and the Indian Ocean Region Network (IORN). CBN membership was open to business representatives from all the countries of the Indian Ocean region, and was to report on: a charter for a new business organization; information technology; customs and trade documentation; non-tariff barriers and impediments to investment; and maritime affairs. The IORN, involving academics and researchers from the region, was established to promote the exchange of information and data, consultative dialogue among researchers and encourage joint research projects. Both the CBN and IORN met in New Delhi in December 1995 (Rao 1997: 4-6).
All IORI meetings up to the first Ministerial Meeting in March 1997 were held in Mauritius. The first meeting of the IORI Working Group in August 1995 decided to: prepare a draft Charter for a prospective association for economic cooperation, to be undertaken by India; to prepare a draft Work Programme, to be undertaken by Mauritius; and to extend membership to Indonesia, Madagascar, Malaysia, Mozambique, Sri Lanka, Tanzania and Yemen. Concurrently the IORBF and IORAG objectives were defined. In March 1996 invitations to attend the second IORI IGM, to be held in September 1996, were delivered to the seven new members. The second IORI Working Group meeting was held in May 1996. During this meeting the draft Charter was discussed and revised by the representatives of the seven original member states, and referred to their own governments as well as to those of the seven new member states. The draft Work Programme was also discussed, and agreement was reached on the development of an Action Plan. Concurrent to the second IORI Working Group meeting the IORBF and the IORAG held separate sessions to examine the draft Work Programme with a view to contributing to it. The agreement on the development of an Action Plan was based on the discussion of the draft Work Programme by the Working Group, as well as by the proposals made by IORBF and IORAG. The third meeting of the IORI Working Group was held on September 9, 1996, during which: it was decided that the association would be called the Indian Ocean Rim-Association for Regional Cooperation (IOR-ARC); views on the agenda of the second IGM were harmonized; understanding was reached on the spirit of the draft Charter; and projects to be implemented under the Work Programme were agreed upon. The second IGM was held on September 10-11, 1996, attended by representatives from the 7 original member states and the 7 new member states. The second IGM: recommended the convening of the first Ministerial Meeting in March 1997 for the official launching of IOR-ARC; finalized the draft Charter and approved it for submission to the first Ministerial Meeting of IOR-ARC; and in consultation with the concurrent IORBF and IORAG discussions approved a Work Programme of ten specific projects for submission to the first Ministerial Meeting. On March 3-4, 1997, the first Meeting of the Committee of Senior Officials of IOR-ARC was held, during which guidelines for projects in the Work Programme were updated, with the IORBF and the IORAG meeting concurrently in parallel sessions. Finally, the first Ministerial Meeting of
IOR-ARC was held on March 5-7 1997, at which IOR-ARC was formally launched, the Charter adopted, the Work Programme endorsed, and IORBF and IORAG reports noted. Mauritius assumed Chairmanship of the IOR-ARC Council of Ministers from 1997-1999, till the next Ministerial Meeting. A Working Group on Membership Issues was also established (Roy-Choudhury 1997: 119-120, 132-133).

The IOR-ARC Charter consists of 11 Articles outlining the fundamental principles, objectives, membership, institutional mechanism, national focal points, the IORBF and IORAG, and financial arrangements. The Charter makes it clear that the focus of the association is on economic cooperation. Article 2 (iv) excludes from the deliberations "bilateral and other issues likely to generate controversy and be an impediment to regional cooperation efforts". Article 2 (iii) stipulates that all decisions are to be taken on the basis of consensus. The Chairman’s Report on IORI Working Group Meetings, delivered to the Second IORI IGM meeting clarified that the Charter is not a treaty; the IOR-ARC is not a preferential trading bloc; and that member states are committed to the principle of non-discriminatory treatment to one another, and, on the basis of Most Favoured Nation (MFN) status, to all those who are also WTO members. Articles 2(ii) and 4 of the Charter kept open the possibility of further expansion of membership, but limited it to sovereign states of the Indian Ocean rim. Immediately prior to the first Ministerial Meeting applications for membership were received from a further seven countries: Bangladesh, Iran, Pakistan, Seychelles, Thailand, Egypt and France. Other countries, such as Japan, and other groupings; expressed interest in forms of associated status. The Working Group on Membership established at the first Ministerial Meeting was to go into all issue relating to membership and other forms of association such as observership, guest status, and dialogue partnership. The Work Programme endorsed by the first Ministerial Meeting consisted of the following ten projects:

1) Cooperation in Standards and Accreditation;
2) Indian Ocean Rim Business Centre and Indian Ocean Rim Network (IORNET);
3) Investment Facilitation and Promotion;
4) IOR Chair in Indian Ocean Studies and Associate Fellows;
5) Trade Promotion Programme and IOR Trade Fair;
6) Development, Upgrading and Management of Seaports, Maritime Transport, Insurance and Re-insurance;
7) Human Resource Development Cooperation;
8) Working Towards Complementarity- A Comparative Analysis of Existing Multilateral and Regional Economic and Trade Policy Arrangements and Processes;
9) Tourism Promotion and Development; and,

According to Article 2(vii) of the Charter the Work Programme was to be undertaken by member states on a voluntary basis. In accordance with the tri-partite nature of IOR-ARC, Article 9 of the Charter gives IORBF and IORAG a major role in establishing priorities of economic cooperation, coordination of the Work Programme, and mobilization of resources for its financing, and provides that the IORBF and IORAG may meet together with the Council of Ministers and the Committee of Senior Officials as mutually decided. Articles 5, 6 and 7 of the Charter set out the institutional arrangements of IOR-ARC to consist of a Council of Ministers, a Committee of Senior Officials and a Secretariat. The Council is to meet at least once in two years and Committee is to meet as often as required. The Council is to formulate policies, review progress and take decisions on new areas of cooperation. The Committee will establish priorities of economic cooperation, coordinate the Work Programme, and mobilize financial resources. The Secretariat, to be set-up in Mauritius, was to avoid excessive bureaucracy and function as a ‘pilot mechanism’ for co-ordination, servicing and monitoring of policy decisions (Roy-Choudhury 1997: 121-126, 133-136).

The second Ministerial Meeting was held in Maputo, Mozambique in March 1999. At this meeting it was decided to admit five more members: Thailand, Bangladesh, United Arab Emirates, Iran and Seychelles (Kelegama 2000: 257). Meetings of the IOR-ARC Committee of Senior Officials (CSO), IORBF and IORAG were held in Mauritius in 1998; Mozambique in 1999 and 2000; and Oman in 2001 and 2002. The third
Ministerial Meeting was held in Oman in 2001. By 2002 IOR-ARC had 19 member countries, 5 dialogue partners; and 1 observer (Kelegama 2002: 2422, see Table 6.1).

The effort to insert regional security issues on to the agenda of IOR-ARC, for example at IFIOR, was not successful (Rao 1997: 26; Roy-Choudhury 1997: 121; Ghosh 2004). One of the reasons given for this is that the effort to insert regional security issues was an Australian initiative, and that India and South Africa, along with some other participants, were not in favour of it (Rao 1997: 26). Another reason given is that introducing political issues on to the agenda could hamper economic cooperation, which drew support from Article 2(iv) of the IOR-ARC Charter referred to above (Roy-Choudhury 1997: 121). However, there are some security issues of a non-military nature which could severely affect the security of the Indian Ocean rim countries. Foremost among such issues are the growing dependence of many countries on imported energy resources, the proliferation of ‘small arms’ and the spread of narcotics. An important characteristic of such issues is that they cannot be dealt with by individual states alone, they require a collective response. If neglected they would have an adverse impact on peace and security in the Indian Ocean rim. Cooperation on such non-military security issues is in the interest of all states of the Indian Ocean rim, and it could also enhance economic cooperation. The demand for, and supply of, energy is a crucial determinant of the security and stability of states. Increasing amounts of energy annually, primarily oil and natural gas, are required to fuel higher rates of growth, ensure acceptable levels of economic development, and meet the demands and rising expectations of people. Inability to meet the growing demand for energy, or disruption of the energy supply flow, would severely destabilize the economy, and create social unrest and political instability within a country. In this regard, given the increasing strategic importance of crude oil from the Persian Gulf, and probably at a later stage from Central Asia as well, increased cooperation on energy security is very much in the interests of Indian Ocean rim states. The proliferation of ‘small arms’, including shoulder-fired surface-to-air missiles, and the growth of drug-trafficking, is also of increasing concern to Indian Ocean rim states, since they fuel intra-state warfare and tension in the area, with non-state actors in many of its
Table 5.1: Participants in IOR-ARC as of 2002

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<th>Members</th>
<th>Dialogue Partners</th>
<th>Observers</th>
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Total 19 5 1

countries challenging the structure and institutions of the state. This state of affairs is further exacerbated by the connection between the supply of arms and the production and trade of narcotics. Two pairs of countries of the Indian Ocean rim form parts of two of the most notorious drug producing areas of the world, Iran and Pakistan of the ‘Golden Crescent’, and Myanmar and Thailand of the ‘Golden Triangle’. Yet IOR-ARC has not given much priority to maritime issues. The charter of the association does not mention maritime cooperation, and only one of the ten projects of the Work Programme (Development, Upgrading and Management of Sea Ports; Maritime Transport; and Insurance and Re-insurance), examined a maritime subject. Maritime issues were also ignored in the projects proposed by the IORBF and IORAG. However there is both reason and requirement for giving more priority to maritime issues on the agendas of IOR-ARC, IORBF and IORAG (Roy-Choudhury 1998a: 304-306).

**Naval Cooperation**

Naval cooperation, both bilateral and multilateral, comprises a wide variety of activities differing in scale, complexity and sensitivity\(^1\). These range from ‘low-level’ to ‘high-level’ activities. Examples of low-level activities are: personnel exchanges; ship visits; attendance at fleet reviews; joint training (basic and specialized); and hydrographic assistance. Examples of high-level activities are: information and intelligence exchanges; joint bilateral and multilateral exercises; warship design, maintenance and construction; avoidance of incidents at sea (INSEA) agreements; joint operations in peace-time (such as disaster relief); coordinated patrols (such as for anti-piracy); cooperative maritime surveillance; enhanced inter-operability stressing ‘jointness’; joint doctrine development; mine counter-measures; combined SLOC protection; and the establishment of standing regional naval forces and joint operations in warfare. The importance of each of these activities depends on the prevailing political relationships. For example, joint naval exercises between two friendly states do not have the same significance as those between

two states in the process of establishing a strategic relationship, and similarly, the implications of multilateral naval exercises are far greater than those of bilateral exercises. The size and diversity of the Indian Ocean rim (IOR) makes the conduct or establishment of ocean-wide forms of multilateral naval cooperation difficult. Nevertheless, this has taken place in a limited context and under special circumstances during ‘Operation Desert Shield/Storm’, when a multinational coalition of 30 states went to war against Iraq in 1990-91, the UN operations off Somalia in the 1990s, and the multinational maritime interception put in place in the Persian Gulf and the Arabian Sea after ‘Operation Desert Shield/Storm’ to enforce a blockade against Iraq. All of these efforts comprised largely of non-IOR naval forces. Within the IOR the nature and extent of naval cooperation varies considerably due to: differences in diplomatic relationships; political interest and experience in international cooperation; domestic importance of naval forces in relation to land and air forces; financial allocations for the defence sector; and naval assets and capabilities. Therefore it would be best to examine naval cooperation in the Indian Ocean in terms of four sub-areas- 1) Southern and Eastern Africa; 2) West Asia; 3) Southeast Asia and Australia; and 4) South Asia (Roy-Choudhury 1998b: 265-266).

Till the late 1990s naval cooperation in Southern and Eastern Africa was extremely limited. The largest surface warships of the indigenous navies were patrol combatants of less than 1000 tons, with only South Africa possessing a small submarine force. France maintained the French Indian Ocean Squadron (15 surface warships and aircraft), and was quite active in carrying out low-level interactions with other naval forces in the area. Eastern Africa witnessed multinational naval operations off Somalia under UN auspices in the early 1990s. After the end of apartheid rule in South Africa the South African Navy (SAN) began to play an active role. In October 1994 the SAN hosted a conference of the chiefs of Southern African navies, with the purpose of establishing communication and a basis for future cooperation. In July 1995 a Maritime Standing Committee of the Southern African Development Community (SADC) was established. It was chaired by the chief of the South African Navy, and it included Angola, Botswana, Lesotho, Malawi, Mozambique, Namibia, Swaziland, Tanzania, Zambia, and Zimbabwe.
From September-October, 1997, it carried out 'Interop East', a six week deployment of a task force of three warships, which visited seven ports in the IOR and took part in joint training activities. Bilateral naval exercises were carried out with Tanzania, Kenya, Mauritius and France (ibid.: 266).

Naval cooperation in West Asia has been better developed and on a far greater scale than in Southern and Eastern Africa. There has been a large and well established US military and naval presence in the area, as well as a formal defence pact in the Persian Gulf, the Gulf Cooperation Council (GCC), comprised of Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates (UAE). Most international naval interaction in the area has been conducted and coordinated by the United States Navy. A critical task of the US Fifth Fleet, established in 1995, based in Bahrain, and responsible for all US naval activity in the Persian Gulf and the western Indian Ocean, was the encouragement of international naval cooperation among allied forces for enhanced defence preparedness. As result a number of joint bilateral and multilateral naval exercises were conducted in the area, mainly with the participation of the US, the GCC states and at times the Royal Navy of the United Kingdom. Such exercises included 'Native Fury' (US and Kuwait), 'Sparkling Neon' (US, UK and Bahrain), and 'Infinite Moonlight' (US and Jordan). West Asia also witnessed the multinational 'Operation Desert Storm/Shield' (1990-91), and the multinational maritime interception operations against Iraq that followed. International naval interaction in the area without the US has been limited, largely due to historical rivalries and tensions among the states of the area. The most notable naval interactions that did not include the US were those with either India or Pakistan, as well as that between Iran and Saudi Arabia. In early 1998 an Iranian naval ship visited a Saudi Arabian port for the first time in many years (ibid.: 266-267).

The most extensive and regular naval cooperation in the IOR has taken place in the Southeast Asia and Australia area, both bilateral and multilateral, at times involving only IOR states and at times involving non-IOR states as well. This has been facilitated by the Association of Southeast Asian Nations (ASEAN), and the political interest and high stakes in maritime security affairs in the area. It has taken place through 'low-level' activities such as regular personnel contacts and exchanges and joint training.
opportunities, as well as through ‘high-level’ activities such as the establishment and conduct of Search and Rescue (SAR) agreements and exercises, joint bilateral naval exercises, coordinated patrols, joint operations, and multilateral activities. Singapore has maintained bilateral SAR agreements with the IOR states of Indonesia, Malaysia and Thailand, as well as with the US Air Force, and has regularly carried out annual bilateral SAR exercises with Malaysia (‘Joint Malaysia-Singapore SAREX’) and Indonesia (‘Indopura SAREX’). In 1997 this was enlarged to a multilateral SAR exercise (‘FEREX 97’) in the Strait of Singapore, comprising the naval forces of Singapore, Indonesia and Malaysia. The Royal Thai Navy (RTN) has conducted regular joint bilateral naval exercises with the Royal Australian Navy (RAN) (‘Austhai’), the Royal Malaysian Navy (RMN) (‘Thalay Laut’ and ‘Seaex Thamal’), the Royal Singapore Navy (RSN) (‘Sing Siam’), and the Indonesian Navy (‘Sea Garuda’). The RMN has conducted bilateral exercises with the RSN, the RAN (‘Lumurex’) and the Indonesian Navy. The RAN has conducted exercises with Indonesia (‘Ausina Parex’, ‘Aussia Patrolex’, and ‘New Horizon’) and Singapore (‘Axolari’ and ‘Singroor’). Indonesia, Singapore, Malaysia and Thailand, have also conducted joint bilateral naval exercises with the Indian Navy (IN). The RTN and the RMN have also carried out joint bilateral naval exercises with extra-regional naval forces such as the USN. The Cooperation Afloat Readiness and Training (CARAT) naval and amphibious exercises were conducted annually and bilaterally between the US and Malaysia/ Singapore/ Thailand. Indonesia and Malaysia have conducted ‘coordinated patrols’ (which are different from ‘joint operations’) for anti-piracy purposes in the Strait of Malacca, while Indonesia and Singapore have done the same in the Strait of Singapore. There have also been instances of actual ‘joint operations’. Australia and Malaysia have regularly shared maritime surveillance operations and data of the Indian Ocean and Southeast Asian waters through the deployment of Australian P-3C maritime patrol and strike aircraft at the Royal Malaysian Air Force (RMAF) base at Butterworth, Malaysia. RMN and RAN ships have also conducted joint surveillance missions. The RAN has also conducted joint air and surface patrols of the ‘zone of cooperation’ in the Timor Sea with the Indonesian Navy. Multilateral activities have included ‘high-level’ conferences such as the ‘International Sea Power Symposium’ (ISS), the ‘Western Pacific Naval Symposium’ (WPNS) and the
ARF Inter-Sessional Meeting (ISM) on SAR. At the WPNS conferences, for example, the senior officers of navies, usually chiefs of navies, of Western Pacific countries, which include Australia, Indonesia, Malaysia, Singapore and Thailand, discuss issues of common concern, and ways and means of enhancing naval cooperation. Multilateral naval operations however have been considered too sensitive. But lower-level multilateral cooperation has taken, such as when the ARF ISM on SAR agreed to the publication of a directory of regional SAR contact points. The Maritime Cooperation Working Group (MCWG) of the Council for Security Cooperation in the Asia-Pacific (CSCAP), in its ‘Guidelines for Regional Maritime Cooperation’ (CSCAP Memorandum No. 4)) has proposed naval cooperation on four specific subjects: SLOC (the development of cooperative approaches to their maintenance and protection, including the exchange of information on likely threats to them); law and order at sea (cooperation in the prevention of piracy, drug smuggling and other crimes at sea); naval cooperation (consideration of a framework of bilateral or multilateral instruments on the avoidance of naval incidents); and maritime surveillance (the conduct of maritime surveillance for peaceful purposes in areas claimed as EEZs or continental shelves, and on the high seas, and the sharing of surveillance information with other parties). However the grant of ‘legitimacy’ to the conduct of maritime surveillance by states in the EEZs and continental shelves of, or claimed by, other states has been a contentious issue due to the intelligence and security implications of such activities. The RAN has hosted the ‘Kakadu’ series of ‘multilateral’ joint training exercises, which are more ‘fleet concentration periods’ than actual multilateral exercises, focusing on specific training activities, such as weapon firing, convoy exercises, anti-submarine warfare (ASW) training, and replenishment at sea drills. The RTN, RMN, RSN and the Indonesian Navy have participated in ‘Kakadu’, along with the RAN and the Royal New Zealand Navy (RNZN). The ‘Strafish’ series of joint naval exercises has taken place annually under the auspices of the Five-Power Defence Agreement (FPDA) comprised of Australia, the UK, Malaysia, Singapore, and New Zealand, although not in the Indian Ocean, but in Southeast Asian waters, including the South China Sea. The FPDA has also held on an annual basis Integrated Air Defence Systems (IADS) and Air Defence Exercises (ADEX) with the participation of air defence-capable ships. However, multilateral exercises have been problematic due to
concerns about converting ASEAN into a military pact, apprehension about China perceiving such activity as anti-Chinese, and intra-ASEAN suspicion and rivalry (ibid.: 267-270).

In South Asia the Indian Navy (IN) has been the most active in establishing and enhancing cooperation with other navies. This has occurred through: the exchange of visits and the hosting of conferences; conducting and hosting of ship visits; joint training; assistance in hydrography; disaster-relief operations; coordination of multinational gatherings of warships; the conduct of joint bilateral and multilateral SAR exercises; joint bilateral naval exercises; coordinated patrols; and on rare occasions, joint operations as well. In 1997-98, the Indian Chief of Naval Staff (CNS) visited Malaysia, while senior naval officers of Australia and Bangladesh visited India. The IN has also co-hosted international naval-oriented conferences, such as the ‘Indian Ocean: Challenges and Opportunities’, which took place in September 1992. In March 1995 a South African naval ship visited India for the first time at Mumbai (Bombay). The Somme, a warship of the French Indian Ocean Squadron, paid a visit to Mumbai in December 1996. Sensitive Indian naval establishments, such as Port Blair and Vishakapatnam, have been made open to visits by warships of foreign states on a selective basis in order to encourage transparency. In 1995 RSN ships were invited to visit the submarine base at Vishakapatnam. In 1996-97 119 officers and 136 sailors from foreign navies were trained in India, and 298 vacancies in Indian naval institutions were available to foreigners for 1997-98. In 1997 three of the four foreign naval officers at the Defence Services Staff College (DSSC), and thirteen of the twenty four foreign students at the National Defence College (NDC), were from IOR states. In 1993-94 India undertook, and successfully completed, the surveying of Omani waters. In the late 1990s more than half the maritime states of the world did not have a hydrographic service, and in the IOR only Australia, India and Egypt had hydrographic training facilities. In July 1991, when a massive tidal wave struck the Maldives India assisted with ‘Operation Madad’. In 1993 Admiral L. Ramdas, the CNS of the IN, proposed to hold multilateral joint naval exercise with ASEAN. However, subsequently, the Indian government and ASEAN reduced this to a bi-annual gathering of warships (‘Milan’) which was referred to as a ‘social and cultural event’ (Miglani 1997: 16, cited in Roy-Choudhury 1998b: 272). In February 1995 four
warships from Indonesia, Thailand, Singapore and Sri Lanka, along with one from India, participated in ‘Milan 95’. In February 1997 thirteen warships from seven countries, this time including Malaysia and Bangladesh, in addition to Indonesia, Thailand, Singapore, Sri Lanka and India, were involved in various activities, excluding joint naval exercise, for a five-day period. Both events took place at Port Blair and the Bay of Bengal. Myanmar, which was formally invited to the event in 1997, initially agreed to participate but subsequently declined. The IN was invited, for the first time, to participate in the 6th WPNS held in South Korea in October 1998. Four IN warships, including the INS Delhi, were to participate in the International Fleet Review to be held at the same time. In 1997 the IN hosted multilateral SAR exercises (‘Madad 97’) with the participation of the USN, the Sri Lankan Navy and the Italian Navy, which was followed by a bilateral SAR exercise between the IN’s newly commissioned destroyer, INS Delhi, and a USN warship, on the return of the former from an inaugural visit to Malaysia. In April 1998, the IN hosted ‘Madad 98’ in the Bay of Bengal and the Andaman Sea with the participation of warships from Bangladesh, Sri Lanka, Indonesia and Singapore, for a five-day period. In 1991 the IN resumed the conduct of joint naval exercises after a lapse of nearly 25 years. From 1991-1998 the IN’s conduct of joint bilateral naval exercises with IOR states were distributed as follows: 1 with Kenya in 1996; 1 with Iran in 1998; 1 with Kuwait in 1998; 3 with Oman, 1 each in 1993, 1995 and 1998; one with Saudi Arabia in 1998; one with the UAE in 1995; three with Australia, 1 each in 1991, 1992 and 1996; 1 with Indonesia in 1994; 1 with Malaysia in 1994; 7 with Singapore, 1 each in 1993, 1994, 1995, 1996 and 1997, and 2 in 1998; 1 with the Philippines in 1998; and 1 with Thailand in 1995. In total it conducted 22 exercises with 12 IOR states (see Table 5.2). For the same period IN’s conduct of joint naval exercises with non-IOR states were distributed as follows: 2 with France, 1 each in 1992 and 1997; 1 with Germany in 1997; 1 with New Zealand in 1993; 1 with Russia in 1994; 1 with South Korea in 1998; 3 with the UK, 1 each in 1992, 1993 and 1997; and 4 with the US, 1 each in 1992, 1995, 1996 and 1997. Thus in total it conducted 13 exercises with 7 non-IOR states12 (see Table 5.3). In addition the Indian Coast Guard has carried out a number of exercises with the

12 It should be noted here that even though Roy-Choudhury (1998b) considers France and the UK as non-IOR states, Schofield (2007) considers them as Indian Ocean states due to their territorial possessions there.
Maldivian Coast Guard. In the early 1990s two IN ships participating in UN peacekeeping operations off Somalia carried out low-level joint multilateral exercises with the USN, the Royal Canadian Navy (RCN), the French Navy, and the Italian Navy. In 1971 the IN, together with warships of other states, and the Sri Lankan Navy had carried out joint surveillance duties off coast of Sri Lanka when the Sri Lankan government was faced with an insurrection led by the Janatha Vimukthi Peramuna (JVP). Although the 1987 Indo-Lanka Agreement had specifically provided for something like joint operations between the IN and the Sri Lankan Navy, this was not effectively implemented. In 1993 the IN and Coast Guard started cooperating with the Sri Lankan Navy in the coordination of surveillance in the Palk Strait, in order to prevent the supply of arms and ammunition to Tamil militants in Sri Lanka from the Indian coast and elsewhere (ibid.: 270-4).

Many of the sub-regional groupings within the Indian Ocean region have attempted to develop cooperative multilateral security arrangements. These include the ASEAN Regional Forum (ARF), the South Asian Association for Regional Cooperation (SAARC), the Arab League, the Gulf Cooperation Council (GCC), the East African Community (EAC), and the South African Development Community (SADC). Although some of these have not been very successful in the domain of maritime security, efforts in that direction have persevered. Nevertheless there may still be a need for a wider overarching mechanism. Such a setup can comprehensively respond to the security threats that span across all sub-regions contained within the Indian Ocean region. Such an expanded cooperative arrangement would also need to be contextualized in terms of the larger Asian, and even global construct, through coordination with similar security groupings elsewhere in the world. On February 14-15, 2008 an Indian Ocean Naval Symposium (IONS) was held in New Delhi, India. As an arrangement for multilateral naval and maritime security cooperation, IONS offered a forum for exchange of views. Conceived within the ambit of Article 52 of the UN Charter, inspired by the initial successes of the ASEAN Regional Forum (ARF) and modeled on the lines of the West Pacific Naval Symposium (WPNS), IONS has the potential to successfully coalesce the imagination of regional states, and serve as a valuable platform to synergize their
Table 5.2: Indian Navy’s Joint Bilateral Exercises with IOR States from 1991-1998

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Source: Adapted from Roy-Choudhury (1998b: 274).
Table 5.3: Indian Navy’s Joint Bilateral Exercises with Non-IOR States from 1991-1998

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Source: Adapted from Roy-Choudhury (1998b: 274).
resources and energies towards maintaining ‘good order’ in the Indian Ocean. It also included extra-regional powers as observers. If the IONS initiative is to be successful it will have to give due cognizance to potential hazards. The more powerful states, including India, would need to resist the temptation of attempting to take centre-stage. Many security issues conceived in the IONS agenda pertain to ‘hard’ security responses with military connotations. These are likely to generate an element of fear and distrust in some states, particularly the smaller ones. So, ‘don’t run before you learn to walk’ may be an apt dictum to sustain the initiative. The IONS may therefore do well to initially focus on capacity building of the smaller littoral states, not only in respect of hardware, but also in terms of information-sharing towards maritime domain awareness (MDA), training of maritime forces and law-enforcement agencies, and cross-fertilisation of standard operating procedures (SoP) and best practices. A cue could be taken from the ongoing multilateral efforts towards security/safety in the Malacca Straits. Rather than focusing on ‘security’ per se in the waterway, the user-states have begun to direct their resources to improve navigational safety. The rationale is that this would reduce the vulnerability of shipping and other maritime activity in the waterway, and thereby itself contribute to security. While there may be fundamental differences between the Malacca Straits and the Indian Ocean, notably the fact that much of the straits are territorial waters of the three countries bordering the waterway, the common factor is that the sensitivities of the straits-littorals over sovereignty issues are likely to be similar to those of many Indian Ocean-littorals. IONS could also begin with security issues involving the benign role of maritime forces, such as humanitarian assistance and disaster relief (HADR) and marine pollution response. Furthermore, notwithstanding the fact that IONS is a naval initiative, the inclusion of non-naval, but pressing maritime issues would enhance its relevance and worth. These issues include development of future technologies for harnessing marine resources, sharing of hydrographic expertise towards compiling data for Legal Continental Shelf (LCS) claims, and formulating a regional action plan to mitigate the effects of climate change. Regional diversity may not be as deep-rooted as it is projected to be (Gurpreet Khuranna 2008). Admiral Arun Prakash, a former Indian naval chief, had argued during the IONS seminar that the genesis of the diversity lies in the effects of the colonial era, and that prior to that there had been a certain unity.
Moreover with increasing multi-faceted intra-regional interactions brought about by globalization, the impediment could well attenuate. IONS could also serve as a security complement to the IOR-ARC’s economic agenda (as cited in ibid.).

South Asian Association for Regional Cooperation (SAARC)\textsuperscript{13}

Bangladesh, Bhutan, India, the Maldives, Nepal, Pakistan and Sri Lanka formed the South Asian Association for Regional Cooperation (SAARC) in December 1985 to improve the economies of more than one-fifth of the world’s population that live in South Asia. The SAARC Charter specifically excluded bilateral and contentious issues from its agenda. Nevertheless, SAARC has provided a unique opportunity for heads of government, ministers and senior representatives of member states to regularly meet and exchange views on subjects of common concern. The leaders have used the opportunity to bilaterally discuss sensitive subjects like Kashmir, the South Asian nuclear issue, the Tamil question, and water disputes. In many cases these discussions helped to manage and contain unstable situations, provided for constructive follow-up action, and even agreements. Functionally and pragmatically motivated interaction spurred by membership in SAARC has worked to decrease sources of tension. The process has been a gradual one, requiring the identification of areas of mutuality and “binding together those interests which are common, where they are common, and to the extent to which they are common” (Khan 1991: 153-4, cited in Alam 1997: 22). On occasions when bilateral inter-state tensions were at a point at which bilateral processes of reconciliation were totally suspended, contacts initiated within the framework of SAARC have continued to be effective, facilitating the process of crisis management. Such cooperation increases interaction at different levels, helps confidence building and creates new priorities of peace among nations. The SAARC Preferential Trading Arrangement (SAPTA) was incorporated into the SAARC framework in 1993 and came into force in December 1995. This was an effort to go into significant tariff cuts for imports within the region in order to increase intra-regional trade in South Asia. Such meaningful cooperation at the regional and sub-regional levels can promote understanding and reconciliation among states leading to resolution of even long standing problems (Alam

\textsuperscript{13} This section, pp. 193-201, is primarily based on Alam (1997).
1997: 21-22). In 2004 at the 12th SAARC Summit in Islamabad the South Asian Free Trade Agreement (SAFTA) was concluded, and it came into force in January 2006. In April 2007 at the association's 14th Summit Afghanistan became its eighth member. SAARC has also granted 'observer status' to Australia, China, European Union, Iran, Japan, Mauritius, Myanmar, South Korea and the United States (http://en.wikipedia.org, see Table 6.4).

Mohd Khursheed Alam (1997: 24-26) had argued that security in South Asia has a lot to do with maritime issues. The waterways through the region are strategically important for both merchant and naval vessels. Coastal and offshore resources provide a principal means of livelihood in many of the countries in the region. For the island countries external threats can only come over, on or under the sea. The realities of geopolitical and geo-strategic imperatives point towards South Asia being a 'zone of conflict' rather than a 'zone of peace'. Its states can act both individually and collectively to build confidence in the region. Acting individually, self-reliance can only come about through internal strength and stability, economic development, and a naval strategy to provide effective and credible sea power to safeguard national interests. Throughout South Asia security concerns have broadened to include economic and environmental issues. Economic security involves not only the protection of SLOC but also the protection of fish stocks and other marine resources. The 1982 UN Convention on the Law of the Sea (UNCLOS) introduced new uncertainties to the region, having to do with the EEZ, disputes over islands, continental shelf claims, and other offshore issues. Many emerging economic security concerns in the region such as oil, illegal fishing and exploitation of other offshore resources are essentially maritime in nature. Fisheries are an important source of nutrition and protein in the region. Yet many of its countries lack sufficient information and infrastructure relevant to sea fish resources, their exploitation and sustenance. Information about marine mineral resources in the region is limited as most of the ocean resources have not been adequately surveyed. In addition the EEZ has generated requirements for naval capabilities for surveillance over resource-rich areas, which are for some states in the region almost equal to, or greater than, their land area. There are
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| Total         | 8            | 9            |

important maritime dimensions in military, economic and environmental aspects of security in the region. The requirements of monitoring SLOC and EEZs, coordinating weather prediction, monitoring oil spills and other pollution, demand greater maritime surveillance capabilities. The prevention of drug trafficking, disaster management and other economic and environmental problems are also likely to require escort ships, offshore vessels and maritime surveillance capabilities. For coastal South Asian countries maritime demands have required a reorientation of planning and capabilities, away from the land theatre and towards the maritime theatre.

Alam (ibid.: 31-34) had suggested that it had become necessary for processes of confidence building and security enhancement in South Asia to be heavily weighted towards maritime mechanisms. Maritime concerns were reflected in a myriad of confidence building proposals which ought to have been the subject of serious discussion in the region. Ballistic missile capabilities were likely to generate offsetting acquisitions elsewhere and trigger an unanticipated and undesired arms race. It was therefore particularly necessary that these acquisitions were accompanied by transparency and dialogue. Many of the new maritime weapon systems, such as submarine warfare systems and long-range anti-ship missiles requiring over-the-horizon targeting, were potential sources of accidents, requiring the establishment of measures to avoid incidents at sea. Concerns over piracy and illegal activities throughout many of the EEZs in the region could best be addressed through cooperative surveillance and/or information sharing arrangements. The diversity of the region in terms of security interests, perceptions and military capabilities, the presence of territorial disputes, insurgency, cultural/religious predispositions and the experience with the development of cooperative mechanisms and processes in other fields such as economic relations indicated that the process of maritime confidence building in South Asia will be slow and painstaking. An information exchange network could be a unique forum and a significant first step towards better understanding between the region’s navies and other maritime forces. The initial focus of such cooperative activities should be on operational matters, directed toward particular concerns, perhaps mostly non-military in nature, beginning with basic modes and procedures for information exchange rather than the erection of new institutional
structures for multilateral maritime surveillance efforts. A list of concerns such as maritime pollution and environmental concerns, weather prediction, high sea robbery/piracy, fisheries infringements, search and rescue, suspicious activity indicating possible narcotics trafficking could be placed on the agenda. The development of common procedures for communication between the navies of the region and merchant vessels could provide a capability the significance of which for regional confidence building will far transcend the particular purposes of any consulate. The process of reaching agreement among naval authorities on the priority areas for information exchange will enhance regional appreciation of particular national concerns and interests as well as increase the understanding among navies. The operation of such a network could be assisted by the use of the region's navies. Naval Headquarters at the national level were more or less competent managers of information, able to analyze information and propose action. A similar institutional centre at the regional level under SAARC may offer a useful starting point for an international network for surveillance, safety and information exchange. For the community of navies in the region it would also provide a framework to deal with possible situations at sea should they ever arise. For the wider marine community navy-to-navy links could be a convenient path to reach equivalent agencies in other countries. Cooperation on marine safety can cover safety of life at sea, navigational services and prevention of shipping accidents. Marine safety is implemented through a system of Port State Control (PSC) which includes efficient inspection when ships are at port, maintenance of data on sub-standard ships and exchange of information among participating countries. Although the PSC system is prevalent in other regions no efforts had been made to introduce such a system in South Asia as of the late 1990s. Maritime safety and anti-pollution measures have also not been effective in the area. Search and Rescue (SAR) systems for rescue of survivors, ship reporting, safety communications and satellite aided tracking systems also need to be developed in the region. Regional cooperation could also include marine environmental protection, marine science and technology and oceanography. Navies have traditionally assumed the role of protecting SLOC along with other maritime forces. A case can also be made generally for navy-to-navy cooperation in areas such as information exchange, high-seas patrol in the suppression of violence at sea from criminal/terrorist activity, and illegal cross-border
flow of drugs and economic/political refugees. Navies have always had an independent role in policing the high seas, beyond the jurisdiction of coastal states, in pursuit of pirates, slavers and mutineers. With increasing interdependence of economies and the diminished responsibility of countries of registry, the navy’s role of high seas patrol and surveillance and subsequent information management should be extended to other examples of criminal activity such as negligence and incompetence. All navies share a number of duties of surveillance and enforcement on the high seas. These duties could be carried out with much closer cooperation in terms of information sharing. In practical terms for ships at sea, this extension of a navy’s charter could be achieved in a number of unthreatening ways in all sea regimes, including during innocent passage, as extensions of the mariners customary duties and obligations. These could include: a policy of regular environmental sampling, periodically surveying areas in dispute; the development of expertise in pollution countermeasures/weather prediction, enabling ships to provide ‘first aid’ in environmental disasters; reporting of sub-standard bridgemanship, particularly where flagrant breaches of the International Regulations for Preventing Collisions at Sea are concerned; assistance to shore authorities in identifying rogue shipping in areas of cooperation; and a willingness to share information of significance to all sea users. In this case, a general understanding on entry into territorial seas of other parties unintentionally or through ‘force majeure’, a uniform interpretation of the rules of innocent passage, agreement on restriction of certain maritime areas to particular operations, agreement on minimum distances of approach between naval ships, and provision for an uninterrupted flow of communication in order to avoid or resolve peacefully any incidents, should be arrived at by the navies of the region.

In order to facilitate such a process Alam (ibid.: 35-37) had called for the formation of an institutional structure within SAARC for a Centre for Maritime Cooperation encompassing the full range of maritime affairs. Such a structure would provide opportunity for establishing common interests, for proposing solutions and for concerting action. The maritime community tends to be more internationalist, less concerned with issues of national prestige, than their land-based colleagues, partly because they share a common enemy, the sea itself, and partly because a lot of their
operating area is international by nature. The 21st century is expected to see a large increase in international trade and hence of seaborne trade as well. There is an increasing need for peace and security in South Asia and for the region to be insulated from external pressure. Arms transfers from North to South were in danger of destabilizing the international system. In such a position of great uncertainty navies represented a force for stability. Moreover, economic factors would force the major naval powers of the region to cooperate. Considering the need of the time, the urgency to deal with maritime issues and to initiate the process of confidence building among military players in the region, it was suggested that Bangladesh table a proposal within SAARC for the setting-up of a Centre for Maritime Cooperation. It was felt that such a proposal would make most progress if it was relatively modest, did not depend on new institutional structures, relatively informal, did not impinge on core national interests and defence capabilities, and addressed lower-profile security issues such as piracy, SAR, drug-trafficking, terrorism, offshore pollution control, SLOC management, and weather prediction. Such a proposal was expected to provide for more structured regional confidence building and security enhancement, the institutionalization of a regional dialogue on maritime issues being one of the most fundamental building blocks of regional security cooperation and confidence building. Such a dialogue could lead to better appreciation of concerns, interests and perceptions of participating countries, enhance mutual understanding and trust, and prevent misinterpretations, misunderstandings and suspicions likely to cause tension and conflict. The suggested objectives of such a Centre for Maritime Cooperation were as follows:

1. to foster maritime cooperation and dialogue among the states of the SAARC and to promote maritime confidence and security building measures;
2. to promote adherence to the principles of the 1982 UN Convention on the Law of the Sea, to commence dialogue on the areas of UNCLOS which are either indefinite or not fully accepted by regional nations, and to promote joint hydrographic survey efforts to assist in the observance and implementation of UNCLOS;
3. to help safeguard the peaceful merchant shipping of the region and to examine the means for developing the procedures which will assist in the protection of shipping within the region with increased joint activity in naval control of shipping;

4. to create a secure atmosphere for the sustained exploitation of the resources of the sea and to identify regional hydrographic survey and oceanographic priorities and examine ways to conduct joint surveys in those waters with greatest priority;

5. to contribute to the preservation of the marine environment and to provide a framework of cooperation for weather prediction; and

6. to undertake policy-oriented studies on specific regional maritime security problems and to provide training in relevant aspects of maritime operations to those lacking in certain types of capability or expertise.

Alam (ibid.: 37-39) had argued that the fraternity of the sea transcends barriers of race, religion, language and nationality. Navies of the region could be considered as messengers of friendship and goodwill, and are often used as the hand maidsens of peaceful diplomacy. Regional cooperation must take over the centre stage in the emerging maritime order. Navies will need to turn the psychology of ‘preparing for war in order to ensure peace’ into ‘if you want peace, prepare to cooperate’. Naval cooperation could be a way towards a more cost-effective use of scarce and expensive naval resources such as naval training facilities for basic and advanced engineering skills, electrical and electronic skills, submarine training tactical work-up and various other infrastructure facilities. A wide range of opportunities for navy-to-navy cooperation could be placed on the agenda of a SAARC Center for Maritime Cooperation. These may include joint schemes for ocean surveillance, transparency in procurement plans, combined operational exercises, joint procedure for relief of natural disasters and weather prediction, pooling of expertise in marine salvage, search and rescue, the exchange of military personnel and joint action in the enforcement of international law and order at sea. In order to cost-effectively utilize the infrastructure of navies for national development as opposed to coercion and military functions it might be better for countries to have common ship-plots and communication facilities for tasks such as quick-response and rescue coordination. Naval cooperation could also take place in
implementing the Safety of Life at Sea promulgated by the International Maritime Organization (IMO), monitoring of nuclear waste disposal, prevention of poaching and over-fishing, and deterring unauthorized population movements. The Coast Guard, where available, would be a vital adjunct of a SAARC Centre for Maritime Cooperation. However, despite Alam's convincing argument, no action seems to have been taken regarding a SAARC Centre for Maritime Cooperation till date.

**Conclusion**

According to Schofield (2007: 24-27) in the Indian Ocean the enormous claims to maritime jurisdiction made by coastal states gave rise to enormous potential maritime opportunities in respect of sovereign rights over marine living and non-living resources. This, at least, was the expected consequence worldwide of broad international acceptance of coastal state rights over the extended maritime zones. Kenya's proposal of the EEZ concept to the Asian-African Legal Consultative Committee in 1972 reflected a growing concern among newly independent states in Africa and Asia about the over-exploitation of their offshore fisheries by foreign fleets, and envisaged a 200 nm zone in which fisheries and pollution control would fall under exclusive state jurisdiction. It was therefore generally thought that the declaration of EEZs would be of substantial benefit to predominantly developing coastal states. This perception is highlighted by the FAO's 1984 estimate that ninety per cent of marine fish and shellfish were caught within 200 nm of the coast. However, anticipated economic gains have largely not been realized, or at least, not to the same scale as hoped. One key problem is that fish stocks straddle international boundaries and maritime zone limits. Whilst in-shore fish stocks have generally fallen within coastal state territorial sea and EEZ claims, key high-value stocks transcend international maritime limits and boundaries. In particular, tunas which represent Indian Ocean's most valuable fisheries resource, are inherently highly migratory and transboundary in nature. These fish stocks therefore migrate not only between the maritime zones claimed by coastal states but also between national EEZs and the high seas. These stocks clearly demand management throughout their range. However, Schofield argues that, such management is complicated by the difficulty of
reconciling coastal state sovereign rights and interests and those of Deep Water Fishing
Nations (DWFNs). Here there exist long-standing tensions and differences over the
interpretation of UNLOSC, and particularly concerning coastal state and foreign state
rights and responsibilities regarding living resources within claimed EEZs. While the
declaration of EEZs affords coastal states considerable sovereign rights, such claims are
also coupled with significant responsibilities. These include protecting and preserving the
marine environment, and thus marine biodiversity, and ensuring conservation and optimal
use of marine living resources. Advancing such extensive claim to maritime jurisdiction
therefore poses a serious challenge in ocean management terms, demanding sophisticated
infrastructure and investment. He is of the view that many developing Indian Ocean
littoral states are therefore faced with great difficulties in meeting the responsibilities that
match their prodigious rights within EEZs, and that purely in terms of monitoring,
surveillance and enforcement, the challenge may prove to be beyond their current
capacity. Moreover, the surveillance and enforcement challenge also has to face-up to the
complexity of the Indian Ocean maritime jurisdictional mosaic. Problematic straight
baseline claims give rise to uncertainties over the limits of maritime zones generated
seaward. Lack of delimited maritime boundaries, unilateral and overlapping claims to
maritime jurisdiction, and sovereignty disputes over islands, all contribute to
uncertainties over jurisdiction and lack of clarity over which state has enforcement rights.
Schofield highlights these difficulties by examining the divergent experiences of Somalia
and Australia. By virtue of its long coastline – at around 3,300 km the longest of any
mainland African state – and geographical position, Somalia benefits from (or should
benefit from) an enormous maritime jurisdiction, estimated at 1.2 million km. These
waters boast considerable marine living resources, including high value stocks such as
tunas, largely as a result of periodic but intense upwelling of nutrients associated with the
Somalia Current marine ecosystem. However, as a consequence of prolonged internal
conflict, Somalia lacks a functioning government since 1991 and, consequently, any
official regulation and enforcement of maritime activities. These factors have converged
to provide a virtual free-for-all in terms of unrestrained fishing in Somali waters. In
contrast, Australia has, as a developed coastal state, been able to devote considerable
resources to safeguards its own extensive maritime jurisdiction. In particular, Australia
has taken a number of legal steps to deter illegal fishing in Australian waters, for instance, by substantially increasing fines related to illegal fishing offences, introducing an automatic forfeiture regime for illegal fishing vessels, and factoring in the costs of pursuits on the part of enforcement authorities into bonds imposed on captured illegal fishing vessels. These measures have been backed with considerably enhanced maritime surveillance and enforcement efforts in an operational sense. He points out however that it is questionable whether the more innovative aspects of Australia’s legal response to the illegal fishing threat, particularly the automatic forfeiture regime and pursuit costs provisions, will survive international legal scrutiny. Furthermore, concerning the effectiveness of operational surveillance and enforcement measures, he points out that the case Australia’s Southern Ocean maritime jurisdiction around its sub-Antarctic Heard Island and McDonald Island is potentially instructive. Australia has instituted year-round patrols of this area at considerable expense under the Southern Ocean Maritime Patrol and Response (SOMPR) programme. This has proved remarkably effective in one sense in that no illegal fishing vessels have been detected in the Australian EEZ around these islands since 2004. However, unregulated fishing vessels have repeatedly been detected operating just outside the Australian EEZ limit, on the high seas. In his view this emphasizes that even with effective national maritime surveillance and enforcement measures in place, over-exploitation will remain a significant threat to regional biodiversity and fisheries until the wider issue of reconciling coastal state and DWFN interests within EEZs and, crucially, beyond them on the high seas is addressed. Schofield argues that many of these issues are well recognized and positive steps have been, and are being, taken to address them. Such as for example the notable progress that has been made towards addressing the major challenges that exist in respect of the management of Indian Ocean fisheries through the work of regional fisheries management organizations such as the Indian Ocean Tuna Commission (IOTC). With regard to clarifying the Indian Ocean jurisdictional picture and overcoming the difficulties associated with excessive or competing maritime claims, he highlights the recent example of Australia and France’s practice on the fringes of the Indian Ocean around their respective sub-Antarctic island territories. In order to help combat illegal foreign fishing in these waters, Australia and France have concluded two treaties on
cooperative surveillance and enforcement that transcend their respective maritime jurisdictions and boundaries and this represents an example of cooperative response to a common challenge. He goes on to argue that while it has to be acknowledged that major challenges remain, it is to be hoped that the shared maritime interests of the Indian Ocean coastal states, emphasized by the presence of highly migratory and economically valuable stocks such as tunas in the waters of the region, will provide a powerful incentive and argument for the development of similar maritime cooperative initiatives in the future.

Bateman (2002: 366-370) argues that the concept of freedom of navigation has both economic and strategic significance. Disruption of the free flow of commercial shipping by the most expeditious route can have serious economic consequences such as higher transportation costs, delays in supply of critical imports and a sudden increase in demand for shipping capacity. The strategic consequences of such a disruption has to do with the pressure created on countries who’s supply of essential imports such as energy is disrupted. The disruption of Indian Ocean seaborne trade would put a great deal of pressure on countries like Japan and China, and to a lesser extent also on the United States. Moreover, the access waterways into and out of the Indian Ocean has great strategic significance for Indian Ocean countries wishing to deploy naval forces out of the Indian Ocean and for extra-regional countries wishing to deploy naval forces in the Indian Ocean. In 2000 Northeast Asia was dependent on the Middle East for 70% of its oil imports, and this dependence was expected to rise to 95% by 2010. In which case, “...a growing fleet of heavily laden supertankers will plow east across the Arabian Sea and the Indian Ocean in the coming decades, headed for Singapore, Hong Kong, Shanghai, Pusan and Yokohama....” (Calder 1996: 59, cited in Bateman 2002: 366). Bateman goes on to argue that, in the face of such a trend the affected countries can be expected to increase their political and diplomatic effort for ensuring the freedom of navigation in the Indian Ocean. Major Indian Ocean countries such as Australia, India and South Africa, share a common interest with important non-Indian Ocean countries in Northeast Asia, North America and Western Europe in maintaining freedom of navigation in the Indian Ocean, especially in the key access waterways. This common interest establishes a basis for maritime cooperation and confidence building in the Indian
Ocean. Cooperation is required to enhance the commercial efficiency of shipping, maintain safety, and to reduce the impact of shipping on the marine environment including by the reduction of shipping casualties. Cooperation is also essential for the mitigation and prevention of ship-sourced pollution, including arrangements for responding to major oil spills from maritime accidents, and monitoring oil spills in open waters from routine tank cleaning and ballasting. Cooperation is also required in an operational context to prevent and deter piratical and terrorist attacks. In times of tension and conflict operational cooperation will also be necessary to protect focal areas and choke points from closure due to mines and other threats to shipping. Following the September 11, 2001 terrorist attacks the IMO has given high priority to the review of existing international legal and technical measures to prevent and suppress terrorist attacks against ships, and improve security aboard and ashore. Measures considered included accelerated introduction of a mandatory system of automatic identification (AIS) to be fitted on all ships over 500 gross tons on international voyages, updated arrangements for seafarer identification, and the introduction of an International Ship and Port Facility Code (ISPS Code). Regional implementation of the new IMO measures will be important, but they will place additional burdens on developing countries. One positive development in international cooperation for marine safety in the Indian Ocean has been the establishment of the Indian Ocean Memorandum of Understanding (MoU) on Port State Control (PSC). PSC involves inspection of foreign vessels entering port by officers of a national maritime authority of the port state to ensure compliance with international maritime safety and marine pollution conventions. The Indian Ocean MoU on PSC provides for cooperation on ship inspections with a regional database and agreement on target inspection rates for foreign ships visiting the ports of participating countries. A common regional understanding of navigational regimes, where uncertainty exists with regard to aspects of the transit passage regime and the rights of coastal states in the EEZ, would also constitute an important confidence building measure. Differences on navigational issues can become dangerous in times of tension, and therefore measures

14 The Indian Ocean MoU on PSC, with a secretariat in Goa, India, came into effect on 01st April 1999. By December 2004 the following 13 countries had become parties to it: Australia, Eritrea, India, Iran, Kenya, Maldives, Mauritius, Oman, Sri Lanka, Sudan, South Africa, Tanzania, and Yemen (www.iomou.org).
for limiting the scope for disagreement would be extremely helpful. The general trend towards the divergence of state practice with regard to the rights of coastal states and other states in the EEZ is an unhelpful development which could have an impact on the freedom of navigation in the future. Bateman goes on to point out that, despite their common interest in the rights of navigation and oceans management, the littoral and island countries of the Indian Ocean are extremely diverse. Earlier attempts at building cooperation in the Indian Ocean have not been completely successful, and the level of existing cooperation is not as high as elsewhere in the world. The Indian Ocean rim contains much of the world’s underdevelopment, population growth, the issues that produce North-South schisms and frustrations, disease, natural disasters such as tsunamis and tropical storms, and environmental vulnerability. There has also been the issue of the extent to which non-Indian Ocean countries should be involved in cooperation. However globalization has tended to weaken the objections to their involvement, this being certainly the case with cooperation to ensure the freedom of navigation. Furthermore, countries have suspicions concerning the capabilities and intentions of their neighbors. There are few obvious naval ‘partners’ in the Indian Ocean. Problems exist with common doctrine, language and inter-operability of equipment. Regional navies acquire their ships, submarines and aircraft from a wide range of sources. The problems can become even more acute as the technological levels of navies increase. Technical deficiencies in some navies may significantly inhibit cooperation because less advanced navies will be reluctant to engage in operational cooperation for fear that their deficiencies will be too apparent. Cooperative activities can also be used to gain intelligence on the capabilities of other countries. Even naval port calls can provide opportunities to gather intelligence for both host and visitor. The host can collect information about the visiting ships and the visiting ships could gain signals intelligence by listening-in on the host nation’s naval communication while they are in port. Expert intelligence collectors can obtain much vital information on another navy, particularly data on weapons, sensors and communication systems, including possible identification of highly sensitive frequencies to support prospective electronic warfare, during joint operations with ships and aircraft of another country. Nevertheless, Bateman is of the view that there is scope for a higher level of naval and maritime cooperation to ensure and enhance the freedom of navigation.
in the Indian Ocean. Political care is needed to prevent cooperative activities from becoming ‘stumbling blocks’ rather than ‘building blocks’ for a more secure Indian Ocean. Activities that can be undertaken include: the development of regional protocols to cover applicable navigational regimes; operational cooperation to protect shipping from piratical and terrorist attacks; and contingency planning to protect focal areas against threats in times of conflict. Development of such initiatives are not just a matter for Indian Ocean countries but requires the involvement also of major user states in Northeast Asia, Western Europe and North America, who also have an interest in the freedom of navigation in the Indian Ocean. The more developed countries have a role in building the capacity of less developed countries in the region to implement and manage navigational safety services.

Apart from Law of the Sea issues such as maritime jurisdiction and rights of navigation as pertaining to the Indian Ocean, the specific attempts at institutionalizing maritime cooperation in the Indian Ocean region that we have looked at are the Indian Ocean Zone of Peace (IOZP) initiative, the Indian Ocean Marine Affairs Cooperation (IOMAC) process, the Indian Ocean Rim-Association for Regional Cooperation (IOR-ARC), and the Indian Ocean Naval Symposium (IONS). In 1989 important extra-regional western members of the UN Ad Hoc Committee on the IOZP withdrew from it arguing that superpower rivalry in Indian Ocean has diminished with the end of the Cold War and that therefore there was no need to create an IOZP. However, while the anticipated ‘New World Order’ on which such an argument was based may have prevailed very briefly in the early 1990s immediately after the end of the Cold War, by the beginning of the 21st century rivalry in the Indian Ocean had remerged (Berlin 2002: 27). Therefore despite the many complexities of the IOZP initiative the need for such an initiative and its implementation remains. By the late 1990s the Arusha Agreement, which had attempted to formally establish IOMAC as an organization, had not managed to acquire the necessary number of ratifications needed to come into force. The IOR-ARC has focused on economic cooperation rather than maritime cooperation. Gurpreet Khuranna (2008) has suggested that the security agenda of the latest initiative, IONS, could complement IOR-ARC’s economic agenda.
With regard to South Asia, Alam (1997: 39-40) had noted that, while the setting up of a SAARC Centre for Maritime Cooperation may be a necessary goal, political tensions in the region were preventing progress in that direction. He had suggested that a first step towards the setting-up of such a centre could be to work-out a regional framework for confidence building measures. These could include agreements on non-interference in naval maneuvers, prevention of incidents at sea, and modalities for dealing with fishermen who stray into someone else’s EEZ. A centre for maritime cooperation would satisfy many important requirements in the region, address some very real issues and serve as a ‘building block’ for proceeding to a more comprehensive maritime organization. That is to say, the process should begin modestly. Structured maritime surveillance systems may be possible in particular circumstances where the commonality of interests is high or in situations where issues can best be addressed multilaterally. Multilateral maritime surveillance systems maybe considered for problems such as piracy, weather prediction and oil spills in international waterways. The navies, coast guards and police forces of the region can begin to compile and share information on areas where piracy is most rampant, establish communication links, coordinate anti-piracy patrols, and organize joint sweeps against pirate strongholds. The establishment of specific purpose multilateral surveillance systems in areas of particular concern and the strengthening of the various bilateral maritime surveillance arrangements in the region will go far in addressing the requirements of a Centre for Maritime Cooperation. Once a common reporting of formats and operating procedures have been developed, further initiatives with coordinated patrol and real-time information exchange may follow. Such a network, and the operational advantages it would confer, would be of great use in responding to other contingencies apart from the problems of piracy and pollution, such as the guidance and protection of peaceful shipping in the event of conflict and/or terrorism across SLOC in the region. While this would not be the initial purpose of the arrangement, it would be well within its capabilities. A comprehensive system of communication between navies would serve as a confidence building measure, and contribute to the protection and restoration of peaceful shipping, the sustainable development and exploitation of sea resources, and the maintenance of the marine
environment. In addition it would provide a strong basis for cooperation regarding the more traditional roles of navies in higher order conflicts. Initiatives for improving safety and security at sea involving only some of the countries in the region could be regionalized to the economic benefit of all countries. Alam had argued that seaborne trade could be an engine that will drive countries towards peace, and that peace and security in the region will in turn allow for greater seaborne trade, creating a mutually reinforcing dynamic which will directly contribute to the economic well-being of each country. However, no action seems to have been taken till date regarding Alam’s proposal. Perhaps, when thinking about multilateral maritime cooperation in South Asia, one should take the following two points into account. First, let us take the argument made by Roy-Choudhury (1998b: 275), in the context of naval cooperation in the eastern sub-region of the Indian Ocean, that ‘...the development of a set of bilateral naval relationships could, over a period of time, be made to evolve into a loosely defined multilateral set of activities...’. In South Asia, there has been a fair amount of maritime cooperation between India and Pakistan, as well as between India and Sri Lanka, particularly in the last few years, and both these bilateral cooperative relationships are ongoing ones. If one goes by Roy-Choudhury’s argument such bilateral maritime cooperation among South Asian countries could evolve into a ‘loosely defined multilateral set of activities’. Secondly, it is important to locate South Asia as a continental sub-region within the Indian Ocean maritime region. Just to illustrate, let us take Peter Lehr’s (2005: 11-13) suggestion that, multilateral security cooperation in the Indian Ocean should focus on the northern part of the Indian Ocean, consisting of the Bay of Bengal and the Arabian Sea. The Bay of Bengal is a sub-region of the Indian Ocean maritime region to the east of South Asia, and the Arabian Sea is a sub-region of the Indian Ocean maritime region to the west of South Asia. The Arabian Sea is situated between the continental sub-regions of South Asia and West Asia (or the Middle East).

15 For India-Pakistan maritime cooperation see Siddiqua-Agha (2000), Sakhuja (2001), and Ghosh (2008). It is worth noting that Siddiqua-Agha (2000) formed the basis for the first symposium on ‘Confidence and Cooperation in South Asian Waters’ held in January 2001. ‘Confidence and Cooperation in South Asian Waters’ is an ongoing project of the Centre for Foreign Policy Studies, Dalhousie University, and the sixth symposium was held in March 2007 (for further details see http://centreforforeignpolicystudies.dal.ca). For India-Sri Lanka maritime cooperation see Raju and Keethaponcalan (2006) and Vohra and Srivatsan (2008).
The Bay of Bengal is situated between the continental sub-regions of South Asia and Southeast Asia. If one thinks in these terms, multilateral maritime cooperation in South Asia may well overlap with multilateral maritime cooperation in West Asia (or the Middle East) and in Southeast Asia. If one thinks in institutional terms, what this translates into is that, maritime cooperation within SAARC may well have to be coordinated with maritime cooperation within the GCC as well as within the ASEAN. Therefore, while not much importance has been given so far to maritime cooperation per se within SAARC, the ongoing India-Pakistan and India-Sri Lanka bilateral cooperation could evolve into multilateral cooperation within SAARC. If and when it does, it may have to coordinate with maritime cooperation within the GCC and the ASEAN.