Chapter Six

China and Multilateral Maritime Cooperation
Introduction

China is a coastal state with very long coastlines. The coastline of the mainland is more than 18,000 km from the mouth of the Yalu River in Liaoning Province in the north to the mouth of the Beilung River in the Guangxi Autonomous Region in the south. The seas adjacent to China are the Bohai Sea, the Yellow Sea, the East China Sea, and the South China Sea. The Bohai Sea is China’s internal sea, surrounded by the Shantong Peninsula and Liaotong Peninsula, with an area of about 77,000 square km, an average depth of 18m, and a maximum depth of 70 m. The Bohai Sea is linked to the Yellow Sea by the Bohai Strait, which is 45 nautical miles (nm) wide. The Yellow Sea is about 380,000 square km, 44 m average depth, and 140 m maximum depth. It is a continental shallow sea. The East China Sea is a wider shallow sea with an area of 770,000 square km and an average depth of 370m. The South China Sea is bounded on the north by mainland China, on the east by the Philippine archipelago, on the south by Kalimantan, and on the west by the Malay Peninsula and Vietnam. The area of the South China Sea is about 3,500,000 square km with an average depth of 1212 m and a maximum depth 5,559 m. The total areas of the above seas are equivalent to about half of China’s land territory, amounting to more than 4,730,000 square km. Their abundant natural resources can be exploited and utilized by the Chinese and other peoples, and they have facilitated friendly intercourse, including trade, between the Chinese and other nations. All the seas described above, except for the Bohai Sea, are semi-enclosed seas as defined by the Law of the the Sea Convention (LOSC, also referred to as the United Nations Convention on the Law of the Sea, or UNCLOS). Article 122 of the LOSC defines a ‘enclosed or semi-enclosed sea’ as “a gulf, basin or sea surrounded by two or more States and connected to another sea or the ocean by a narrow outlet or consisting entirely or primarily of the territorial seas and exclusive economic zones of two or more coastal States” (Keyuan Zou 2008: 148).

Examining China’s conformity with, and implementation of, the UNCLOS, and its participation in the ASEAN Regional Forum (ARF) and the Council for Security Cooperation in the Asia Pacific (CSCAP), regional measures for combating piracy, and
the Regional Maritime Security Initiative (RMSI) of the United States, will help us gain an understanding of the nature of its participation in multilateral maritime cooperation. Given the relatively underdeveloped state of maritime cooperation in the Indian Ocean and South Asia, China's future maritime role in South Asia could emerge from the manner in which it has engaged in maritime cooperation with other Asia-Pacific countries. This chapter includes much factual detail in order to bring into sharp relief the international legal dimension as well as increasing cooperative efforts in the management of vital interests, and China's firm commitment to these processes.


China ratified the Law of the Sea Convention (LOSC/UNCLOS) in 1996. According to Zhao Lihai (1996: 148, cited in Keyuan Zou 2000: 182) China regards the LOSC as a universal code governing overall marine affairs in the world, the international document guaranteeing the global maritime legal order, and as of utmost significance for the maintenance of peace, justice and progress of all humankind. Pursuant to the provisions of the LOSC, a coastal state has the right to establish maritime zones under its jurisdiction, which consist of internal waters inside the baselines which are used to measure the extent of the territorial sea and other jurisdictional waters, the territorial sea of 12 nautical miles (nm), the exclusive economic zone (EEZ) of 200 nm, and the continental shelf of 200 nm (or up to 350 nm in some cases), outward from the baselines. Different maritime zones have different legal status. Internal waters and territorial sea are treated as part of the coastal states territory and that state enjoys full sovereignty there except innocent passage for foreign vessels in its territorial sea. According to LOSC Article 2 (2) the sovereignty of the coastal state over the territorial sea extends to the airspace above the territorial sea as well as to its bed and subsoil. For some jurisdictional purposes, such as the prevention and punishment of infringement of its customs, its fiscal, immigration or sanitary laws and regulations, a coastal state has the right to establish the contiguous zone which may extend not more than 24 nm from the baselines from which the breadth of the territorial sea is measured. However, it should be noted that in
comparison with the territorial sea or the EEZ, the contiguous zone is not a complete maritime zone, rather it is subsidiary to the territorial sea for the coastal state to control certain matters of territorial nature, while at the same time, it is part of the EEZ in another sense. As to the EEZ and continental shelf, the coastal state, according to the LOSC, only enjoys sovereign rights and certain kinds of jurisdiction. According LOSC Articles 56 (1) (b) and 77 (1) the coastal state enjoys sovereign rights to the living and non-living resources in the EEZ and continental shelf, and exercises its jurisdiction over matters relating to “the establishment and use of artificial islands, installations and structures”, “marine scientific research”, and “protection and preservation of the marine environment”. According LOSC Article 81 the coastal state has the exclusive right to authorize and regulate drilling on the continental shelf. The EEZ and the continental shelf are identical in terms of sovereign rights and jurisdiction of a coastal state. For that reason, the EEZ and the continental shelf are not part of the high seas, or part of the territorial sea. The EEZ is a maritime zone sui generis. However there is at least one similarity between the territorial sea and the EEZ in the sense that they are both maritime zones within national jurisdiction (Keyuan Zou 2008: 147-148).

Based on the international law of the sea, China has established legal regimes for its maritime zones, including the territorial sea, EEZ, and the continental shelf, through its domestic legal procedures. Among the many such domestic laws and regulations, one of the most important ones is the 1992 Law on the Territorial Sea and the Contiguous Zone, which has improved the territorial sea regime established under the 1958 Declaration on the Territorial Sea. China has set its territorial sea at a breadth of 12 nm and the contiguous zone of 24 nm, measuring from its baselines. Merchant ships enjoy the right of innocent passage through China’s territorial sea but foreign warships are subject to the requirement of prior permission. China uses the method of straight baselines to define the limits of its territorial sea and in May 1996 part of such baselines around the mainland and the Xisha Islands was publicized in the Declaration on the Baseline of the Territorial Sea of the People’s Republic of China. In addition to the above fundamental stipulation the law provides that all international organizations, foreign organizations or individuals should obtain approval from China for carrying out scientific
research, marine operations or other activities in China’s territorial sea and comply with relevant Chinese laws and regulations. The Chinese competent authorities may, when they have good reason to believe that a foreign ship has committed violations, exercise the right of hot pursuit against the foreign ship. This law applies to all of China, including Taiwan and various islands located in China’s adjacent seas. Another important law is the 1998 Law on the Exclusive Economic Zone and the Continental Shelf. This law is designed to guarantee China’s exercise of sovereign rights and jurisdiction over its EEZ and continental shelf, and to safeguard China’s national maritime rights and interests. According to this law China’s EEZ is the area beyond and adjacent to China’s territorial sea, extending up to 200 nm from the baselines from which the breadth of the territorial sea is measured. The legal regime of the continental shelf is closely related to that of the EEZ though each is of course a separate regime under the LOS Convention. For the purpose of natural resource development, the former is more concerned with non-living resources and latter with living resources. In state practice the regimes on the EEZ and continental shelf are often found together, as is the case with the China’s 1998 Law on the Exclusive Economic Zone and the Continental Shelf. In addition to enjoying the same rights and jurisdiction as in the EEZ regime, coastal states like China enjoy the exclusive right to authorize and regulate drilling on the continental shelf for all purposes. The continental shelf of China comprises the sea-bed and subsoil of the submarine areas that extend beyond China’s territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nm from the baselines where the outer edge of the continental margin does not extend up to that distance. Although the provision to define the EEZ in the Chinese law is the same as the relevant provision of the LOSC, the provision regarding the continental shelf has ‘Chinese characteristics’ and contains something different. This is, an emphasis on the natural prolongation of China’s rights to the continental shelf, which has strong implications for the delimitation of the continental shelf in the East China Sea (ibid.: 148-149).

After the entry into force of the LOSC in 1994 the legal situation of maritime zones in East Asia has become more complicated. Most East Asian countries have
become parties to the LOSC, and have enacted corresponding domestic laws governing the maritime zones entitled under the LOSC. By 2002 Cambodia, North Korea and Thailand were the only three countries from whom the UN had not received the instrument of ratification. However since the seas adjacent to China are all semi-enclosed seas with multiple coastal states, maritime boundary de-limitation has become another maritime issue in East Asia. While China has resolved the maritime boundary issue in the Gulf of Tonkin with Vietnam, it still has to negotiate maritime boundary delimitation with its neighbouring countries in the Yellow Sea, East China Sea and the South China Sea. Maritime boundary de-limitation is complicated by territorial disputes over islands. In the East China Sea there is a dispute between China and Japan over Tiaoyu/Senkaku Islands, and in the South China Sea the Spratly Islands involve claims by five countries-China, Malaysia, Vietnam, the Philippines, and Brunei- or six parties if Taiwan is included as a separate entity (ibid.: 150-151, 152).

A substantial conflict between the right of coastal states to control adjacent maritime areas and the right of maritime states to freedom of navigation has endured for much of the history of the law of the sea. Asia Pacific is an area where the reconciliation of these two rights has caused controversy. The freedom of the seas principle as it stands today was set out in UNCLOS in 1982, which came into force in November 1994. Apart from reaffirming the freedom of the seas principle, UNCLOS establishes three important regimes in securing freedom of navigation, namely ‘innocent passage’ through territorial waters, ‘transit passage’ through international straits, and ‘archipelagic sea-lanes passage’ through archipelagoes. Different navigation rights apply depending on the different regime. Though UNCLOS contributes to the building of a stable maritime regime, including navigation regimes, it only offers general rules and principles and is ambiguous on many issues. Differences in its understanding and interpretation are prevalent in the world community. It is acknowledged that “the navigational rights contained in innocent passage are less than those of transit passage and archipelagic sea-lanes passage” (Schachte Jr. and Bernhardt 1993: 527-36, cited in Ji Guoxing 2002: 20). The transit passage and archipelagic sea-lanes passage regimes have been a compromise between the freedom of navigation on the high seas which maritime states desired and the right of
innocent passage which strait states and archipelagic states preferred. The main disputes
are those that pit interests of maritime states in navigational freedom against interests of
coastal states in security, access to resources, protection from marine accidents, or other
rational for restricting navigation. Protection of freedom of overflight and navigation in
important sea-lanes was, and remains, a primary goal of the United States in seeking a
universal Law of the Sea Convention. US defence strategy in the 1990s continued to be
highly dependent upon traditional freedoms of navigation including transit and over­
Freedom of navigation is important to Russia as well. Two weeks after the
announcement by the Admiralty in Moscow in December 2000 that it would resume
patrols in the Pacific and Indian Oceans, a Russian flotilla of naval ships set sail for the
first time in five years from Vladivstok “on a mission to reassert Russia’s role in Asian
security after a decade of military decline” (as reported in The Times, January 16, 2001,
cited in Ji Guoxing 2002: 21). As the application of the principle of freedom of
navigation relates to SLOC security, Asian Pacific countries need to establish an agreed
definition of navigation rights to be applied in practice so as to guarantee SLOC security
in the region. It might be of significance for the UN body to make clarification on some
ambiguous points in the relevant provisions of UNCLOS. Understanding and consensus
among UN law-of-the-sea groups regarding the navigation regimes would be a
contribution to regional maritime safety (Ji Guoxing 2002: 20-21).

Innocent passage refers to the right of continuous and expeditious surface transit
through territorial waters. Aircraft over-flight and submerged passage of submarines in
territorial waters are not permitted without coastal state permission. According to
UNCLOS, there are two restrictions: submarines and other underwater vehicles shall
navigate on the surface and display their flags, and nuclear-powered ships and ships
carrying nuclear or other inherently dangerous or noxious substances are required to carry
documents and to observe special precautionary measures. The innocent passage regime
has always required a delicate balance between the rights of coastal states to control
immediately adjacent waters and the rights of maritime states to navigate through these
waters. How to strike that balance has been a difficulty. The right of innocent passage
also applies to the archipelagic waters of an archipelagic state with some qualification. It is not complete freedom of navigation because the coastal or archipelagic state has the right to create laws that affect vessels passing through the territorial seas/archipelagic waters and can temporarily suspend innocent passage in order to protect its security. These laws may govern the safety of navigation, the conservation of living resources, environmental protection, and so on. It has been a much debated issue, for a long time in the international community, as to whether the right of innocent passage through territorial waters applies to warships. UNCLOS fails to address the question. Maritime powers have stressed its applicability. Both the US and Russian navies have traditionally sought to exercise power within the Asian Pacific region. In that context, the navigational freedoms guaranteed to warships have been vital. Coastal states have been reluctant to permit passage to warships without prior authorization or notification. The history of foreign invasion and traditionally sensitive security concerns in the Asia Pacific caused many littoral states in the region to have strong reservations on the right of foreign warships to innocent passage through their coastal waters. Before World War II and its ascendance as the premier maritime power, the US was among those states which denied the right of innocent passage of warships in territorial seas. Later the US reversed its position. Bangladesh, Myanmar, India, Indonesia, South Korea, North Korea, and Pakistan are among the countries that require prior notification of warships in their territorial waters. Vietnam even “denies the right of innocent passage for warships not only in the territorial sea, but also in the contiguous zone” (Farrell 1998: 83, cited in Ji Guoxing 2002: 22). China formalized its position requiring permission for any foreign military vessels to enter the territorial sea in its 1958 Declaration on the Territorial Sea and reiterated the position in its 1992 Law on the Territorial Sea and the Contiguous Zone. For the avoidance of misunderstanding regarding this controversial issue after the Black Sea ‘bumping’ incident of February 1988, when two US ships entered the Soviet territorial sea in the Black Sea and were ‘shouldered’ by two Soviet warships, the US and the former Soviet Union signed in 1989 a joint statement, agreeing that all ships, including warships, enjoy the right of innocent passage, and that neither prior notice nor authorisation is required prior to innocent passage. Other countries should to take this into consideration in formulating their positions (Ji Guoxing 2002: 21-22).
UNCLOS recognizes the right of transit passage for all nations to sail through straits used for international navigation, including narrower ones that lie totally within the territorial waters of bordering countries. Transit passage is defined as exercising freedom of navigation solely for the purpose of ‘continuous and expeditious’ transit through the strait from one part of the exclusive economic zone (EEZ) and/or the high seas to another part of the exclusive economic zone (EEZ) and/or the high seas. When in transit passage, ships and aircraft may transit in their ‘normal mode’, that is, formation steaming, flight operations, and submerged transits for submarines are permitted. This is the first time that the right to fly over straits was established. This right was dramatically invoked in 1986, when France and Spain closed their skies to US warplanes. American bombers leaving Britain reached terrorist-related targets in Libya by flying over the Strait of Gibraltar (The San Diego Union-Tribune, August 19, 1988, cited in Ji Guoxing 2002: 23). However, transit passage is not complete freedom of navigation. States bordering a strait have the right to create laws and regulations that might affect vessels passing through it as long as they do not deny or hamper transit passage. The concerns of strait states focus on the security threat posed by warship transit and the threat of pollution from tankers or nuclear-powered ships. The problem is to what extent strait states can regulate certain aspects of transit passage. Indonesia and Malaysia believe that transit rights for all countries’ ships through the Strait of Malacca cannot be absolute, given that their own security could be at risk from major accidents. The difficulties are due to the ambiguity and uncertainty of some of the provisions in UNCLOS and to the substantial variations in state practice. UNCLOS fails to articulate how much control a strait state can exercise over navigation. Regarding state practice within the region, the range of controls that coastal strait states impose upon vessels passing through an international strait varies greatly. The extent of the use of vessel traffic services (VTS) dealing with safety of navigation and environmental pollution by strait states in international straits has also been a subject of debate. Maritime powers have held that “measures to protect the marine environment from ship sourced pollution have continued to erode traditional navigational freedom” (Rothwell 1995, cited in Ji Guoxing 2002: 23). As the adoption of VTS by regional countries is a considerable possibility, the presence of US fleets in many parts of the Asia Pacific might make this a particularly volatile issue. If China uses some kind of
VTS or exercises some strait management in the Taiwan Strait, it would definitely be controversial. Whether coastal states can actually impair the freedom of navigation of vessels carrying inherently dangerous cargoes has been controversial in the Asia Pacific in recent years. Due to the perceived great environmental risk of a vessel carrying certain cargo, some states will not allow their passage through the waters of an international strait. The definition of a strait as an international strait is another issue. Japan once intended to make the Osumi Strait its internal strait, and later gave up due to opposition from the US and other regional countries. The same problem exists regarding the Taiwan Strait. The Taiwan Strait has always been used for international navigation. In spite of the Chinese government's opposition, the call among some Chinese for declaring the Taiwan Strait as an internal strait of China occasionally emerges (Ji Guoxing 2002: 23-34).

As UNCLOS recognizes archipelagic states and their right to declare baselines around their outer islands, the high seas have contracted and constraints have begun to appear in areas where traditional freedom of navigation was once guaranteed. Now major shipping routes fall within archipelagic waters. Though archipelagic states have sovereignty over the waters that fall within archipelagic baselines, their right is subject to certain accepted navigational freedoms. UNCLOS grants the right of innocent passage to all vessels within archipelagic waters, and the right of archipelagic sea lanes passage along sea lanes that archipelagic states have designated, or if such sea lanes have not been designated, through routes normally used for international navigation. A vessel can only exercise the right of archipelagic sea lanes passage within a fifty-nautical-mile corridor, and the right of innocent passage applies outside of this zone. There are significant differences between the two types of passageways, which impact most severely on military vessels. Since this is a new regime, it has led to some tension between certain archipelagic and maritime states. Previously, the Java Sea and many other large bodies of water between Indonesian islands were treated as open seas. Under the treaty, they become internal waters under Indonesia's control as an archipelagic state. In such waters that are used normally by foreign shipping, the law of innocent passage applies. Under this regime, submarines are supposed to travel on the surface and fly their national flag. Warships are required by some countries to shut down their surveillance radars and
weapons sensors, although officials have said Indonesia was only asking that there should be no unauthorized broadcasting or radio contact between passing warships and land-based transmitters to prevent spying. Military aircraft have no rights to fly over internal waters without permission from the coastal state, which can also suspend innocent passage and close areas to foreign planes and ships on security grounds, for example if it wants to hold military exercises. Indonesia has proposed restricting foreign ships to three north-south sea-lanes that run between Sumatra and Java islands, between Bali and Lombok islands, and through the Molucca Sea to the Timor Sea and the Arafura Sea. Foreign shipping, including military vessels traversing Indonesia, can sail freely through the designated lanes without having to seek prior permission. But they can no longer travel on routes outside these lanes. Indonesian ambassador-at-large Hasjim Djalal has said, “aircraft flights would also be allowed above sea lanes, and submarines would not have to surface during their passage” (as reported in The Straits Times, June 18, 1998, cited in Ji Guoxing 2002: 25). The archipelagic sea lanes proposal was officially adopted by the IMO on May 19, 1998. The US, however, is against the proposal, arguing that it could harm international trade and limit the strategic movement of warships, including its submarines and aircraft carriers that sail through Indonesian waters. The US would like to maximise the number of sea lanes open for archipelagic sea lanes passage. Australia has proposed an additional east-west archipelagic sea lanes passage for its ships for possible emergent situations. Japan and some other Asian Pacific countries are pressing Indonesia to open its waters more widely to free passage of ships. The Philippines’ claim that all waters within its archipelagic baselines are internal waters not subject to archipelagic sea lanes passage present a further difficulty. Under its constitution, the Philippines “considers all waters bound by the baselines and all waters around, between and connecting the islands of the archipelago, as part of the internal waters of the Philippines” (Coquia 1997: 54, cited in Ji Guoxing 2002: 26), and maintains it has the right to enact legislation to protect its sovereignty, independence and security. The US and other countries protest these claims. As of the late 1990s the Philippines had not designated its archipelagic sea lanes. Scholarly debate within the Philippines pointed to the necessity of the Philippines designating archipelagic sea lanes, because otherwise it will run the risk
The Exclusive Economic Zone (EEZ):

The EEZ regime attempts to accommodate the competing interests of coastal states for greater control over offshore resources, and those of maritime powers for maintaining traditional freedom of action in waters beyond territorial seas. As large areas of water in the Asia Pacific now fall within various EEZs and only a few high seas remain, the restrictive regime of EEZ has a substantial impact on certain navigational freedoms in EEZs. Many problems exist in the implementation of the regime. The EEZ regime poses a threat to the mobility of navies, including the freedom of action of foreign navies within EEZs. The issues are whether a foreign navy is free to conduct military manoeuvres within an EEZ without prior notification or authorisation from the coastal state, and whether a state is free to place non-economic installations, such as submarine detection devices in the EEZ of a foreign state, which do not interfere with the coastal state’s enjoyment of its EEZ rights. UNCLOS confers rights and duties upon coastal states to protect and preserve the marine environment within their EEZs. However, it fails to detail the full extent of that jurisdiction. It is quite possible that coastal states in the region could impose standards higher than those currently accepted internationally. While the exercise of navigational rights can result in incidents that affect the marine environment, coastal states’ regulation of these activities may infringe upon navigational freedoms that previously existed beyond the limits of the territorial sea. The debate over the shipment of ultra hazardous goods and waste, the potential environmental impact, and the ability of coastal states to control these shipments involve the exercise and control of navigational rights in EEZs. These concerns have highlighted significant deficiencies in the existing navigation regime. The question of whether coastal states have the capacity to declare maritime security or exclusion zones has also been the subject of debate, as these zones tend to be delimited within EEZs. Security zones in EEZs deal primarily with limitations placed upon freedom of navigation for warships and upon entry by military aircraft. Some states within the Asia Pacific have proclaimed such zones during peacetime. For example, North Korea purports to exclude foreign military forces from its 50-nautical-mile security zone. The US has protested the claim. To what extent a coastal
state could govern the passage of fishing vessels in its EEZ is also a problem. Though UNCLOS recognises that the vessels of all states, including fishing vessels, enjoy freedom of navigation in EEZs, foreign fishing vessels must have due regard to the right of the coastal states to prevent illegal fishing. For the purpose of preventing violation of its fishing laws and regulations, a coastal state would require foreign fishing vessels in its EEZ to obey its laws and regulations which govern the passage of fishing vessels. Countries such as Canada request transiting fishing vessels to report, and the Maldives has a prior consent regime for all foreign fishing vessels entering its EEZ. For ensuring that foreign fishing vessels do not engage in illegal fishing activities, Malaysia’s Fisheries Act of 1985 allows foreign vessels to exercise the right of innocent passage in Malaysian fishery waters which are the waters of the EEZ. Moreover, the law requires prior notification for fisheries vessels to enter the Malaysian EEZ (Valencia 1991: 116, cited in Ji Guoxing 2002: 27). But these provisions have aroused protests from Thailand (Ji Guoxing 2002: 26-28).

The high seas are defined as those parts of the world oceans beyond the limits of national jurisdiction. According to UNCLOS, the high seas refer to all parts of the sea that are not in the exclusive economic zone, in the territorial sea or in the internal waters of a state, or in the archipelagic waters of an archipelagic state. Owing to the insistence of maritime powers, UNCLOS retains the provisions that high seas freedom of navigation applies to EEZs, but under UNCLOS coastal states have sovereign rights over EEZ resources, and EEZs fall into coastal states’ spheres of jurisdiction. Thus EEZs do not belong to the high seas. EEZs are specific water areas different from the high seas. Maritime powers then have used a new term ‘international waters’ to replace the term of ‘high seas’. For example, the US holds that:

“all waters seaward of the territorial sea are international waters where the ships and aircraft of all States enjoy the high seas freedom of navigation and overflight. International waters include the contiguous zone, exclusive economic zone, and high seas..... International respect for freedom of the seas guarantees legal access up to the territorial waters of all coastal countries of the world” (Mandsager 1998: 114, 117, cited in Ji Guoxing 2002: 28).
Its main purpose is to equate EEZs with high seas in terms of freedom of navigation. However UNCLOS recognizes that the continued freedom of navigation through the waters of an EEZ is subject to the laws and regulations of the coastal state that legitimately apply within that zone. Freedom of navigation and over-flight in EEZs is subject to the resource-related rights of the coastal state. An example of the controversial stand on the interpretation of ‘international waters’ between maritime powers and coastal states is the collision between a US EP-3E surveillance aircraft and a trailing Chinese jet fighter 70nm southeast of Hainan Island on April 1, 2001. The Chinese pilot was killed, and the US damaged plane had to make an emergency landing at Lingshui airbase on Hainan. The US argued that its surveillance plane was flying in international waters and had the freedom of navigation, whereas China argued that it was flying in China’s EEZ, and should be subject to the laws and regulations of China. China demanded that the US halt its surveillance off the Chinese coast, but the US asserted that the flights are standard and legal. The freedoms of the high seas comprise the freedom of navigation and over-flight, freedom to lay submarine cables and pipelines, freedom to construct artificial islands and other installations, freedom of fishing, and freedom of scientific research. But when these freedoms are applied in EEZs, they are subject to relevant laws and regulations of coastal states. Regarding scientific research, the scientific community in developed countries is concerned about what they see as anti-scientific provisions contained in the Law of the Sea (Valencia 1991: 120, cited in Ji Guoxing 2002: 29). The US holds that,

"military surveys in EEZ—a high seas freedom—sometimes are mistaken for marine scientific research, which is subject to coastal state consent..... Marine scientific research is subject to coastal state jurisdiction in the EEZ, but the LOSC fails to define the term. A particular problem because hydrographic surveys and the collection of marine environmental information for military purposes are considered by the US to be high seas freedoms that are not subject to coastal state jurisdiction, even when conducted in the EEZ” (Mandsager 1998: 119, 124, cited in Ji Guoxing 2002: 29).

The air-collision in April 2001 pertained to a serious legal issue in international law relating to the legality of the conduct of military activities in the EEZs of other countries in time of peace. According to the LOSC, its Article 301 in particular, all the
seas in the world shall be used peacefully, and any threat or use of force against the territorial integrity or political independence of any state, or action in any other manner inconsistent with the principles of international law embodied in the Charter of the United Nations, shall be prohibited. From this basic legal principle, military activities with threatening potential should not be carried out in the EEZs of other countries. The difficulty lies in differentiating what is threatening from what is not threatening, which raises the issue of foreign military activities without threatening potential. According to Charles E. Pirtle (2000: 8, cited in Keyuan Zou 2008: 155) military use of oceans consists of two categories, movement rights and operational rights. Movement rights embraces the notion of mobility and includes such legal rights as transit passage through straights used for international navigation, innocent passage in territorial seas and archipelagic waters, and high seas freedom of navigation and over-flight. Operational rights include activities such as task force maneuvering, anchoring, intelligence collection and surveillance, military exercises, ordnance testing and firing, and hydrographic and military surveys. Some states may invoke LOSC Article 58 (1) to justify military activities, that is say what Pirtle has referred to as ‘operational rights’, in other countries’ EEZs. The provision reads:

“in the exclusive economic zone, all States, whether coastal or land-locked, enjoy, subject to the relevant provisions of this Convention, the freedoms referred to in Article 87 of navigation and overflight and of the laying of submarine cables and pipelines, and other internationally lawful uses of the sea related to these freedoms, such as those associated with the operation of ships, aircraft and submarine cables and pipelines, and compatible with the other provisions of this Convention”.

The freedoms in the high seas provided for in LOSC Article 87 are thus applicable to the EEZ as long as they are not contrary to other provisions of the LOSC. According to maritime powers such as the United States, the wording ‘freedoms’ ‘associated with the operation of ships, aircraft’ implies the legality of naval maneuvers in a foreign EEZ (Boczek 1988: 450, cited in Keyuan Zou 2008: 156). One view even considers military exercises, aerial reconnaissance, and all other activities of military aircraft freedom of high seas if due regard is paid to the rights and interests of third states (Hailbronner 1983:
It has been advocated that, since the LOSC mainly provides the rights of navigation and over-flight, while keeping silent on the rights of military activity, a maritime superpower must defend and enforce such rights for its security interests (Pirtle 2000: 8-9, cited in Keyuan Zou 2008: 156). The LOSC does not expressly mention military use, so it has become a ‘grey area’ which leads to different interpretations. This non-mention has been criticized as one of the major defects in the LOSC (Shao Jin 1985: 183, cited in Keyuan Zou 2008: 156). The LOSC affirms that matters which are not regulated under it should be governed by general international law, including customary law. In this case, military activities have been consistently allowed under customary international law, though in the implied form. There is also a difficulty in inferring from the text and legislative history of LOSC Article 58 that the establishment of the EEZ has limited foreign military operations other than pure navigation and communication. However the allowance of military activities under international law does not mean that they can be conducted in the EEZ without any regulation. While there is no controversy regarding military activities conducted on the high seas, the EEZ is different from the high seas in that it is an area under national jurisdiction. While military activities are not expressly disallowed there under international law, the factor of national jurisdiction must be taken into account. There should be some kind of check-and-balance mechanism for foreign military activities in the EEZ. It is hard to understand the logic of subjecting marine scientific research in the EEZ to the consent of the coastal state but not subjecting military activities to any check by the coastal state. Even if military use is an internationally lawful use, it can be argued that according to the LOSC it is limited to navigation and over-flight and other rights as provided in LOSC Article 87. In practice some coastal states, including Bangladesh, Brazil, Cape Verde, India, Malaysia, Pakistan and Uruguay, explicitly restrict unapproved military exercises or activities conducted by other countries in or over their EEZs. Iran has laid down laws restricting foreign military activities in its EEZ. Article 16 of the 1993 Act on the Marine Areas of the Islamic Republic of Iran in the Persian Gulf and the Oman Sea stipulates that “foreign military activities and practices, collection of information and any other activity inconsistent with the rights and interests of the Islamic Republic of Iran in the exclusive economic zone and the continental shelf are prohibited”
(Division for Ocean Affairs and the Law of the Sea, Office of Legal Affairs, United Nations 1995: 67, cited in Keyuan Zou 2008: 157). This legal provision led to a diplomatic row between Iran and the United States. The United States lodged a protest against it by stating that the prohibition of military activities contravenes international law and the United States reserves its rights in this regard. Iran responded to the US protest with a diplomatic note which stated that, due to the multiplicity of economic activities, it is possible that such activities, for which the coastal state enjoys sovereign rights, could be harmed by military practices and maneuvers, and that accordingly those practices which affect the economic activities in the EEZ and continental shelf are thus prohibited (ibid.: 147-51). The Iranian explanation does not deny the right of foreign military activities in the EEZ, instead they are prohibited because of the possible harm that they can do to economic activities there. While the rationale that foreign military activities are inherently potential threats to the peace and good order of coastal states, and national regulations based on such a rationale, are understandable, it should be borne in mind that not all military activities are threatening. Some military activities, such as the activities of UN peacekeeping forces are indispensable to maintaining peace and good order, and some civilian activities such as marine pollution caused by an accident or illegal fishing in the EEZ can be threatening.

Therefore what should be looked into is whether a certain military activity is of a threatening nature and whether it is conducted with a clearly bad intention and/or in a hostile manner. If this is so it should banned in the EEZ, and if not it should be allowed under certain conditions laid down by the coastal state. There is no reason why the coastal state should be prevented from regulating foreign military activities in its EEZ while it is allowed to regulate foreign marine scientific research there. However, while the coastal state can enact laws and regulations to govern activities in the EEZ, a problem arises when a particular law is not consistent with, or not expressly permitted by, the LOSC, and such laws are challenged by the maritime powers, as has been the case with some coastal state laws governing foreign military activities in the EEZ. Under such circumstances the question of whether a certain activity is ‘legal’ or ‘illegal’ becomes controversial, and this affects the normal enforcement of its law by the coastal state, and
can even lead to conflict between the countries concerned. In order to resolve such differences and conflicts states usually resort to diplomatic channels. In 1998 China’s Ministry of National Defence and the United States Department of Defence had signed an agreement on establishing a consultation mechanism to strengthen military maritime safety. Under this agreement both sides agreed that their respective maritime and air forces operate “in accordance with international law, including the principles and regimes reflected in the United Nations Convention on the Law of the Sea”, and that consultation could be focused on “measures to promote safe maritime practices and establish mutual trust as search and rescue, communications procedures when ships encounter each other, interpretation of the Rules of the Nautical Road, and avoidance of accidents at sea” (ILM 37 1998: 530, cited in Keyuan Zou 2008: 158). This agreement however was unable to prevent contention between the two sides concerning the military air crash over the South China Sea in April 2001. After this incident the two sides are reported to have held several rounds of discussion on military aviation technical issues which had been largely ignored before (Qian Chuntai 2002: 10, cited in Keyuan Zou 2008: 158). This indicates that after the incident China and the United States have paid more attention to the ‘rules of the road’ in the air so as to avoid such incidents in future. Moreover the United States began to consider seriously the issue of military and intelligence-gathering activity in EEZs. The East-West Centre, Honolulu organized a series of workshops on the topic. The one held in Bali, Indonesia in June 2002, focused on identifying the disagreements and areas of possible agreement on this issue (East-West Centre 2002, cited in Keyuan Zou 2008: 158). Another one held in Tokyo in February 2003 acknowledged that with technological advances intelligence gathering activities in the EEZs would increase (East-West Centre 2003, cited in Keyuan 2008: 158). Yet another meeting held in Honolulu in December 2003 drafted some guidelines for military and intelligence gathering activities in the EEZs (Hasjim Djalal et al 2005: 175-183, cited in Keyuan Zou 2008: 158). Such efforts could work towards reaching a consensus in the world community regarding military and intelligence activities in the EEZs and a possible review of the LOSC in this regard (Keyuan Zou 2008: 155-158).
According to Ji Guoxing (2002: 29-31) China supports the principle of freedom of navigation, and holds that freedom of navigation is in the interest of China, Japan, the US, and other countries of the Asian Pacific region. In his view however it needs to clarify some of its positions, and such clarification would be in China's long-term interest. For example:

- China states it will fulfill its duty of guaranteeing freedom of navigation in the South China Sea. In view of the concerns in the world community over the disruption of SLOC in the South China Sea after the Mischief Reef incident, China's foreign Ministry issued a statement in May 1995, stating "while safeguarding its sovereignty over the Nansha (Spratly) Islands and its maritime rights and interests, China will fulfill its duty of guaranteeing freedom of navigation for foreign ships, and air routes through and over the international passage of the South China Sea according to international law" (Beijing Review, May 8-14, 1995: 22, cited in Ji Guoxing 2002: 30). China needs to make clear that this statement applies to both the sea areas under its jurisdiction (innocent passage in territorial waters and freedom of navigation in its EEZ) and to the remaining high seas, as some circles in the world community think that China's stated freedom of navigation only applies to the high seas.

- In submitting UNCLOS to the Chinese People's Congress for ratification on May 11, 1996, a representative of the State Council stated, "overall, the ratification is in China's interests, but in certain aspects, China needs to formulate corresponding countermeasures and to adopt follow-up actions" (People's Daily, May 12, 1996, cited in Ji Guoxing 2002: 30). What these corresponding countermeasures and follow-up actions are, and how they relate to freedom of navigation, are unclear.

- In its Law on EEZ and Continental Shelf promulgated on June 26, 1998, China affirms its adoption of the 200nm EEZ regime and the continental shelf regime, and states its continual implementation of certain historical rights (China Ocean
In the law China also states that, it has exclusive right of jurisdiction over artificial islands and installations in the EEZ and continental shelf, and while exercising its sovereign rights over living resources in the EEZ, can adopt necessary measures such as boarding, inspection, detaining, hot pursuit, arrest, and judicial procedures (People's Daily, June 29, 1998, Ji Guoxing 2002: 30). The historical rights, the exclusive right of jurisdiction, and the necessary measures referred to here are unclear and undefined.

- According to Wang Shuguang, Director of China's Maritime Affairs Bureau, “on the basis of the Law of Territorial Sea and Contiguous Zone and the Law on EEZ and Continental Shelf China plans to formulate a series of implementation regulations, such as, measures on the management of innocent passage in territorial waters, regulations on contiguous zone, regulations on protection of living resources in EEZ, regulations on natural resources in continental shelf, etc" (China Ocean News, September 8, 2000, cited in Ji Guoxing 2002: 30). These regulations would definitely relate to and affect the issue of freedom of navigation. What these regulations are and how they accord with international practice remains a question.

- Chinese naval activities in the East China Sea (such as passing through the Tsugaru Strait, and cruising in the Japanese EEZ) accord with the principle of freedom of navigation. These activities may not be necessarily notified beforehand. Since China practices in this way, China should not ask other countries for prior notification of their activities in China's EEZ.

- Due to its sensitivity over foreign warships, China requires prior notification of foreign warships for innocent passage. Thus, with the expansion of Chinese naval activities in offshore areas, China should also notify others beforehand in implementing innocent passage.
The ASEAN Regional Forum (ARF) and the Council for Security Cooperation in the Asia-Pacific (CSCAP)

The Association of Southeast Asian Nations (ASEAN) was established on 8 August 1967 in Bangkok by the five original Member Countries—Indonesia, Malaysia, Philippines, Singapore, and Thailand. Brunei Darussalam joined on 8 January 1984, Vietnam on 28 July 1995, Lao PDR and Myanmar on 23 July 1997, and Cambodia on 30 April 1999 (www.aseansec.org, see Table 5.1).

The 26th ASEAN Ministerial Meeting and the Post-Ministerial Conference for interaction between ASEAN and its Dialogue Partners, which were held in Singapore on 23-25 July 1993, agreed to establish the ASEAN Regional Forum (ARF). The inaugural meeting of the ARF was held in Bangkok on 25 July 1994. The objectives of the ARF are outlined in the First ARF Chairman's Statement as follows, namely:

1. to foster constructive dialogue and consultation on political and security issues of common interest and concern; and
2. to make significant contributions to efforts towards confidence-building and preventive diplomacy in the Asia-Pacific region.

The 27th ASEAN Ministerial Meeting in 1994 stated that,

"The ARF could become an effective consultative Asia-Pacific Forum for promoting open dialogue on political and security cooperation in the region. In this context, ASEAN should work with its ARF partners to bring about a more predictable and constructive pattern of relations in the Asia Pacific".
Table 6.1: ASEAN Member Countries and their Dates of Joining

<table>
<thead>
<tr>
<th>Country/ Countries</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Indonesia, Malaysia, Philippines, Singapore, Thailand</td>
<td>8 August 1967</td>
</tr>
<tr>
<td>Brunei Darussalam</td>
<td>8 January 1984</td>
</tr>
<tr>
<td>Vietnam</td>
<td>28 July 1995</td>
</tr>
<tr>
<td>Lao PDR, Myanmar</td>
<td>23 July 1997</td>
</tr>
<tr>
<td>Cambodia</td>
<td>30 April 1999</td>
</tr>
</tbody>
</table>

Source: www.aseansec.org
On the tenth year of the ARF, the ARF Ministers met in Phnom Penh on 18 June 2003 and declared that “despite the great diversity of its membership, the forum had attained a record of achievements that have contributed to the maintenance of peace, security and cooperation in the region”. They cited in particular:

- the usefulness of the ARF as a venue for multilateral and bilateral dialogue and consultations and the establishment of effective principles for dialogue and cooperation, featuring decision-making by consensus, non-interference, incremental progress and moving at a pace comfortable to all;
- the willingness among ARF participants to discuss a wide range of security issues in a multilateral setting;
- the mutual confidence gradually built by cooperative activities;
- the cultivation of habits of dialogue and consultation on political and security issues;
- the transparency promoted by such ARF measures as the exchange of information relating to defence policy and the publication of defence white papers; and
- the networking developed among national security, defence and military officials of ARF participants.

The criteria for participation in ARF, adopted in July 1996, are as follows:

1. Commitment:

All new participants, who will be sovereign states, must subscribe to, and work cooperatively to help achieve the ARF’s key goals. Prior to their admissions, all new participants should agree to abide by and respect fully the decisions and statements already made by the ARF. All ASEAN members are automatically participants of ARF.

2. Relevance:

A new participant should be admitted only if it can be demonstrated that it has an impact on the peace and security of the ‘geographical footprint’ of key ARF activities (i.e. Northeast and Southeast Asia as well as Oceania).
3. Gradual Expansion:

Efforts must be made to control the number of participants to a manageable level to ensure the effectiveness of the ARF.

4. Consultations:

All applications for participation should be submitted to the Chairman of the ARF, who will consult all the other ARF participants at the Senior Officials Meeting (SOM) and ascertain whether a consensus exists for the admission of the new participant. Actual decisions on participation will be approved by the Ministers.

Based on the ARF Concept Paper, which was adopted on 1 August 1995, the ARF is chaired by the Chairman of the ASEAN Standing Committee. ASEAN established the ARF Unit at the ASEAN Secretariat on 26 June 2004. Based on its Terms of Reference, the ARF Unit’s role and functions are as follows: (1) to support the enhance role of the ARF Chair, including interaction with other regional and international organizations, defence officials dialogue and Track II organizations; (2) to function as depository of ARF documents/papers; (3) to manage database/registry; and (4) to provide secretarial works and administrative support, including serving as the ARF’s institutional memory (www.aseanregionalforum.org).

Meanwhile, at a meeting in Seoul on 1-3 November 1992, representatives of some two dozen strategic studies centres from ten countries in the Asia Pacific region—Australia, Canada, Indonesia, Japan, South Korea, Malaysia, the Philippines, Singapore, Thailand and the USA—decided that there was a need to provide a more structured regional process of a non-governmental nature to contribute to the efforts toward regional confidence building and enhancing regional security through dialogue, consultation and

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1 At present there are 27 participant countries in the ARF. These are: Australia, Bangladesh, Brunei Darussalam, Cambodia, Canada, China, European Union, India, Indonesia, Japan, Democratic Peoples’ Republic of Korea, Republic of Korea, Laos, Malaysia, Myanmar, Mongolia, New Zealand, Pakistan, Papua New Guinea, Philippines, Russian Federation, Singapore, Thailand, Timor Leste, United States, Vietnam, and Sri Lanka (www.aseanregionalforum.org).
cooperation. Over the next eight months, the concept of a Council for Security Cooperation in the Asia Pacific (CSCAP) was widely canvassed among both government officials and regional security analysts, and agreement was reached to formally establish CSCAP at a meeting in Kuala Lumpur on 8 June 1993. The CSCAP Charter was adopted at a meeting of the Steering Committee Pro Tem in Lombok, Indonesia, on 16 December 1993. The Charter was subsequently amended in August 1995. CSCAP membership includes almost all the major countries in the Asia Pacific. At present it has twenty one full members of the council and one associate member committee. The full membership in the council is vested in country specific member committees. The individual memberships of CSCAP member committees in each country have also grown substantially. With member committees from all the major countries in the Asia Pacific, CSCAP is now looking forward to consolidating its links to the first track ASEAN Regional Forum (ARF). CSCAP activities are guided by a Steering Committee composed of representatives of the broad-based member committees that have been established in each of the member countries. The CSCAP Steering Committee meets twice a year - in June in Kuala Lumpur and in December in one of the other member countries. The Steering Committee is co-chaired by a member from an ASEAN Member Committee and a member from a non-ASEAN Member Committee. The Steering Committee is served by a Secretariat, which is currently located in Kuala Lumpur at the Institute of Strategic and International Studies (ISIS) Malaysia (www.cscap.org).

At the first official meeting of the CSCAP Steering Committee in Kuala Lumpur in June 1994, four Working Groups were established in the following areas: Confidence and Security Building Measures (CSBMs); Concepts of Cooperative and Comprehensive Security; Maritime Cooperation; and the North Pacific. A fifth on Transnational Crime was set up in December 1996, initially as a Study Group, until its viability was accepted by the Steering Group in December 1997. These Working Groups did substantial work in their respective areas of study, and issued no less than eight Memorandums for the

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2 The countries with full membership in the council, and a CSCAP-member committee, are: Australia, Brunei, Cambodia, Canada, China, Europe, India, Indonesia, Japan, DPR Korea, Korea, Malaysia, Mongolia, New Zealand, Papua New Guinea, Philippines, Russia, Singapore, Thailand, United States of America and Vietnam. The associate member is the Pacific Islands Forum Secretariat (www.cscap.org).
consideration of the ASEAN Regional Forum (ARF) and regional governments. From these eight memorandums four were on maritime cooperation. Some of their work, such as in the formulation of principles of preventive diplomacy, has been much appreciated by the ARF. Papers presented at Working Group meetings have also been published in the form of books to add to the general reservoir of knowledge on the relevant security matters (ibid.).

In December 2004, a restructure of the Working Groups was undertaken to better reflect the changes taking place in the strategic environment, resulting in the setting-up of a new set of Study Groups. This included Study Groups on Capacity Building for Maritime Security Cooperation in the Asia-Pacific, and on Facilitating Maritime Security Cooperation in the Asia-Pacific. The latter was subdivided into Safety and Security in the Malacca and Singapore Straits, and a Legal Experts Group. The Study Group on Facilitating Maritime Security Cooperation in the Asia-Pacific produced a further two memoranda. The tenure of these new Study Groups was for a period of two years. Currently there are two Study Groups dedicated to maritime cooperation, one on Naval Enhancement in the Asia-Pacific, and another on Safety and Security of Off-shore Oil and Gas Installations (ibid.).

CSCAP Memorandums on maritime cooperation are the following:

- Memorandum No. 4- Guidelines for Regional Maritime Cooperation
- Memorandum No. 5- Cooperation for Law and Order at Sea
- Memorandum No. 6- The Practice of the Law of the Sea in the Asia Pacific
- Memorandum No. 8- The Weakest Link? Seaborne Trade and the Maritime Regime in the Asia Pacific
- Memorandum No. 12- Maritime Knowledge and Awareness: Basic Foundations of Maritime Security
- Memorandum No. 13- Guidelines for Maritime Cooperation in Enclosed and Semi-Enclosed Seas and Similar Sea Areas of the Asia Pacific (ibid.).
Memorandum No. 4, which was also the first CSCAP memorandum on maritime cooperation, aspired to the status of a non-binding international legal instrument in respect of maritime relations between states in the region, similar to the 1992 Rio Declaration on Environment and Development in the field of international environment. Memorandum No. 4 Paragraph 1 defined the following terms according to UNCLOS: archipelagic waters, continental shelf, enclosed or semi-enclosed sea, exclusive economic zone, high seas, marine environment, pollutions of the marine environment, and territorial sea. In addition it also defined the terms, sea lines of communication and surveillance. In Paragraph 2, parties to Memorandum No. 4 recognized the sovereignty and responsibility of other parties in respect of their internal waters, territorial seas, and archipelagic waters; the sovereign rights and duties of other parties with regard to exclusive economic zones and continental shelves; and the rights and responsibilities of other states as provided by UNCLOS, other conventions, treaty obligations and general international. After dwelling on maritime cooperation in general from Paragraphs 3-6, it focuses on the following specific areas of maritime cooperation: sea lines of communication (Paragraphs 7-9); humanitarian assistance (Paragraph 10); search and rescue (Paragraphs 11 and 12); maritime safety (Paragraphs 13-15); law and order at sea (Paragraphs 16 and 17); naval cooperation (Paragraphs 18 and 19); maritime surveillance (Paragraphs 20 and 21); protection and preservation of the marine environment (Paragraphs 22 and 23); marine resources (Paragraphs 24 and 25); marine scientific research (Paragraphs 26 and 27); technical cooperation and capacity building (Paragraph 28); and training and education (Paragraph 29). Memorandum No. 4 also states that some CSCAP members have reservations about Paragraphs 18-19 on naval cooperation, Paragraph 20 on maritime surveillance, and Paragraph 30 (non-prejudicial) (ibid.).

CSCAP-China participated in the CSCAP consultation process on maritime cooperation for the first time in June 1997 at the third meeting of the Maritime Cooperation Working Group (Sam Batmean and Hasim Djalal 1998b: 179). The theme of the meeting was regional oceans management and security, and one of its objectives was to share national and sub-regional perspectives of cooperative oceans and marine management (Sam Bateman and Stephen Bates 1998a). At this meeting China’s marine
managerial system, and marine development strategy and policy, was outlined by Xu Guangjian (1998a: 13-18). China’s marine managerial system was characterized by integration of national management with local management and of comprehensive management with sectoral management, and by the important role played by sectoral management. Marine management in China was concerned with a wide range of issues in marine development and conservation. Its major areas of work are ecology and environment, resources (fisheries and offshore hydro-carbons), traffic, cracking down on crimes at sea, and surveillance. The general objectives of China’s marine development strategy and policy are to:

- prevent degradation of, and restore and improve the quality of, the marine environment, and to build well-balanced marine ecosystems; and
- establish a rational marine development system that will continually strive for the optimal marine industry structure, and that will accelerate the sustainable development of the marine economy.

In addition to the above, marine management policy in China would also focus on developing marine high and/or new technology. China will seek to achieve these objectives through enhancing the marine legal system, improving the system of institutional mechanisms for marine management, and promoting cooperation with other countries both regionally and globally. Xu pointed out that China has consistently advocated that China and the other countries in the region should enhance communication and understanding among themselves, starting with some practical programmes that are based on shared interests in the joint development of the resources of the areas of sea under dispute, and mentioned the agreement on joint research and cooperation in marine resources and environmental protection between China and the Philippines reached in 1996 as an example.

The fourth meeting of the Maritime Cooperation Working Group was held in November 1997. It examined regional security concerns with shipping and seaborne trade, and the potential for security cooperation and dialogue. At this meeting Xu Guangjian (1998b: 68-70) argued that the success of China’s programme of
modernization will depend on the maintenance over the longer term of a favourable international environment, and that for this reason China seeks to preserve international peace and stability, and promote the development of friendly relations in region, so as to maintain maritime shipping and traffic safety, and the smooth flow of traffic through international sea lanes. Xu also outlined the national laws regarding maritime safety and marine pollution prevention enacted by China, as well as the international conventions relating to maritime safety and pollution prevention accepted or ratified by China. At this meeting CSCAP-China agreed to the publication of CSCAP Memorandum No. 4 on the condition that a note is included to the effect that not all CSCAP member committees support all the guidelines. After being drafted, discussed and redrafted through the third and fourth meetings of the Maritime Cooperation Working Group, Memorandum No. 4 was published in time for distribution at the CSCAP Steering Committee meeting held in Tokyo in December 1997. During the discussions at this meeting it was also noted that China and India can both be described as energy deficient countries and that growing energy dependence is a fact of life for both countries, underpinning their interest in energy imports, and in investment in shipping and ports. It was also recognized that China and India attach great importance to the security of shipping and the safety of navigation, and are prepared to cooperate to maintain stability at sea in the region (Sam Bateman 1998c: 140, 142).

At a joint meeting of the CSCAP Working Groups on Maritime Cooperation and Transnational Crime on the theme of Maritime Crime, held in November 1999, Zhiguo Gao gave an idea of the China’s attitude towards regional cooperation. China did not favour cooperation in the military sphere, and thought that cooperation in other spheres should be based on respect for state sovereignty and non-intervention, and an incremental approach to common problems based on consensus. Zhiguo Gao had also indicated a preference for bilateralism over multilateralism (Scott Davidson 1999: 3).

The first meeting of the CSCAP Study Group on Facilitating Maritime Cooperation in the Asia-Pacific was held in December 2006. According to the report on this meeting its theme was, ‘The Roles of Maritime Security Forces’. The fourth session of this meeting was on national arrangements for the provision of maritime security. In
this session it was noted that China’s case there were many agencies with maritime security responsibilities, with each enforcing the law according to their responsibilities. With the development of the international situation and the emergence of non-traditional security threats, the Navy is playing a more important role in non-traditional security areas such as combating terrorism, piracy, smuggling, drug-trafficking, and search and rescue. The National Border and Coastal Defence Commission coordinates maritime law enforcement agencies, such as public security, customs inspection and quarantine, fishery administration, marine safety administration, marine environment protection and marine surveillance. The provincial governments have jurisdiction over the territorial sea, while the central government has control over the EEZ (www.cscap.org). The second meeting of the same Study Group was held in April 2008. According to the report on this meeting its objective was to develop principles/guidelines for maritime cooperation in enclosed and semi-enclosed seas. This would include issues of functional cooperation and joint management arrangements for particular functions. Such cooperation was essential in order to arrive at an effective management regime, or to reduce the risks of conflict and confrontation over disputed areas. With regard to cooperative arrangements in the East China Sea, a CSCAP-China representative noted that maritime security cooperation was not well developed and that ‘hot lines’ (dedicated and secure direct communication links) between the relevant national agencies were not in place. With regard to the South China Sea a CSCAP-China representative provided an overview of cooperative arrangement in which China was participating. These included much activity between China and Vietnam, the China-ASEAN Joint Working Group on the implementation of the Declaration on Conduct of Parties in the South China Sea, arrangements between China and the Philippines, and the Tripartite Agreement for Joint Marine Seismic Undertaking between China, the Philippines and Vietnam. It was acknowledged that there was still a long way to go with substantial cooperation in the South China Sea (ibid.).
Regional Measures for Combating Piracy

Sea piracy has emerged as a growing and significant threat to maritime security in the Asia Pacific. Estimates of losses to piracy and maritime fraud have run as high as US$ 16 billion a year (USA Today, May 1, 1999, cited in Ji Guoxing 2002: 15). Given that piracy is a typical transnational security issue, cooperative measures should be worked out among regional countries to cope with it. Piracy thrives in regions where there are numerous national jurisdictions, little or ineffective maritime law enforcement, plenty of shipping and lots of places to hide. There are vast sections of Asia that fit this description well. The massive increase in regional commercial maritime traffic has provided a ready supply of potential targets, and the expansive archipelagoes in the region has made monitoring very difficult. Piracy ‘hot spots’ are: the straits of Malacca and Sunda; offshore Vietnam and Cambodia; the Hong Kong-Luzon-Hainan (HLH) triangle; the area around the Philippines; the Indonesian archipelagic waters; the area north of Taiwan; and the Yellow Sea areas. Changes in regional economics have driven piracy from its mid-1990s hotbed in the HLH triangle further south into and around the Malacca Strait. Piracy and armed robbery in Southeast Asia has generally accounted for about 60% of the total reported piracy in the world. According to the International Maritime Bureau (IMB), the number of acts of piracy between 1998 and 1999 jumped by 47%. The biggest increases were in the Malacca Strait (from 6 to 37) and the South China Sea (from 94 to 136). In the first three months of 2000, there were 17 attacks in the Malacca Strait and 46 in the South China Sea (Foreign Report, September 7, 2000, cited in Ji Guoxing 2002: 15). The actual number may have been several times higher. Many incidents are not reported because ship owners fear investigation entailing costly delays. According to a IMB report pirate attacks in 2000 rose by 57% to 469 incidents worldwide, and more than two thirds of such attacks occurred in Asian waters, of which 75 were in the Malacca Strait. In Indonesian waters, the number of attacks jumped from 18 in 1997 to 59 in 1998, 113 in 1999, and 199 in 2000. In the first half of 1999, nearly half the world’s piracy incidents occurred in Indonesian waters and the Indonesian part of the Singapore Strait (Journal of Commerce, December 29, 1999, cited in Ji Guoxing 2002: 16). In the first three months of 2000, one-third of the world’s piracy incidents
occurred in Indonesia’s adjacent waters. Recurring political unrest, economic recession and the lack of resources for combating piracy were some of the reasons for this alarming rise of piracy in waters surrounding Indonesia (Ji Guoxing 2002: 15-16). The geographic features of the East China Sea and South China Sea are very complex. The complicated topography and the vast size may enable pirates to commit their crimes more frequently than in other regions of the world. Effective law enforcement is extremely difficult in the South China Sea because of its vastness (more than 200 nm wide) and due to the fact that it is dotted with numerous uninhabited islands to which pirates can retreat (Keyuan Zou 2008: 160).

There have been three common strategies in pirate attacks. The first approach involves simple theft at sea, a second targets the cargo in the ship’s hold, and a third is to steal the ship itself. The third approach is called ‘phantom ship attack’, which involves a number of serious associated crimes, including hijacking and the fraudulent registration of vessels. Highly organised and sophisticated criminal syndicates are involved in the theft of vessels and the subsequent disposal of cargo. Attacks can be planned in one nation and carried out by the nationals of a second country in the waters of a third, and the proceeds can then be disposed of rapidly in a fourth (Ji Guoxing 2002: 16). Reports indicated that a highly organized and well-financed criminal syndicate, with connections in Hong Kong, Indonesia, and China had access to excellent shipping intelligence (Hollingsbee 1999, cited in Ji Guoxing 2002: 16).

There is also a strong link between piracy and maritime terrorism. As early as December 1985 the UN General Assembly called upon the IMO “to study the problem of terrorism aboard or against ships with a view to making recommendations on appropriate measures” (IMO 1988, cited in Keyuan Zou 2008: 159). Since the September 11, 2001 piracy has been firmly connected to maritime terrorism, though there is no universally accepted definition of terrorism. The Bush Administration tried to convince the world that terrorism was just as immoral as piracy, the slave trade, and genocide (Dow Jones International News, May 8, 2002, cited in Keyuan 2008: 159). In 2002 the IMB issued a warning in its annual piracy report on the vulnerability of shipping to terrorist attacks.
Attacks like the one in the Gulf of Aden in October 2001, when the French tanker Limburg was rammed by a boat packed with explosives, are difficult to prevent. In March 2003 two Chinese fishing vessels, operating in the sea off Sri Lanka, were attacked suddenly by unidentified armed vessels and sank. Of the 23 crew members, only eight were rescued. Such blatant armed attack is more serious than piracy and comes close to a terrorist attack (Keyuan Zou 2008: 159).

LOSC Article 101 defines ‘piracy’ in the following manner:

“Piracy consists of any of the following acts: (a) any illegal acts of violence or detention, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed to: (i) on the high sea, against another ship or aircraft; (ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State; (b) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft; (c) any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b)”.

First, the link between piracy and ‘private ends’ established in LOSC excludes terrorist acts at sea for political ends. On 3 October 1985 a group of Palestinian guerillas hijacked the Italian cruise ship Achille Lauro while it was in Egyptian territorial waters. The hijackers demanded the release of 50 Palestinians held in Israel in return for the release of the passengers. They ordered the ship to sail to Syria, which refused them port entry. The hijackers then on 8 October killed an American passenger. Several days later the four hijackers gave themselves up to the Egyptian authorities. On 11 October an Egyptian civilian aircraft was intercepted by United States military aircraft over the Mediterranean Sea and instructed to land at an air base in Sicily. Four Palestinians on board were detained by the Italian authorities and subsequently indicted and convicted in Genoa of offences related to the hijacking of the ship and the death of the American passenger. This incident pointed towards the need of the world community for the Convention on Suppression of Unlawful Acts against the Safety of Maritime Navigation (the SUA Convention), which was concluded in 1988. Secondly, according to the LOSC definition, for an act to qualify as piracy it has to be a criminal act committed by the passengers or the crew of one ship against another ship, or persons or property onboard. This two-
vessel requirement creates a problem regarding ‘internal seizure’ qualifying as piracy. Thirdly, the LOSC definition also stipulates that for an act to qualify as piracy it must be committed on or above the high seas, and this excludes acts committed within territorial waters. Therefore the IMO has created the category ‘armed robbery against ships’ for those acts committed in internal and territorial waters (Olsen 1999: 2, cited in Keyuan Zou 2008: 160). This category of ‘armed robbery against ships’ however does not take into account other violent acts such as murder, assault and rape that such incidents may entail. For most countries in East Asia piracy may be subject to punishment in the name of robbery, murder, larceny, or kidnapping, according to their criminal laws. In this context the international definition does not carry significant meaning when piratical activities occur in the waters within national jurisdiction and are subject to the domestic criminal law of a coastal state. However, at the regional level, particularly with a view towards regional cooperation, the definition under international law is meaningful and consists of the legal concept of a crackdown on piracy. With the legal developments in the international arena the clarification provided by the IMO has been gradually accepted world-wide, as manifested in numerous international documents, including those UN documents relating to the LOSC. The LOSC is the major international convention for the suppression of piracy at the global level. China signed the LOSC in 1982 and ratified it in 1996. China has also signed and ratified the 1988 SUA Convention and its Protocol against maritime terrorism. In addition China has participated in activities relating to the piracy issue sponsored by relevant international organizations such as the IMO. International law has established an obligation for states to cooperate in the suppression of piracy and grants states certain rights to seize pirate ships and criminals. Article 100 of the LOSC provides that “all States shall cooperate to the fullest possible extent in the repression of piracy on the high seas or in any other place outside the jurisdiction of any State”. LOSC Article 105 further provides that,

“on the high seas, or in any other place outside the jurisdiction of any State, every State may seize a pirate ship or aircraft, or a ship or aircraft taken by piracy and under the control of pirates, and arrest the persons and seize the property on board. The courts of the State which carried out the seizure may decide upon penalties to be imposed, and may also determine the action to be taken with
regard to the ships, aircraft or property, subject to the rights of third parties acting in good faith”.

Only governmentally authorized ships have the power to seize a pirate ship or aircraft on the high seas. These LOSC provisions on piracy are also applicable to the EEZ, thought it is within national jurisdiction. The SUA Convention applies to all maritime terrorist acts, whether private or political. Thus if terrorist acts are not punished by the LOSC they may still be so under the terms of the SUA Convention. The other relevant legal instrument is the 1988 Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (the SUA Protocol), which was adopted at the same time as the SUA Convention and contains similar provisions. It is especially relevant to the China Seas because the seas are rich in oil and gas and the coastal states have already launched exploitation projects, either by themselves or jointly with foreign oil companies. The offshore oil and gas installations have been identified as potential targets of piracy (Sam Bateman and Doug MacKinnon 1998d: 5, cited in Keyuan Zou 2008: 161). Should any terrorist or piratical attack occur against oil platforms or artificial islands located in the China Seas, it could be suppressed under this protocol. According to the report on the 86th session of the IMO’s Legal Committee by March 2003 the SUA Convention had been ratified by 87 states, representing 75.74 % of world merchant shipping tonnage, and the SUA Protocol had been ratified by 79 states, representing 75.41 percent of world merchant shipping tonnage. As of September 2006 nine countries in East Asia had ratified the SUA Convention (Keyuan Zou 2008: 159-161).

In the Asian Pacific region there are several problems that need to be solved in order to combat piracy effectively. One problem is the lack of national law on acts of piracy and maritime violence. Even when suspects are caught, many countries lack the legislation to prosecute them. A group of leading maritime lawyers met in Singapore in February 2001 and proposed a model national anti-piracy law to address the legal loopholes that have allowed pirates to escape without facing trial. A draft of the model law was to be presented to the IMB for endorsement. Another problem is the sphere of different jurisdiction over waters. The restrictions on cross-jurisdictional rights written into most regional countries’ maritime agreements have undermined the regional fight
against piracy. Given the sensitivities in the region regarding maritime jurisdiction and sovereignty, there has been a conspicuous absence of cross-jurisdictional arrangements between the region’s coastal states. In a number of instances, pirates have used this legal gap to their advantage, deliberately fleeing to territorial/archipelago waters, or to areas of contested jurisdiction, where it is most risky for naval vessels to operate unilaterally. Many countries in the region have been unwilling to prosecute offenders for acts of piracy committed beyond their territorial waters, and have preferred to deport them instead (Ji Guoxing 2002: 16-17).

The upsurge of piracy in the Asian Pacific region has driven regional countries to cooperate. The anti-piracy mission has started to climb up the list of priorities for the region’s armed forces. Several states have entered into bilateral and multilateral agreements to exchange intelligence information, and allow joint anti-piracy patrols along (though not within) their common maritime frontiers. New patrol policy has been implemented by Singapore, Malaysia and Indonesia since late 1999. In June 2000, the Malaysian Navy announced its intention to increase round-the-clock patrols in the Malacca Strait in partnership with the Indonesian and Singaporean authorities. Since early 2000, Japan has begun taking an active role in promoting closer cooperation, including joint coast guard patrols, after the Japanese-owned Alondra Rainbow was seized off Indonesia. Some Asian countries occupied by Japan in the 1930s and 1940s have become more willing to accept a more assertive role by Japan. Singapore, for example, announced in May 2000 that “it will allow Japanese forces to use its military bases” (The Vancouver Sun, August 17, 2000b, cited in Ji Guoxing 2002: 18). China, due to its worries over the revival of Japanese militarism, has some reservations regarding this active role of Japan. Japan has been trying for quite some time to free itself of the opprobrium it still carries for its conquests and abuses of the 1930s and 1940s. But it has been hard to find legitimate uses for its considerable military power which do not raise old fears. The piracy threat has provided that opportunity (The Vancouver Sun, March 04, 2000a, cited in Ji Guoxing 2002: 18). As Japan has a vital interest in protecting the SLOC through which the bulk of its imports and exports pass through, the forward deployment of Japanese military assets cannot be discounted in the near future (Bilveer
Singh 1998: 57, cited in Ji Guoxing 2002: 18). Multinational anti-piracy exercises are gradually being undertaken. The Japanese coast guard organized one test on November 9, 2000 with Indian vessels off the coast of India, and a similar one with Malaysia on November 15, 2000. Malaysia called a meeting in Kuala Lumpur on November 13-15, 2000, to discuss further coordination among maritime organizations of 15 Asian countries. Singapore, Japan, South Korea and the US conducted a submarine rescue exercise in Asian waters in late 2000. China is willing to play its part in regional combat against piracy, and is also willing to participate in multilateral efforts in the fight against piracy. As to US-led multinational exercises, China at present is afraid that it might be constrained by the US after participation. Besides, as China is unfamiliar with these anti-piracy exercises, it would take some time for China to make its decision for participation (Ji Guoxing 2002: 17-18).

There have been accusations that, individuals or groups from China’s military, or other official services, were involved in attacks on shipping. The accusations were based on a series of hijackings by pirates wearing Chinese law enforcement uniforms. According to shipping industry sources, “South China’s small harbours have been a popular destination for gangs wishing to offload their hijacked cargoes” (Calgary Herald, November 27, 1999, cited in Ji Guoxing: 18). There have also been accusations that China has been soft and lax toward piracy. They have taken the hijacking by 12 Indonesians of a Malaysian-flagged tanker, Petro Ranger, on October 29, 1998 as an example, alleging that China freed and deported the pirates it caught. Under pressure from international maritime authorities and with a domestic need to improve law-enforcement, China has taken actions to crack down on pirates and on corrupt officials in the southern provinces since early 1999. China’s Public Security Ministry has ordered local police forces in dozens of cities to form anti-piracy units and to work more closely with courts, customs, port authorities and harbour masters, and Chinese courts have dealt harshly with the perpetrators. In March 1999, a Chinese court sentenced 14 men to terms ranging from death to prison for their involvement in an attack on a Taiwanese ship. The gang members were all Myanmar nationals. The world’s shipping industry has welcomed orders from Beijing for southern China’s notoriously corrupt police, customs and military
to stamp out the rampant piracy off the country's southern coast (ibid., cited in Ji Guoxing 2002: 19). The Chinese crackdown has begun to quiet earlier accusations that Beijing was soft on crime at sea or even colluding with the perpetrators (*The Boston Globe*, September 4, 2000, cited in Ji Guoxing 2002: 19). In December 1999, China tried and convicted 38 persons, sentencing 13 of them (one Indonesian, and 12 Chinese) to death. One particularly brutal case was the hijacking of the Hong Kong-owned freighter Chang Sheng carrying coal sediments on November 16, 1998 as it sailed down the coast from Shanghai. The pirates, disguised as public security officers, intercepted the Chang Sheng, ransacked the ship, and killed all 23 crew members on board. Following this incident a Vice President of the Chinese Supreme People’s Court stated that, "the judicial departments of China will keep on handing down harsh penalties on this kind of crime" (*China Daily*, December 13, 1999, cited in Ji Guoxing 2002: 19; *China Daily*, January 29, 2000, cited in Ji Guoxing 2002: 19). The trial was seen as an important message from China, both to pirates and to the rest of the world, that China isn’t going to tolerate piracy (*Journal of Commerce*, December 29, 1999, cited in Ji Guoxing 2002: 19). Captain Pottengal Mukundan, IMB director, praised Chinese authorities for sending "a clear signal to these gangs that they shouldn’t bring their cargo to China" (*The Boston Globe*, September 4, 2000, cited in Ji Guoxing 2002: 19). However, many more measures remained to be taken in China’s domestic effort to combat piracy. As of 2002 laws in China had no provisions dealing with piracy crimes, and the term ‘sea piracy’ did not even exist in the laws, creating legal loopholes in particular cases (Ji Guoxing 2002: 18-19).

At a bilateral level China and the Philippines have discussed the possibilities of their cooperation in combating piracy and drug-trafficking in the South China Sea, including the possible establishment of special joint patrol teams (*Lianhe Zaobao*, July 15, 1999, cited in Keyuan Zou 2008: 162). In October 2004, China’s Maritime Safety Administration and the Philippine Coast Guard held a joint search and rescue (SAR) exercise to strengthen capabilities in the region and make the sea safer for the public and ships (*China Daily*, October 22, 2004, cited in Keyuan Zou 2008: 162). In the East China Sea, China and Japan have signed an agreement on police cooperation between the
Ministry of Public Security of China and the Police Bureau of Japan, which would be helpful in the taking of common measures against piracy (Yu Qing 1999, cited in Keyuan Zou 2008: 162). In the Indian Ocean China had concluded an agreement with India to combat piracy and arms smuggling as early as 1996. During the Indian Prime Minister’s visit to China in 2003 such maritime cooperation was further enhanced by an agreement on mutual naval visits and joint maritime maneuvers (Hu Shisheng 2004: 314).

China has also undertaken suppression of piracy under regional cooperative frameworks for managing non-traditional security issues. In April 1997 China initiated the ‘concept of new security’ which contains the core elements of mutual trust, mutual benefit, equality, and coordination. In May 2002 China submitted to the ASEAN Regional Forum (ARF) Senior Officials Conference the document concerning China’s stand in strengthening cooperation in non-traditional security fields. In November 2002 the Joint Declaration of ASEAN and China on Cooperation in the Field of Non-Traditional Security Issues (the Joint Declaration) was adopted, which initiated full cooperation between ASEAN and China in the field of non-traditional security issues and listed the priority and form of cooperation. The priorities included “combating trafficking in illegal drugs, people smuggling, including trafficking in women and children, sea piracy, terrorism, arms-smuggling, money-laundering, international economic crime, and cyber crime”. With regard to bilateral and multilateral cooperation, it aims to, “(a) strengthen information exchange, (b) strengthen personnel exchange and training and capacity building, (c) strengthen practical cooperation on non-traditional security issues, (d) strengthen joint research on non-traditional security issues, and (e) explore other areas and modalities of cooperation”. In addition the 2002 Declaration on the Conduct of Parties in the South China Sea also mentions the suppression of piracy and armed robbery at sea (Keyuan Zou 2008: 161-162).

In April 2000 the heads of coastguard agencies of sixteen countries and one ‘region’ attended the first in a regional conference series held in Tokyo. This conference

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3 The 16 countries are, the ten ASEAN countries, India, Sri Lanka, Bangladesh, South Korea, China and Japan, and the ‘region’ is Hong Kong (Keyuan Zou 2008: 162).
produced three documents. First, in a statement, ‘Asia Anti-Piracy Challenge 2000’, the coastguard authorities expressed their intention to reinforce mutual cooperation in combating piracy and armed robbery against ships. Secondly, the ‘Tokyo Appeal’ called for the establishment of contact points for information exchange among relevant authorities as well as for the drafting of national anti-piracy action plans. Thirdly, it produced a ‘Model Action Plan’ stating specific counter-measures based on the Tokyo Appeal (Ministry of Foreign Affairs of Japan 2001, cited in Keyuan Zou 2008: 162). At the ASEAN+3 meeting in 2001 Prime Minister Junichiro Koizumi of Japan put forward the proposal to commence negotiations for developing a legal framework in the region, the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP) (Akima Umezawa 2003: 2). The tenth ASEAN Regional Forum held in Phnom Penh, Cambodia, in June 2003 issued the ARF Statement on Cooperation against Piracy and Other Threats to Maritime Security. It acknowledged that piracy and armed robbery against ships has been a significant problem in the Asia-Pacific region and that effective responses require “regional maritime security strategies and multilateral cooperation in their implementation”. It noted that the ARF countries express their commitment to becoming parties to the SUA Convention if they have not yet done so. In addition to undertaking necessary actions such as exchange of information, consideration and discussion of IMB proposals on prescribed traffic lanes for large supertankers with coastguard or naval escort, provision of technical assistance and capacity building-infrastructure for countries that need help, they committed to “endorse the ongoing efforts to establish a legal framework for regional cooperation to combat piracy and armed robberies against ships” (ASEAN 2003, cited in Keyuan Zou 2008: 162-163). After several rounds of negotiations ReCAAP was finalized on 11 November 2004 in Tokyo by the 16 countries mentioned above. ReCAAP provides for regional cooperation through the establishment of an Information Sharing Centre (ISC) in Singapore, capacity building, joint exercises, extradition, mutual legal assistance and encouraging ships to take protective measures. ReCAAP has been welcomed by regional and international organizations. The ARF Intersessional Support Group Meeting in October 2005 noted the importance of agreements such as ReCAAP in enhancing maritime security in the region. A meeting on the Straits of Malacca and Singapore hosted by Indonesia and the IMO in
September 2005 also noted the significance of ReCAAP. The Revolution on the Oceans and the Law of the Sea, a document approved by the 60th UN General Assembly Plenary, also welcomed the progress in regional cooperation through ReCAAP and urged states to give urgent attention to concluding, adopting and implementing cooperation at the regional level in high-risk areas (Roy 2006: 24). The government of Singapore was the depository of the agreement, and it opened for signature on February 28, 2005. The agreement came into effect on September 04, 2006, after eleven of the sixteen countries had deposited their instruments of ratification with the government of Singapore (People’s Daily, June 21, 2006a). At the time China, Malaysia and Indonesia had not ratified ReCAAP. Malaysia and Indonesia had given verbal assurances that they will eventually do so, although Indonesia had qualified this with the need to remain vigilant about any possible impact on Indonesian sovereignty and in protecting the Indonesian national interest. It was in China interest to join ReCAAP because it would reinforce China’s status as a ‘user state’ in the Malacca Straits (Christoffersen 2008: 141).

The ReCAAP Information Sharing Centre (ReCAAP ISC) was officially launched on 29 November 2006 in Singapore. The ReCAAP ISC is overseen by a Governing Council which comprises one representative from each Contracting Party to ReCAAP. The roles of the ReCAAP ISC include exchanging information among Contracting Parties on incidents of piracy and armed robbery, facilitating operational cooperation among Contracting Parties, analysing the patterns and trends of piracy and armed robbery and supporting the capacity building efforts of Contracting Parties. Each ReCAAP Contracting Party designates a Focal Point responsible for its communications with the ReCAAP ISC. The role of the ReCAAP Focal Point is to facilitate smooth and effective information sharing with the other Focal Points and with the ReCAAP ISC. The organizational structure of the ReCAAP ISC consists of an executive director, deputy director, and four departments. The four departments are: research, operations,

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4 The 11 countries that had deposited their instrument of ratification with the government of Singapore before the agreement came into effect were: Cambodia, Japan, Laos, Singapore, Thailand, the Philippines, Myanmar, the Republic of Korea, Vietnam, India and Sri Lanka (People’s Daily, June 21, 2006a). By the time the agreement had come into effect, apart from China, Malaysia and Indonesia, Brunei Darussalam and Bangladesh had also not ratified the agreement.
programmes and administration. The Operating Principles of the ReCAAP ISC are: respect for sovereignty, effectiveness and transparency. The ReCAAP Contracting Parties advocate the International Maritime Organisation's MSC/Circ.623/Rev.3 (Guidance to Ship Owners and Ship Operators, Shipmasters and Crews on Preventing and Suppressing Acts of Piracy and Armed Robbery Against Ships). Sharing information on the incidence of piracy and armed robbery can help improve operational cooperation when responding to incidents. The ReCAAP ISC facilitates exchange of information among the ReCAAP Focal Points through a secure web-based Information Network system (IFN). Through this network, the ReCAAP Focal Points are linked to each other as well as the ReCAAP ISC on a 24/7 basis, and are able to facilitate appropriate responses to incidents. In the event of an incident of piracy or armed robbery, ships are strongly encouraged to report the incident to the nearest coastal state as advocated in the MSC/Circ.623/Rev.3. The agency receiving the report will manage the incident in accordance to its national policies and response procedures, and provide assistance to the victim ship where possible. The agency will, in turn, inform their ReCAAP Focal Point which will submit an incident report to the ReCAAP ISC as well as its neighbouring Focal Points. Where possible, the ReCAAP Focal Points shall conduct or facilitate post-incident investigation, and manage incidents within their national jurisdiction. The ReCAAP ISC gathers the information from these incident reports for analysis purposes. It also undertakes initiatives that enhance the ability of Contracting Parties to respond to incidents of piracy and armed robbery in accordance with the International Maritime Organisation's MSC/Circ.622/Rev.1 (Recommendations to Governments for Preventing and Suppressing Piracy and Armed Robbery Against Ships). These initiatives include exercises, training workshops and technical assistance programmes that share best practices. The ReCAAP ISC adopts the United Nations Convention on the Law of the Sea (UNCLOS) definition of piracy and the International Maritime Organisation's Code of Practice for the Investigation of Armed Robbery against Ships. The ReCAAP ISC collates and analyses the information concerning piracy and armed robbery against ships submitted by the ReCAAP Focal Points and other relevant organisations. This information is published in the form of monthly, quarterly and annual reports which identify patterns and trends, highlight good practices and recommend preventive
measures. The ReCAAP ISC and ReCAAP Focal Points also provide regular alerts on incidents to the maritime community. It also categorizes reported incidents of piracy and armed robbery based on their level of significance in the following manner:

- Category 1- Very Significant
- Category 2- Moderately Significant
- Category 3- Less Significant

This categorization system provides a qualitative dimension in differentiating the nature of reported incidents. In this regard, it complements existing approaches of analyzing (and reporting) incidents of piracy and armed robbery. The ReCAAP ISC adopts an inclusive and collaborative approach towards governmental, intergovernmental, international, and non-governmental organizations as well as research institutes, that are not members of the ReCAAP, but who’s activities are consistent with the purposes, functions and spirit of the ReCAPP ISC, and are interested in cooperating with ReCAPP ISC in sharing information or capacity building programmes. To this end, it grants the status of partner organizations to such organizations on mutually beneficial terms and conditions (www.recaap.org).

In July 2007 the Re-CAAP-ISC announced that in the first half of 2007 43 incidents of piracy and armed robbery were reported, which was a sharp decline from 79 incidents reported in the first half of 2006, and 75 incidents reported in the first half of 2005 (People’s Daily, July 06, 2007). In February 2008 it announced that for the year 2007 a 100 incidents were reported, representing a 26% decline when compared to the number reported for the year 2006. Out of the 100 incidents 77 were actual, 23 were attempted. Most of the decline had taken place in Moderately Significant incidents, which had come down by 63%. The number of Less Significant incidents remained more or less constant from 2006 to 2007. In terms of the geographical distribution of the decline, less incidents were reported in the port of Chittagong, Bangladesh, and the Makassar Strait, Indonesia. Only 6 attacks were reported in the Makassar Strait for 2007, a sharp decline.
from an annual average of 23 incidents reported there between 2003 and 2005 (People’s Daily, February 28, 2008).

The ReCAAP was signed on behalf of the Chinese government by the Chinese Charge D’affairs for Singapore, Huang Yong, in October 2006 (People’s Daily, October 28, 2006b). In February 2008 the ReCAAP ISC announced that it will receive a contribution of US$ 50,000 from China (People’s Daily 2008, op cit).

The Regional Maritime Security Initiative (RMSI)

The Regional Maritime Security Initiative (RMSI) was formally put forward in March 2004 by Admiral Thomas B. Fargo, Navy Commander of the US Pacific Command, in his testimony regarding US Pacific Command posture, before the House Armed Services Committee of the US House of Representatives. According to Fargo (2004, cited in Keyuan Zou 2008: 163) the RMSI was designed to implement the “President’s Proliferation Security Initiative (PSI) and the State Department’s Malacca Strait Initiative”, and it detailed plans “to build and synchronize interagency and international capacity to fight threats that use the maritime space to facilitate their illicit activity”. Fargo had emphasized that in order to conduct effective interdiction in the sea it is necessary to use high-speed vessels equipped with Special Operations Forces or Marines. PSI was an attempt to establish collective measures among participating countries to prevent the proliferation of weapons of mass destruction. As of late 2004 PSI was administered by a ‘core group’ of countries. To implement the PSI the United States signed non-proliferation ship-boarding agreements with Liberia on 11 February 2004, Panama on 12 May 2004, and Marshall Islands on 13 August 2004. According to such agreements, if a ship with either party’s flag is suspected of carrying proliferation-related cargo, either party can request the other to confirm the nationality of the ship and, if necessary, to authorize the boarding, search and possible detention, of the ship and its

5 The ‘core group’ consisted of the following 15 countries: Japan, the US, the UK, Italy, the Netherlands, Australia, France, Germany, Spain, Portugal, Poland, Singapore, Canada, Norway and Russia (Keyuan Zou 2008: Note 74).
cargo. These agreements, together with PSI partners, covered more than 50% of world commercial shipping fleet dead weight tonnage, which became subject to rapid action consent procedures for boarding, search, and seizure, by the United States (Keyuan Zou 2008: 163).

China’s feeling towards the RMSI was complex. While on one hand China needed the safety of navigation in the Strait of Malacca since most of China’s imported oil reaches China through this strait, on the other hand China is concerned about American intervention in the strait, fearing that a military presence of the United States in the strait may block China’s oil transportation if China-US relations deteriorate due to, say for example, a dispute concerning the Taiwan issue. This is one of the reasons why China has been considering the construction of an oil pipeline from Myanmar to China to reduce its dependence on shipping oil imports through the Strait of Malacca. According to Zhao Jianhua (2004: 4, cited in Keyuan Zou 2008: 164) maritime security is of vital importance to the welfare and economic development of the region, and regional cooperation is indispensable for maritime security. However China had doubts whether the principles embodied in international law, including the UN Charter, would be, or could be strictly observed in real actions against maritime threats, and advocates extreme care and sensitiveness when it comes to military involvement. In other words China prefers a maritime security arrangement for the Strait of Malacca led by countries of the region rather than by the United States. Moreover, China has had an unpleasant experience regarding interdiction at sea by the United States. On 7 July 1993, the Chinese freighter the Milky Way (Yinhe) departed from Tianjin to the Middle East with port of Kuwait as destination. On 23 July the United States accused China of sending to Iran chemical materials (thiodiglycol and thionyl chloride) to be used for making chemical weapons and demanded an inspection on board by the American side. From 1 August, several American warships followed the Milky Way, monitoring its movement and taking photos so that the Chinese ship could not sail normally. Due to American pressure the Milky Way was refused permission to anchor in port and remained on the high seas until late August. Finally, on 29 August China agreed to check the containers on board together with a Saudi Arabian representative and American experts. The investigation
result proved that there were no chemical materials on board as alleged by the United States. On 4 September 1993 China’s foreign ministry issued a statement condemning the American hegemonic attitude and its groundless accusation. Chinese legal scholars accused the United States of having violated international law, including the freedom of the high seas, and maintained that the United States should bear legal liability to compensate for the economic loss of the Chinese freighter (Zhao Lihai 1996: 237-44, cited in Keyuan Zou 2008: 164). Going by this incident one would expect China to be averse to the RMSI which involved military interdiction at sea. This might also have been expected from China’s basic policy regarding the South China Sea. China has continuously reiterated that it will maintain freedom of navigation and over-flight in the South China Sea, and that it has never interfered in such free passage and will not do so in future (China Ocean News, April 23, 2004, cited in Keyuan Zou 2008: 164). Having said that, it must also be kept in mind that for some reasons, such as the Taiwan issue, China might not always oppose military interdiction or naval inspection (Keyuan Zou 2008: 164-165).

Conclusion

Keyuan Zou (2008: 165-167) argues that the principle of ‘the rule of law’ and international law has begun to play an increasingly important role in China’s diplomacy and intercourse with other countries. The marine legal order in East Asia is based on the universally accepted principles of international law, including the LOSC, which most East Asian countries including China has ratified. Although there are various definitions on ‘rule of law’ what is clear is that, the rule of law principle at the international level requires states to use international law rather than power, the will of individuals and force, to govern state-to-state relations. It is of paramount importance that countries, particularly those big countries in the region, behave responsibly. The first time that China expressed clearly that the rule of law should be implemented in international relations was in 2004 as one of the opinions in ‘Four Opinions of China Regarding the Work of the United Nations’. It has recognized that the rule of law is fundamentally
important in maintaining world peace and security, enhancing development and protecting human rights, and that the pick-and-choose mentality towards international legal norms is of no help in promoting and realizing the rule of law and justice in the world community (www.people.com.cn, cited in Keyuan Zou 2008: 165). In this way the principle of rule of law has been implanted into the foreign relations of China. However since this has been done only recently, it is still in the early stages of implementation. More reliance on international law to develop China’s diplomacy at the bilateral, regional and global levels is actually a timely reflection of the changed perception of the current Chinese leadership in understanding the law, as well as in terms of governance at the domestic level. The rule of law was officially incorporated in 1999 into the Chinese Constitution. Article 5 of the amended constitution pledged to “implement law to govern the State and construct the socialist country with the rule of law” (Keyuan Zou and Zheng Yongnian 1999b, cited in Keyuan Zou 2008: 165). Following this the Chinese government, as well as the Chinese Communist Party, has implemented the new policy towards political reforms, which is called ‘governance in accordance with law’ (yifa zhizheng) and ‘administration in accordance with law’ (yifa xingzheng). The new internal policy and changed governmental behaviour has influenced China’s external relations. China has also realized, though with some reluctance, that regionalization of the maritime-security issues such as the South China Sea dispute is an inevitable trend, which China is unable to prevent but must adapt itself to, so that it can still play a significant role in dealing with regional maritime security issues. Vibrant regional cooperation and a regional mechanism for maintaining and improving the marine legal order in China’s adjacent seas with other countries are required by international law, including LOSC Article 123, which obliges coastal states to cooperate between/among themselves:

- to coordinate the management, conservation, exploration and exploitation of the living resources of the sea
- to coordinate the implementation of their rights and duties with respect to the protection and preservation of the marine environment
- to coordinate their scientific research policies and undertake where appropriate joint programs of scientific research in the area; and
to invite, as appropriate, other interested states or international organizations to cooperate with them in furtherance of its provisions.

In practice the most active area of regional cooperation has been the protection of the marine environment through two regional seas programmes: the East Asian Seas Programme sponsored by the IMO, the Global Environment Facility, and the UN Environment Programme (UNEP), which was implemented in 1994, and the Regional Seas Programme sponsored by the UNEP for the Northwest Pacific. The existing cooperating experiences in the area of marine environment protection can be extended to apply to other areas in the context of maritime security. The emergence of non-traditional security issues as a priority in China-ASEAN regular talks could be of relevance here. At the same time however, China’s preference for regionalization of some security issues is intended to prevent them from being further internationalized, such as in the case of the Spratly Islands issue. Having accepted international law and regionalization, China still firmly upholds the principle of sovereignty in its multiple external interactions. China interprets sovereignty as independence, including both the internal power of independence (such as legislation, and establishment of national system), and the external power of independence (such as the freedom to deal with international affairs, participation in international conferences and signing treaties) (Bai Guimei 1995: 107-8, cited in Keyuan Zou 2008: 166). Keyuan Zou goes on to argue that strict adherence to the principle of the inviolability of sovereignty has become a distinctive feature of the foreign policy of the PRC, and that it is treated as the basis of international relations and the cornerstone of the whole system of international law. In his view China’s understanding and practice of sovereignty are closely related to the Five Principles of Peaceful Coexistence: 1) mutual respect for each other’s sovereignty and territorial integrity; 2) non-aggression; 3) non-interference in each other’s internal affairs; 4) equality and mutual benefit; 5) peaceful coexistence. The Five Principles, which first appeared in the Agreement between the Republic of India and People’s Republic of China-ASEAN regular talks could be of relevance here. At the same time however, China’s preference for regionalization of some security issues is intended to prevent them from being further internationalized, such as in the case of the Spratly Islands issue. Having accepted international law and regionalization, China still firmly upholds the principle of sovereignty in its multiple external interactions. China interprets sovereignty as independence, including both the internal power of independence (such as legislation, and establishment of national system), and the external power of independence (such as the freedom to deal with international affairs, participation in international conferences and signing treaties) (Bai Guimei 1995: 107-8, cited in Keyuan Zou 2008: 166). Keyuan Zou goes on to argue that strict adherence to the principle of the inviolability of sovereignty has become a distinctive feature of the foreign policy of the PRC, and that it is treated as the basis of international relations and the cornerstone of the whole system of international law. In his view China’s understanding and practice of sovereignty are closely related to the Five Principles of Peaceful Coexistence: 1) mutual respect for each other’s sovereignty and territorial integrity; 2) non-aggression; 3) non-interference in each other’s internal affairs; 4) equality and mutual benefit; 5) peaceful coexistence. The Five Principles, which first appeared in the Agreement between the Republic of India and People’s Republic of China.

6 The East Asian Seas Programme was implemented with the participation of Brunei, Cambodia, China, Indonesia, Malaysia, North Korea, the Philippines, Singapore, South Korea, Thailand, and Vietnam. The Regional Seas Programme for the Northwest Pacific involves China, Japan, North Korea, Russia and South Korea (Keyuan Zou 2008: 166).
China on Trade and Intercourse between the Tibet Region of China and India, signed on 29 April 1954, have been reiterated in China’s foreign policy documents as well as in agreements, declarations and joint statements signed between China and other countries that were willing to incorporate those principles into the relevant documents. In China’s view the Five Principles have become universally applicable principles among states, and have therefore become fundamental principles of international law. In this sense China’s advocacy of the rule of law in the world community strengthens, rather than weakens, the long-maintained and implemented Five Principles in its diplomacy. Therefore in his view the ‘coexistence’ mentality may have hampered, and may continue to hamper, China’s attempts at active diplomatic interaction with its neighbouring countries and the world community.

Ji Guoxing (2002: 65-69) argues that because almost all of the Asian Pacific countries depend on the seas for survival and well-being and share their key sea lines, the safeguarding of SLOC security in the region is in the interest of all, and that SLOC security cooperation is the ideal front for initiating regional security cooperation. Only by collective cooperation among regional countries, can SLOC security cooperation in the region be guaranteed. As oceans are an integral whole, no country can defend the wide radius of the sea lines by itself. In many ways SLOC security is the classic multilateral maritime security interest, and it provides the most basic demonstration of how a nation’s maritime security interests extend beyond its own waters. Japan needs secure sea lines between itself and Southeast Asia and the Middle East, and “no one in Asia, including the Japanese, wants Japan itself to do the job of guaranteeing the security of those sea lanes” (as reported in Asian Wall Street Journal, October 6, 1997, cited in Ji Guoxing 2002: 65). China needs the sea lines, and no one wants China to defend the sea lines by itself either, not to mention China’s inability to carry out the task. China has shared security interests and the willingness to work together with others in defending SLOC. Ji Guoxing (ibid.) notes that several regional official and semi-official organizations have been engaged in maritime security issues. APEC has been involved in recent years in furthering cooperation in shipping and maritime safety. The Transportation Working Group under APEC has taken a number of initiatives to facilitate maritime commerce. The ARF has
also been involved in the area of maritime cooperation. The Western Pacific Naval Symposium and its associated workshops have led the way in operationalizing maritime cooperation, including SLOC protection, among regional navies since its inception in 1988. The Council for Security Cooperation in the Asia Pacific (CSCAP), which is supposed to be the premier institution of track-two processes to support ARF, has been very active in promoting maritime cooperation. Its Memorandum No. 4- Guidelines for Regional Maritime Cooperation- was forwarded to the ARF for consideration. This document established general principles of regional maritime cooperation in various maritime areas, and laid the basis for further development of regional cooperation. But what lacks in the region is a region-wide institutionalized and authoritative maritime cooperation mechanism taking SLOC security as its priority. In spite of its deficiencies, ARF at present is the main pan-Asia-Pacific official multilateral security dialogue and cooperation forum, and has successfully brought together regional leaders. Ji Guoxing suggests that SLOC security cooperation in the region could fall within the framework of ARF, and that the regional maritime cooperation mechanism should be set up under it. Regional maritime cooperation could be focused firstly on maritime confidence-building measures, including information and transparency measures, and incidents-at-sea (INCSEA) agreements, and then gradually proceed to deal with territorial disputes and overlapping claims. As Asian navies have generally moved further offshore over the past decade to protect SLOC, INCSEA agreements merit serious consideration. In consideration of the geographic disparities in the region, multilateral sub-regional INCSEA agreements are needed for Northeast Asia, Southeast Asia, and the Indian Ocean. In his view China supports regional security dialogue and cooperation and stands for enhancing mutual understanding and trust through governmental and non-governmental channels in a step-by-step manner. Chinese representatives have attended official and unofficial meetings within the framework of ARF. The white paper on ‘China’s National Defence in 2000’ proposed to establish an ARF marine information and data centre, encouraged exchange of high-level military visits and port calls by naval vessels, as well as exchanges of military personnel, and supported cooperation in emergency rescue and disaster relief, safety in maritime navigation and marine environmental protection. At the same time he takes note of the fact that some
misunderstanding exists in world circles regarding China’s attitude in participating in multilateral security cooperation. There are those who doubt China’s support of multilateral dialogue, and China’s sincerity in observing internationally acceptable rules. He argues that as China has just begun to be integrated into the world community, it takes time for China to get accustomed to rules-based systems of international issues management, and that China’s foreign policy is under adjustment. It is true that China has traditionally shied away from the multilateral approach, but things are changing, as exemplified by China’s attitude toward UN peacekeeping operations. China dispatched 15 civilian policemen to the UN Transitional Authority in East Timor, the first time China has ever done so. In defending SLOC in the region and in bringing about SLOC security cooperation in the region, China is duty-bound to play an active and positive role and to make its due contributions. Ji Guoxing suggests that the following are some of the actions that China could take in order to make this contribution:

- China should clarify its interpretations of relevant UNCLOS stipulations, reconsider those of its positions not in conformity with UNCLOS, and contribute towards a unified understanding and interpretation of UNCLOS among regional countries. For example, China needs to reconsider and give up the ‘nine-dashed intermittent line in the South China Sea’. China might also reconsider its position on the principle of natural prolongation of land territory in delimiting the continental shelf in the East China Sea in view of the world-wide emphasis on the application of the median or equidistance line in continental shelf demarcation. China needs to clarify its stand on ‘certain historical rights’ mentioned in its 1998 Law on the EEZ and Continental Shelf. China should reach a consensus with regional countries regarding the application of freedom of navigation, especially the application of the regimes of innocent passage, transit passage, and archipelagic passage in regional waters.

- China should take the initiative to negotiate and sign agreements on maritime boundaries with its neighbouring countries. The first maritime boundary agreement China concluded was the one with Vietnam in the Gulf of Tonkin
signed in late December 2000. China must step up its efforts to negotiate and reach a maritime boundary agreement with Japan in the East China Sea. The Senkaku (Diaoyudao) Islands could be enclaved and put aside first so as not to affect the boundary demarcation. Differences over each other’s baselines of territorial seas could be solved first during the boundary negotiations.

- In respect of the Senkaku (Diaoyudao) and the Spratly (Nansha) disputes, China might consider the acceptance of third-party assistance for the settlement of disputes. This would be much better than indefinite procrastination. Third-party assistance may take several forms: adjudication by the International Court of Justice, arbitration by an arbitral tribunal or an arbitrator, and mediation by a conciliation commission or a conciliator. Since China holds that it has enough evidence supporting its sovereignty claims, it may go to the International Court of Justice for the adjudication. Such a move by China would allay the suspicions and apprehensions of the world community. If China could show its flexibility in this regard, it would be a great step forward in the settlement of regional islands’ sovereignty disputes, and in the safeguarding of SLOC in the region.

- China should spare no efforts to solve reunification with Taiwan by peaceful means. The two sides of the Taiwan Strait should try to set up a mechanism for confidence-building measures and crisis-prevention.

- China should further increase transparency regarding defence policy, military doctrine and strategy, security concerns, military organisation, force structure, military expenditures, military deployments, weapons acquisition, future development plans, and so on. Information on its naval buildup and naval strategy should be particularly transparent. China should actively implement the maritime confidence building measures (CBMs) which have been already agreed upon and support those that have been discussed. Bilateral and multilateral naval exchanges among regional navies need to be promoted. The US-China INCSEA (avoidance
of incident at sea) agreement should be implemented well, and similar agreements should be signed with other countries.

• China should work out with other regional countries detailed cooperative approaches for the maintenance and protection of sea lines. They might include humanitarian assistance, search and rescue (SAR), anti-piracy, maritime surveillance, and mine countermeasures. China should actively participate in joint naval exercises and joint patrols to deal with piracy and drug-trafficking in the South China Sea. China should strictly abide by the Declaration on the Conduct of Parties in the South China Sea.

• As the supply of energy and its unimpeded transportation becomes one of the major security concerns in the region, the ways of guaranteeing oil and gas import transportation should be given special attention in SLOC security cooperation in the region. In a time of crisis Asian Pacific countries are likely to take strong and decisive actions separately to maintain the flow of their energy imports. Therefore early agreement on cooperative approaches is preferable.

• A stable and amicable tripartite political relationship should be maintained among the US, Japan, and China for regional peace and security as a whole and for SLOC security in the region in particular. Confrontation among them would only make the Asia Pacific unstable and SLOC in the region insecure. Apart from the initiatives from the US and Japan, China should do its part in making the trilateral relationship secure and smooth. China should support the establishment of a regular security consultation mechanism among the three.

With regard to China’s implementation of, and conformity with, the UNCLOS, several points can be made. First, there is the issue of military activity- that is to say activities such as task force maneuvering, anchoring, intelligence collection and surveillance, military exercises, ordnance testing and firing, and hydrographic and military surveys- in foreign EEZs. Both Keyuan Zou (2008) and Ji Guoxing (2002) have
discussed this issue in the case of the April 2001 air collision involving an EP-3E surveillance aircraft of the United States and a Chinese jet fighter over China’s EEZ, and Ji Guoxing has also discussed it with reference to China’s naval activities in Japan’s EEZ. Following the incident involving the EP-3E China had accused the United States of violating international law. While the UNCLOS, its Article 301 in particular, provides for the peaceful use of the sea, and prohibits the threat of force and the use of force, the convention does not explicitly prohibit the military use of the EEZ. Moreover, as pointed out by Keyuan Zou, the UNCLOS Article 58(1) can be used to justify military activity in foreign EEZs, because it confers high seas freedoms referred to in the UNCLOS Article 87- of navigation, over-flight and the laying of submarine cables and pipelines- on the EEZ as well. Keyuan Zou goes on to argue that, while military activities in foreign EEZs are not explicitly disallowed under international law, given that the EEZ is not a part of the high seas and that the EEZ is an area under national jurisdiction, there should be a check-and-balance mechanism to regulate military activities in foreign EEZs. Furthermore, he also points out that it is possible to argue that military use of a foreign EEZ is limited to navigation, over-flight and other rights provided for in the UNCLOS Article 87, which would exclude activities such as task force maneuvering, anchoring, intelligence collection and surveillance, military exercises, ordnance testing and firing, and hydrographic and military surveys. Since freedom of navigation and over-flight in EEZs is subject to the resource related rights of coastal states there, one could also prohibit foreign military activities in the EEZ because of the harm they can do to the economic activities of the coastal state there. Keyuan Zou argues that if a certain military activity is of a threatening nature it should be banned in the EEZ, and if not it should be allowed under conditions laid down by the coastal state. He also points out the need for a review of the UNCLOS regarding military and intelligence activities in foreign EEZs. However Ji Guoxing (2002) argues that China’s naval activities in Japan’s EEZ, which are not always notified beforehand, accord with the principle of freedom of navigation, and given such practice China should not ask other countries for prior notification of their activities in China’s EEZ. Therefore, even though Ji Guoxing takes note of the fact that EEZs fall within the coastal state’s sphere of jurisdiction, his position on this issue appears to be close to that of maritime powers. Secondly, Keyuan Zou has noted that the
provision regarding the continental shelf in China’s 1998 Law on the Exclusive Economic Zone and the Continental Shelf includes an emphasis on the ‘natural prolongation of China’s rights to the continental shelf’, and that this is not entirely in conformity with the relevant provision in the UNCLOS. Thirdly, China’s 1958 Declaration on the Territorial Sea and its 1992 Law on the Territorial Sea and Contiguous Zone require foreign military vessels on innocent passage to obtain permission before entering China’s territorial sea. Ji Guoxing suggests that for its part China too should notify other countries before its military vessels implement innocent passage in their territorial waters. Fourthly, with regard to the issue of transit passage through straits used for international navigation, Ji Guoxing notes that the presence of US fleets in many parts of the Asia Pacific would make the adoption of a vessel traffic services (VTS) system by China in the Taiwan Strait, a strait used for international navigation, somewhat controversial. He also notes that the Chinese government is opposed to the calls among some Chinese for declaring the Taiwan Strait an internal strait of China.

With regard to regional maritime cooperation China has been an active participant in the ARF and CSCAP process in general, and in measures for combating piracy in particular. At the CSCAP Maritime Cooperation Working Group (MCWG) meeting held in November 1997 Xu Guangjian (1998b) stressed that the safety of shipping and the smooth flow of traffic through international sea lanes was important to China. The report on the discussions at this meeting also noted that both China and India are importing increasing amounts of energy along sea lanes, and that therefore they are prepared to cooperate in maintaining stability at sea in the region. At a joint meeting of the MCWG and the Transnational Crime Working Group held in November 1999 Zhiguo Gao (cited in Davidson 1999: 3) had stated that China did not favour cooperation in the military sphere, that cooperation in other spheres should be based on respect for state sovereignty and non-intervention, and an incremental approach to common problems based on consensus. He had also indicated a preference for bilateralism over multilateralism. At a meeting of the CSCAP Study Group on Facilitating Maritime Cooperation in the Asia Pacific held in December 2006 it was pointed out that with development of the international situation and the emergence of non-traditional security threats the PLA-N
was playing a more important role in tasks such as combating terrorism, piracy, smuggling, drug-trafficking, and in search and rescue. It was also noted that the provincial governments have jurisdiction over the territorial sea, while the central government has control over the EEZ. In May 2002 China submitted to the ARF Senior Officials Conference a document concerning China’s stand in strengthening cooperation in non-traditional security fields. In November 2002 the Joint Declaration of ASEAN and China on Cooperation in the Field of Non-Traditional Security Issues was adopted, which initiated full cooperation between ASEAN and China in the field of non-traditional security issues and listed the priority and form of cooperation. The priorities included combating trafficking in illegal drugs, people smuggling, including trafficking in women and children, sea piracy, terrorism and arms-smuggling. With regard to bilateral and multilateral cooperation its objectives are to: strengthen information exchange; strengthen personnel exchange and training and capacity building; strengthen practical cooperation on non-traditional security issues; strengthen joint research on non-traditional security issues, and to explore other areas and modalities of cooperation. The 2002 Declaration on the Conduct of Parties in the South China Sea, which China is party to, also mentions the suppression of piracy and armed robbery at sea. The Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP), finalized in November 2004, provides for regional cooperation through the establishment of an Information Sharing Centre (ISC), capacity building, joint exercises, facilitating extradition, mutual legal assistance and encouraging ships to take protective measures. The government of Singapore was the depository of the agreement, and it opened for signature on February 28, 2005. The agreement entered into force with effect from September 04, 2006 after acquiring the necessary number of ratifications. The ReCAAP was signed on behalf of the Chinese government in October 2006, and in February 2008 ReCAAP-ISC announced that it will receive a contribution of US$ 50,000 from China. As Christoffersen (2008: 141) has argued, it would be in China’s interest to ratify the ReCAAP because that would reinforce China’s status as a ‘user state’ in the Malacca Straits. However China has not been supportive of the Regional Maritime Security Initiative (RMSI) of the United States, announced in March 2004, preferring instead a maritime security initiative led by countries of the region.
Keyuan Zou’s (2008) argument is that the principle of ‘the rule of law’ has begun to increasingly influence China’s conduct of international relations. The UNCLOS encourages maritime cooperation at the regional level, and China is playing an active role in such cooperation. However, he fears that China’s strict adherence to the principle of ‘the inviolability of sovereignty’, reinforced by advocacy of the Five Principles of Peaceful Coexistence as fundamental principles of international law, may stand in the way of interaction with neighbouring countries. Ji Guoxing (2002) emphasizes that the security of SLOC is the classic multilateral maritime security issue, and that therefore China is willing to cooperate with other countries in defending SLOC. He is of the view that a regional maritime cooperation mechanism on SLOC security in the Asia Pacific region should be set up under the ARF, and that such a mechanism should include separate sub-regional multilateral incidents-at-sea (INCSEA) agreements for Northeast Asia, Southeast Asia and the Indian Ocean. Recognizing the existing suspicion regarding the sincerity of China’s participation in multilateral security fora and its commitment to observing internationally accepted rules, Ji Guoxing stresses that China must actively seek to dispel such suspicions and make its due contribution to multilateral SLOC security cooperation in the Asia Pacific region.