

DEVELOPMENT OF THE CONCEPT OF MARITIME SECURITY FROM A PERSPECTIVE OF IMO

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*PANEL IIIA: “MARITIME SECURITY AND THE
IMO”*

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II. Development of the Concept of “Maritime Security”

III. Agenda Which We have Been Facing under the Widened Concept of “Maritime Security”

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Introduction

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1. Widening of the Concept of Maritime Security in This Decade

2. International Society and Domestic Society

(1) International Society

(2) Domestic Society

e. g. Japan's Experience



Confirmation of the shared “widened concept of maritime security”

II. Development of the Concept of “Maritime Security”

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1. Widened Concept of Maritime Security

(1) International Law

“Maritime security does not confine itself to **traditional concept of maritime security** in relation to military threats. Maritime security is understood by the measures combatting **military threat, terrorism, weapons proliferation, transnational crime, piracy, environmental/resource destruction, and illegal seaborne migration.**” (Douglas Guilfoyle, “Maritime Law Enforcement Operations and Intelligence in an Age of Maritime Security,” 93 *International Law Studies*, Published by U. S. Naval College, 2017, p. 299.)

II. Development of the Concept of “Maritime Security”

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1. Widened Concept of Maritime Security

(1) International Law (continued)

“In the twenty-1st century, the concept of maritime security continues to embrace the military interests of States, as well as extending to a range of maritime crimes that may threaten a State’s economic, political, social, and cultural values....

Maritime security is best understood as encompassing two key dimensions: (1) traditional security concerns and (2) responses to perceived maritime security threats. ...”

(Nathalie Klein, “Maritime Security,” in Donald Rothwell, Alex G. Oude Elferink, Karen N. Scott & Tim Stephens (eds.), *The Oxford handbook of the law of the sea* (Oxford University Press, 2017), pp. 582-583,)

II. Development of the Concept of “Maritime Security”

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1. Widened Concept of Maritime Security

(1) International Law (continued)

“Yet, despite being widely used, there is little agreement over its exact meaning. Not only is there no agreed definition of what ‘maritime security’ is, but even the definition approaches differ considerably and notably **span from positive to negative conceptualisations of the term**. The former approach ‘projects a certain ideal-typical end state that has to be reached’; in this vein, **legal doctrine has defined maritime security, for instance, as ‘a stable order of the oceans subject to the rule of law at sea’**. By contrast, the negative conceptualisation of the term rests on an understanding of **maritime security as the absence of specific threats**. It is usually complemented and further specified by **a list of threats deemed to amount to security challenges at sea** – hence, the origin of the term ‘laundry list’ approach.” (Anna Petrig, Human Rights and Law Enforcement at Sea, in Ruxandra-Laura Boşilcă, Susana Ferreira, and Barry J. Ryan (eds.), *The Routledge Handbook of Maritime Security* (Taylor & Francis Group, 2022), pp. 272.)

II. Development of the Concept of “Maritime Security”

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1. Widened Concept of Maritime Security

(2) Domestic Law: Japan’s Case

* Not limited to “maritime” security

Comprehensive Maritime Security under the Third Basic Plan on Ocean Policy of 2018

Economic Security: Legislative measures, such as Act on the Promotion of Economic Security, and Amendments to the Foreign Exchange and Foreign Trade Act

Energy Security: the Seventh Strategic Energy Plan of 2025

Food Security: Act Partially Amending the Basic Act on Food, Agriculture and Rural Areas of 2024

II. Development of the Concept of “Maritime Security”

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2. International and Domestic Trend of Widening of the Concept of Maritime Security

“Yet, despite being widely used, there is little agreement over its exact meaning. Indeed, definitions of the concept are actor, context and region-specific:”(Anna Petrig, *ibid.*)

Nonetheless, we can safely find: **Shared and Recognized Trend of Widening of the Concept of Maritime Security**

II. Development of the Concept of “Maritime Security”

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3. Related Concept: Gray Zone

(1) A Gray Zone between Security Situation and a Tense Situation

“A tense situation”

Even with lack of an armed attack by use of force, there is a threat to States by, for instance, invasive acts, cyber attacks, and information manipulation

A wide array of acts that may cause threat to States, while they are normally conducted by non-State actors, and some of them fall under international crimes at sea



II. Development of the Concept of “Maritime Security”

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3. Related Concept: Gray Zone

(1) A Gray Zone between Security Situation and a Tense Situation (continued)

“A tense situation”

e. g. armed robbery, IUU fishing (👉 the presentations in this Conference)

e. g. Armed attacks against commercial vessels in the Red Sea



Opinions divided

Measures to cope with : Self defence? Responding measures at sea?

(2) “A Commonly Shared Meaning of a Gray zone”

A gray zone between (military) security situation and law enforcement situation



With the widening of “maritime security,” the distinction between “maritime security” and “(maritime) gray zone” should be blurred.

III. Agenda Which We have Been Facing under the Widened Concept of “Maritime Security”

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1. Merit of the Widening of the Concept of Maritime Security

Recognition of various kinds of danger (threats) in the international society

Sharing such danger (threats) in the international society

Preparation for prevention of such danger (threats)

III. Agenda Which We have Been Facing under the Widened Concept of “Maritime Security”

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2. Agenda Which We have Been Facing under the Widened Concept of “Maritime Security”

(1) Various Interests Involved in “Maritime Security”

- Defence against military threat
- Law enforcement for combatting crimes at sea
- Exercise of jurisdiction for coping with wrongful acts at sea, such as IUU fishing, marine environmental pollution
- Border protection against seaborne illegal migration

III. Agenda Which We have Been Facing under the Widened Concept of “Maritime Security”

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2. Agenda Which We have Been Facing under Widened Concept of “Maritime Security”

(2) How to Compromise the (Possibly) Conflicting Interests and How to Decide the Priority among the Various Interests?

【The Current Situation of the Strait of Hormuz】

👉 Various interests are at stake, such as

- military security
- combatting international crimes (terrorist attacks) at sea
- the freedom and the safety of navigation
- Safety of Seafarers

【Destruction of Undersea Infrastructure】

👉 Various interests are at stake, such as

- Reparation for destruction of property
- Combatting international crime at sea
- Responding to hostile acts

III. Agenda Which We have Been Facing under the Widened Concept of “Maritime Security”

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2. Agenda Which We have Been Facing under Widened Concept of “Maritime Security”

(2) How to Compromise the (Possibly) Conflicting Interests and How to Decide the Priority among the Various Interests? (continued)

e. g. GATT Article XXI *Security Exceptions*

Nothing in this Agreement shall be construed

(a) to require any contracting party to furnish any information the disclosure of which it considers contrary to its essential **security interests**; or

(b) to prevent any contracting party from taking any action which it considers necessary for the protection of its essential **security interests**

... or

(c) to prevent any contracting party from taking any action in pursuance of its obligations under the United Nations Charter for **the maintenance of international peace and security**

When security interests become more and more various, how to seek a balance between those interests and GATT's object (free market)?

III. Agenda Which We have Been Facing under the Widened Concept of “Maritime Security”

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2. Agenda Which We have Been Facing under Widened Concept of “Maritime Security”

(2) How to Compromise the (Possibly) Conflicting Interests and How to Decide the Priority among the Various Interests? (continued)

e. g. INTERNATIONAL HEALTH REGULATIONS (2005) As amended in 2014, 2022 and 2024

Article 2 Purpose and scope

“The purpose and scope of these Regulations are to prevent, prepare for, protect against, control and provide a public health response to the international spread of disease in ways that are commensurate with and restricted to public health risk and which avoid unnecessary interference with **international traffic and trade**.”

* Prevention of pandemic can be (health) security

How to seek a balance between the interest in (health) security and international traffic and trade?

III. Agenda Which We have Been Facing under the Widened Concept of “Maritime Security”

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2. Agenda Which We have Been Facing under Widened Concept of “Maritime Security”

(2) How to Compromise the (Possibly) Conflicting Interests and How to Decide the Priority among the Various Interests?



How to compromise the conflicting interests, when “security” interests are widened?

If there are relevant treaties, compromise can be pursued based upon consent of parties to the treaties in interpretation and/or amendment of the rules.

IV. Contribution by IMO to Cope with the Agenda

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1. Distribution of Powers among International Organizations: Decentralizes Structure of International Society

Each international organization and treaty regime have inherent function and mandate, such as

- International Peace and Security 👉 United Nations
- Combat against International Crimes at Sea 👉 UNCLOS, Treaties (dealing with certain international crimes at sea)
- IUU Fishing 👉 Global and Regional Fishery Organizations

What is the contribution that IMO can provide to the realization of maritime security in a wider sense?

IV. Contribution by IMO to Cope with the Agenda

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2. Contribution by IMO to Realization of Maritime Security in a Wider Sense

(1) Function and Mandate

① Legal Ground for IMO Competence: Consents of Member States Credibility by Member States and International Society on IMO by Precisely Adhering to Its Mandate

Otherwise, there could be no effective treaties supported by States, which are adopted under the auspice of and/or by the initiative of IMO.

【Convention on the International Maritime Organization (as Amended)】

Part 1 – Purposes of the Organization

Article 1

(a) To provide machinery for co-operation among Governments in the field of governmental regulation and practices relating to technical matters of all kinds affecting shipping engaged in international trade, and to encourage the general adoption of the highest practicable standards in matters concerning **maritime safety, efficiency of navigation and prevention and control of marine pollution from ships**; and to deal with administrative and legal matters related to the purposes set out in this Article.

IV. Contribution by IMO to Cope with the Agenda

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2. Contribution by IMO to Realization of Maritime Security in a Wider Sense

(1) Function and Mandate (continued)

② 【Our Work】

[From IMO HP]

Maritime Safety, Maritime Security and Piracy, Marine Environment, Legal Affairs, Human Element, Facilitation, Member State Audit Scheme, Implementation of Instruments Support, Technical Cooperation

IV. Contribution by IMO to Cope with the Agenda

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2. Contribution by IMO to Realization of Maritime Security in a Wider Sense

(1) Function and Mandate (continued)

③ 【Legal Affairs】

a. IMO is primarily concerned with the safety of shipping and the prevention of marine pollution, but the Organization has also introduced regulations covering liability and compensation for damage, such as pollution, cause by ships...

UNCLOS covers some issues not regulated under IMO treaty instruments- for example, the jurisdictional power of the coastal State.

IV. Contribution by IMO to Cope with the Agenda

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2. Contribution by IMO to Realization of Maritime Security in a Wider Sense

(1) Function and Mandate

③ 【Legal Affairs】 (continued)

- b. IMO has established joint working groups with ILO on seafarer issues.
- c. Registration of a ship plays an imperative function towards safety and security of the maritime transport and significantly contributes towards the protection and preservation of the marine environment.
- d. IMO has adopted and implemented a number of measures to support and enhance flag (and port) State jurisdiction and enforcement.

IV. Contribution by IMO to Cope with the Agenda

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2. Contribution by IMO to Realization of Maritime Security in a Wider Sense

(2) Close Relationship between “Security” and “Safety”

e. g. “safety” in the SUA Convention Regime

(Convention for the Suppression of Unlawful Acts against the **Safety** of Maritime Navigation)



- “the safety of navigation”? Or “security”?
- combating international crimes? Or self-defence against the use of force?

IV. Contribution by IMO to Cope with the Agenda

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2. Contribution by IMO to Realization of Maritime Security in a Wider Sense

(3) Interplay between the IMO Treaties and Other International Documents, in the Field of Maritime Security That Is Understood Widely

【Examples Focusing upon UNCLOS】

① UNCLOS and the SUA Convention Regime

- Definition of “piracy” under UNCLOS and the “unlawful acts” under the SUA Convention Regime

② UNCLOS, and SOLAS and COLREG for the safety of ships and the safety of navigation

IV. Contribution by IMO to Cope with the Agenda

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2. Contribution by IMO to Realization of Maritime Security in a Wider Sense

(3) Interplay between the IMO Treaties and Other International Documents, in the Field of Maritime Security That Is Understood Widely

【Examples Focusing upon UNCLOS】 (continued)

③ UNCLOS and SAR for search and rescue

④ UNCLOS and the IMO treaties on the marine environmental protection

“internationally agreed rules, standards and recommended practices and procedures”

“competent international organizations”

Similar provisions under many Articles of in Part XII of UNCLOS

= IMO and international rules and etc. adopted by IMO

IV. Contribution by IMO to Cope with the Agenda

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3. Strong Expectation on IMO's Contribution to Maritime Security in a Wider Sense

- ① (by) Precisely Adhering to Its Mandate Based upon the Consents of the Member States,
- ② (by) Appropriately Expanding its Function by Further Promoting the Interplay between IMO Treaties and Others, on the One Hand, and UNCLOS and Other International Documents, on the Other Hand.



Still remaining limits of “a decentralized international society”

V. Concluding Remarks

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International society has been still facing **the agenda** that the widened concept of “maritime security” produces.

Limits of a decentralized international society



Substantially: lack of agreed priority among the conflicting interests that form “maritime security” in a wider sense

Institutionally :lack of integrative decision-making mechanism to decide the priority among the conflicting interests that form maritime security in a wider sense

V. Concluding Remarks

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We need to work together for overcoming the limits of the decentralized international society, and promoting the maritime security in a wider sense.

COLP49 must be the important first step for that purpose.

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Thank you for your kind attention !