Introduction

Strategy is about solving problems—in fact, the best strategy is the best solution to that problem. This very simple way of looking at strategy is in itself very complex. The problem that needs to be solved must be well defined and understood and the strategic solution has to be feasible with the means that are in hand. To complicate things further, most of the situations that need solving are probably all “in the future.” Additionally, the problem may be simply stated as “terrorism,” but we all know that is not enough. Apart from some novelist, who could have conceived that commercial airplanes could be used in such a horrible manner as they were on September 11?

This “solution” must also fit scenarios that themselves will undoubtedly differ from region to region throughout the world, even from country to country. A resolution that is good for one region or country may not be applicable to another. Thus, when in 1947, a Chilean lawyer from Viña del Mar—does anybody today remember his name?—presented his theory of an expanded coastal State territorial
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sea, who anticipated that it would evolve into the 200-nautical-mile exclusive economic zone (EEZ) that is now universally accepted? In 1947, he was presenting a solution for the risk to the national whaling industry as foreign whalers operating just off Chilean shores were very quickly exterminating the mammals.

Solutions also have their own levels of responsibility: the political or grand strategic level decision makers have to be able to recognize the problems, state their objectives and create the necessary means—and perhaps the legal structure—to attain them. On the other hand, the “means” or forces that will implement the policies need clear-cut instructions as to what they can or cannot do in resolving the problem. As we all know with regard to threats at sea, there will always be a conflict between the freedom of the seas and certain control measures that would help to confront the threats effectively.

Globalization has resulted in the rapid advance of communications capabilities and technology, a great mobility of humans and capital, a weakening of commercial barriers and the creation of important multinational corporations, which every day acquire a greater importance in international affairs. All this has made borders more permeable and the world economies more interdependent, with all the advantages and disadvantages that this entails. Globalization provides enormous benefits and opportunities, but it also has negative effects. Unfortunately the benefits are still concentrated in a few nations, creating false expectations, rivalries, tensions and divisions among the rest. We know that today most conflicts are intra-State conflicts. These originate for multiple reasons, including lack of governance, corruption and ethnic and religious problems. All of these are causes of instability, civil war, social disorder, systematic violations of human rights, massive migration and frontier tensions. These effects not only create instability in the States where they occur but also have the potential to cause negative repercussions within the region or throughout the whole international system. The world has seen a polarization of those who support and those who oppose globalization. The former focus on the possible benefits associated with participating in the global economy. The latter are concerned that they are too far removed from the level of economic development that would permit them access to globalization’s benefits, or they consider globalization to be the cause of all their problems—the loss of national identity, the relaxation of moral values and the weakening of the principle of sovereignty of States.

In a globalized world, we have not only the traditional threats, but new threats giving rise to new risks have emerged. These are not planned or organized by a State—at least not openly. These risks rise from the proliferation of international criminal organizations, piracy, cyber attacks, small arms trafficking, the spread of weapons of mass destruction, drug trafficking and terrorism. We must also mention potential AIDS and bird flu pandemics and natural disasters and other problems, such as droughts, floods, soil degradation and overexploitation of natural
resources. All these phenomena are considered transnational, as they cross international boundaries.

Writing from the perspective of a distant country our objective is to show the importance of the sea to Chile as a maritime nation and how turning to some “old” ideas may help find an effective and efficient way to create the indispensable cooperation needed to confront the “new” threats that affect the world.

The New Threats at Sea

The sea has always contributed to human development through its four main attributes: its resources, its utility as a means of transportation and trade, as a means of exchanging information and, finally, as a source of power and dominion.1 In the past, the maritime resources of most States were mainly dedicated to pursuing their national interests relating to military power and dominion. Today the new threats, particularly those which threaten the environment and transportation, must be confronted in a new way. “Good order at sea”2 requires three very important issues to be addressed effectively: maritime awareness, maritime policy and integrated maritime governance. Simply reflecting on the titles of these issues indicates the need for a wide base of understanding if we are to succeed in combating the new threats.

Today the use of the global commons presents much more complex problems than when it was referred to as a “wide common” by Admiral Mahan late in the nineteenth century.3 Today the threats and risks cover a very wide range. We will only discuss some that we consider especially important.

As addressed at the ASEAN Regional Forum in 2003, piracy, which has existed from time immemorial, has now emerged in a new form: “Piracy and armed robbery against ships and the potential for terrorist attacks on vulnerable sea shipping threaten the growth of the Asia-Pacific region and disrupt the stability of global commerce, particularly as these have become tools for transnational organized crime.”4 Other threats from and on the global commons include smuggling, drug trafficking, illegal immigration, banditry, human smuggling and slavery, environmental attack, trade disruption, and weapons proliferation, including weapons of mass destruction and terrorism.5

Chilean Maritime Interests

Chile, with its unique shape, is not a very large country in terms of its land territory, but its length entitles it to a huge expanse of territorial and exclusive economic zone waters. If you add to this Chile’s geographical position in the world, plus an
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economic system that is outward looking, you can understand that for Chileans the sea is of great importance.

From 1990 to 2005, Chile’s foreign trade by sea rose from thirty million metric tons to seventy million tons. In 2005, 85 percent of Chile’s foreign trade was by sea. That year, Chilean exports transported by ship totaled $14.5 billion to Asia and Oceania, $9.8 billion to Europe, $7.6 billion to North America and $125 million to Africa. 7

Although Chile is far removed from many areas of the world, events occurring elsewhere can quickly and negatively impact Chile. As an example, although the rise in foreign trade was generally steady from 1990 to 2005, the 1997 Asian economic crisis, which had nothing to do with Chile, led to a decrease in Chilean shipping and hardships for the Chilean economy that lasted for several years.

Key Vulnerabilities

Chile heavily depends on its sea lines of communication. Nearly 90 percent of its increasing foreign trade must travel by sea, 100 percent of fuel imports come by sea and by 2009 most of the natural gas needed will come as liquefied natural gas on ships whose cargoes can themselves be a weapon of mass destruction in the hands of terrorists and will, of course, require special security.

Although Chile is in a geographic region that to date has not been the subject of serious terrorist threats, the government is aware of the dangers that terrorism presents. This is why Chile is party to numerous international conventions. 8 The latest international treaties ratified are an expression of our agreement with the international effort to combat terrorism following the 9/11 attacks.

Illegal fishing and overexploitation of fishery resources are a worldwide concern and Chile is no exception. To address these, the government has imposed quotas on Chilean fishing companies that fish in our exclusive economic zone and Presentia Sea, but it has not been possible to prevent illegal fishing by foreign enterprises that are obviously overexploiting some areas and endangering certain highly migratory and straddling stocks.

Pollution of our seas is also a major threat to Chile. As one example, Chile is one of the most important producers of salmon, which require clean water.

The Panama Canal is of primary importance for Chile. Chilean shipping is the fourth largest world user and largest South American user of the canal. Any interruption to the flow of shipping through the canal will immediately affect our economy and Chilean exports may become uncompetitive because of increased shipping costs and times.

The Strait of Magellan and Drake Passage, although not the busiest sea lanes in the world, are of great importance as an alternative to the Panama Canal. The use
of these passages is growing yearly as a consequence not only of the increase in world trade, but also due to the increase in post-Panamax vessels (those too large to transit the Panama Canal), vessels carrying dangerous cargoes prohibited from canal transits, and technology advances that now allow larger ships to sail the high latitudes safely. These increases in the use of the Strait of Magellan and Drake Passage raise the risk of collisions.

**Chilean Policy**

Chilean defense policy recognizes that—apart from providing the traditional aspects of protecting the citizens and national interests and safeguarding territorial integrity and sovereignty—a modern view must include international security and stability as factors that affect Chile’s own national security. Although oriented in the first place to dissuade any threats, it recognizes that defense forces must be prepared to act coercively in defense of national interests if dissuasion doesn’t work. It also quite definitely expresses that Chile is prepared to cooperate with other States, especially under UN mandates, as the best way to address non-conventional threats.

In the near term, Chilean foreign policy has the challenge of increasing Chile’s place in this new globalized and interdependent world. Chile is today a nation that has left behind its traditional insularity, and, faced with globalization, has chosen to try to influence it so as to minimize its risks and to take part in its opportunities. Accomplishing these objectives will require diversified strategies.

Taken together Chilean defense and foreign policies present three challenges: first, contributing to international peace and security; second, participating in Latin American governability and social cohesion; and, finally, becoming a bridge and platform between Latin America and Asia.

In meeting these challenges, the Chilean Navy is prepared—no easy task, considering the size of the area to protect, the limited assets available and the growing maritime interests—not only to fulfill the traditional naval role of national defense, but to participate actively in preserving Chile’s other maritime interests. In that regard, in Chile the functions normally performed by coast guards in other nations are the responsibility of the navy. Finally, the navy also participates in international cooperation initiatives with other countries, particularly, as indicated previously, in operations conducted under UN auspices.

For many years, the navy has participated in multilateral and bilateral exercises with other navies to develop the interoperability necessary for effective operations in the maritime environment. An interesting example was the sponsorship of Panamanian Maritime Force training, and creating and participating in special exercises to increase security in the Panama Canal area.
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The Chilean navy is today a very efficient armed service comprised of a sound and modern organization of men, infrastructure and the technical means to provide effective command and control. It is a navy that is fully capable of the necessary—and indispensable—coordination in its operations with international and government specialized agencies. The navy effectively covers Chilean territory from the maritime boundary with Peru in the north to the Antarctic in the south and is equipped with the aircraft and ships to control the open waters under Chilean jurisdiction and our littoral and internal waters.

Chile has developed a maritime power appropriate for its level of development and a navy that is organized and equipped consistent with the principle that "a fleet that concentrates on maintaining a presence on the high seas and patrolling in support of the sea lanes of communication is far more effective in identifying and countering threats to one's national security than a coastal-defense fleet." 12

Confronting the New Threats

It is important to point out initially that in confronting the threats of the twenty-first century, it is necessary to find appropriate responses to those threats within the international system and responses that are consistent with international law. Under the law of the sea, the flag State has the responsibility of exercising jurisdiction and control over vessels registered under its flag and has the obligation of carrying it out in accordance with its own national legislation, the 1982 United Nations Convention on the Law of the Sea (1982 LOS Convention)13 and international conventions approved within the International Maritime Organization (IMO) framework. The 1982 LOS Convention permits a State that has reason to believe that jurisdiction and control have not been executed properly regarding a specific vessel registered with another State to communicate this to the flag State, which is to investigate and take any necessary actions to remedy the situation.14

Recognizing that the flag State has not always effectively fulfilled its obligation of exercising jurisdiction and control over its flag vessels, the principle of port-State control is provided for by various international conventions.15 This principle empowers their port State to inspect foreign shipping in their ports. In addressing port-State control, special mention must be made of the International Ship and Port Facility Security Code (ISPS Code).16 The primary objective of the ISPS Code is to strengthen the security of international shipping, ports, waterways and the high seas by directing governments, shipping companies and port operators to enhance the security of the maritime enterprise. The ISPS Code also places responsibility on port authorities to undertake detailed security assessments, including response plans, to identify threats and vulnerabilities.17
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On the other hand, the 1982 LOS Convention provides explicit rights to the coastal State within its EEZ regarding fishing and to prevent, reduce and control pollution of the maritime environment. There also are conventions that permit a coastal State to act beyond its EEZ, such as the International Intervention Convention in instances in which an accident beyond the EEZ causes pollution that may affect the coastal State, the International Convention for Search and Rescue (SAR) and others.

The Presential Sea as a Useful Tool for Confronting the New Threats

When the Presential Sea concept was first advanced, the threat was uncontrolled exploitation of fishing stocks, particularly migratory and straddling fishing resources. Today the threats are far more diverse, but we believe the Presential Sea is an alternative that can be useful in confronting these new threats.

But, what is the Chilean Presential Sea? Geographically, it is that part of the ocean space between the outer limits of Chile's continental exclusive economic zone and the meridian which, passing through the western edge of Easter Island's continental shelf, extends north to the international boundary with Peru and south to the South Pole. It is depicted as follows:

Figure 1. Chilean Presential Sea and SAR Area of Responsibility

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The Presential Sea is an area in which Chile maintains a presence to protect the national interests and takes part in economic activities that will contribute to national development. “This concept expresses the will to be present in this part of the high seas with the aim of projecting maritime interests regarding the rest of the international community, watch over the environment, preserve the natural resources, with exact adherence to International Law.”

The Presential Sea is Consistent with International Law

The concept of the Presential Sea was first articulated in 1991. Immediately there were critics who expressed concern that the Presential Sea was an attempt to assert Chilean jurisdiction beyond those limits established in the 1982 LOS Convention. One writer described it as “a very disturbing precedent.”

Professor Vicuña, who served as president of the Chilean Delegation to the Third United Nations Conference on the Law of the Sea (1973–1983), responded to those critics:

The meaning and extent of the Presential Sea can be explained in the light of the developments set forth above since it closely responds to the expression of a special interest of the coastal State, in this instance Chile, but which can also be applied to many other geographical situations throughout the World. . . . It involves firstly the participation in and surveillance of the activities undertaken by other States in the high seas areas of particular interest to the coastal State. In this regard it is not a question of excluding any State from such areas, but, on the contrary, of ensuring the active inclusion of the coastal State concerned . . .

There is no question of exclusive coastal State rights involved in this concept, or the drawing of new maritime boundaries in a legal sense; neither should participation in such activities be understood as a kind of compulsory intervention by the coastal State in the activities undertaken in by other countries, but only as ensuring its own right to operate actively in the area. The concept expressly safeguards the legal status of the high seas established by the United Nations Convention on the Law of the Sea. . . . It follows that the approach has been conceived in a manner entirely consistent with the current status of the Law of the Sea.

Satya Nandan, who headed the Fijian delegation to the Third United Nations Conference on the Law of the Sea and served as chairman of the conference working groups on the exclusive economic zone, delimitation of maritime boundaries and the high seas, in addressing the accomplishments of the 1982 LOS Convention, believed:
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A major achievement of the 1982 Convention was to rationalize different uses and thereby reconcile the competing interests of states. The balance thus attained has greatly reduced the proliferation of incoherent regimes, as states adopt national legislation to conform to the regimes of the Convention. In that sense, the Convention has had a stabilizing effect, reducing uncertainty and instability in the peaceful use of the oceans.27

He continued:

For the future, the interest of all nations in a peaceful order of the oceans lies in uniform and consistent application of the principles established in the Convention. Differences between parties and non parties to the Treaty, and even between non parties, may be resolved by observing the norms of cooperative conduct and international resolution established by the Convention. Open conflicts and confrontations and unilateral assertions of new jurisdictional regimes will not contribute to the stability and certainty necessary in the international movement toward the rule of law....28

Jane Dalton observed a few years later that

[T]he Mar Presencial is a juridical concept offered to support Chilean national aspirations. The challenge to Chile and the international community is to attain Chilean aspirations within the framework of the existing Convention regime. The Mar Presencial may be the tool that enables Chile to do so. It must not be the tool by which the erosion of the regime begins.29

Beyond the fact that Chile desires a greater participation in Pacific Ocean activities, whether those are international trade, protection of the maritime environment, conservation of its resources or addressing threats arising on or coming from its waters, it has never been Chile's intention to act unilaterally, but through active participation in international organizations, specifically, the United Nations, the Organization of American States and the International Maritime Organization.

Maritime Domain Awareness

It is interesting to note how a similar concept to the Presential Sea has been developed by the United States, which has labeled it Maritime Domain Awareness (MDA).30 Admiral Thomas Collins, commandant of the US Coast Guard, speaking at the US Naval War College, stated:

From a risk-mitigation perspective, MDA is perhaps the highest return element of our application of maritime power. Simply put, MDA is processing comprehensive
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awareness of the vulnerabilities, threats, and all matters of interest on the water. It means having extensive knowledge of geography, weather, position of friendly vessels and potential threats, trends, key indicators, anomalies, intent and the activities of all vessels in an area of concern, including the innocent. . . . If knowledge is power, and MDA provides us the requisite knowledge of the maritime [spectrum], then MDA is the key to maritime power. MDA, and the knowledge it will bring, will allow maritime forces to respond with measured and appropriate force to meet any threat on, below or above the sea and, taken to an ultimate state, will provide the necessary awareness to create "nonevents," proactively preventing incidents, challenges, and devastation.31

International Cooperation and Voluntary Agreements

Vice Admiral John Morgan, deputy chief of naval operations for information, plans and strategy, and Rear Admiral Charles Martoglio, director of the Strategy and Policy Division, in the US Navy's Office of the Chief of Naval Operations, in describing the importance of the seas and the interests of all nations in ensuring the security of the oceans, stated:

Promoting and maintaining the security of the global maritime commons is a key element because freedom of the seas is critical to any nation's long-term economic well-being. The impact of the commons on trade, international commerce, and the movement of people is significant, making security on the high seas, and in the world's littorals, harbors, and ports, a cornerstone of prosperity. Likewise, the exploitation of the maritime domain by nations, groups, or individuals must be considered a global challenge. Policing and protecting the maritime commons against a wide spectrum of threats is a high priority for all nations interested in the economic prosperity and security that comes from a safe and free maritime domain."32

Admiral Collins, in his 2003 address at the International Seapower Symposium, described how 9/11 forced the United States to rethink its approach to maritime power in the context of maritime security as resting purely on military power in indicating:

[M]aritime security is a concerted effort that encompasses more than just protecting the nation's national interest against hostile nations, clearly. It includes protection against terrorist attacks; protection of our sovereign natural resources, environment, and the like. To reduce these risks in this new security environment, it requires a special application, I think, of concerted, integrated maritime power at four major areas of emphasis: to (1) increase our awareness of all activities and events in the maritime environment; (2) very importantly, build and administer an effective maritime security regime both domestically and internationally; (3) increase military and civil operational presence—persistent presence—in our ports and coastal zones and
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beyond, for a layered security posture; and (4) improve our response posture in the event a security incident does occur.33

The twenty-three States attending the 2003 ASEAN Regional Forum emphasized the importance of national and regional cooperation to the maintenance of maritime security:

To deal with this increasingly violent international crime, it is necessary to step up broad-based regional cooperative efforts to combat transnational organized crime, including through cooperation and coordination among all institutions concerned, such as naval units, coastal patrol and law enforcement agencies, shipping companies, crews, and port authorities;

Such efforts must be based on relevant international law, including the 1982 Law of the Sea Convention;

It is important that there be national and regional cooperation to ensure that maritime criminals and pirates do not evade prosecution;

Effective response to maritime crime requires regional maritime security strategies and multilateral cooperation in their implementation;

National, Regional and International efforts to combat terrorism also enhance the ability to combat transnational organized crime and armed-robberies [sic] against ships.34

We think international organizations have an important role, particularly the International Maritime Organization (IMO), which effectively addresses a wide variety of maritime affairs, in furthering international cooperation. International instruments and recommendations/guidelines have been approved for the suppression of piracy and armed robbery against ships and fixed platforms, including the 1988 Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation35 and its Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf36; the 1974 International Convention for the Safety of Life at Sea,37 particularly the new Chapter XI-2, the International Ship and Port Facilities Security Code38; the 2005 Protocol of the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation39; and the Protocol of 2005 for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf.40 IMO
measures adopted to enhance maritime security have greatly contributed to strengthening international maritime security.

The contributions of international organizations have been recognized in a range of international conferences; for example, in January 2006, the Tokyo Ministerial Conference on International Transport Security "welcomed and supported the vigorous maritime security activities undertaken by relevant international organizations, particularly, the International Maritime Organization (IMO) and the World Customs Organization (WCO)." \(^{41}\)

Also, the Ninth Asia Pacific Heads of Maritime Safety Agencies (APHMSA) Forum, held in Viña del Mar, Chile from April 18–22, 2006,\(^ {42}\) stressed that the fight against international terrorism and criminal acts at sea constitutes a goal for all States, with the purpose of assuring people's integrity and development through safe and free trade, and that cooperation among member States is imperative in addressing these non-traditional threats. During the forum, the US delegation explained the meaning of Maritime Domain Awareness (MDA). The communiqué issued at the conclusion of the forum addressed MDA as follows:

It was also acknowledged by the Forum that for MDA to be effective, information from all maritime mission areas must be integrated, and that the sharing of maritime information among international partners, particularly among APHMSA members, is essential in achieving transparency. . . .

Noting the great potential for MDA to contribute to many aspects of maritime safety, SAR, environmental protection, as well as security, the Forum suggested further work should be carried out or discussed at a future meeting regarding the precise benefits which can be derived.\(^ {43}\)

There are a number of voluntary agreements created by the United States after 9/11 that are designed to address threats from and on the sea. These include the Container Security Initiative (CSI),\(^ {44}\) the Proliferation Security Initiative (PSI)\(^ {45}\) and the Regional Maritime Security Initiative (RMSI),\(^ {46}\) directed specifically at the Strait of Malacca. While the international community supports their objectives,

[They] have received a mixed bag of responses from the maritime nations. The PSI raises some fundamental issues under the United Nations Convention of the Law of the Sea (UNCLOS). Maritime specialists argue that under the customary international law all vessels have the freedom of movement on the high seas and therefore the freedom of navigation on the high seas is absolute. Therefore, there is no justification in boarding and searching a ship if it has a nationality, not engaged in piracy or slave trade. Analysts doubt the right of the powerful nations to violate the basic principles and norms enshrined in the UNCLOS. . . . The daunting challenge however, is how to
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address these initiatives in a comprehensive, yet cost-effective way, without challenging sovereignty issues and dramatically restraining the flow of commerce.47

Another author's concerns were not just with the legal issues raised by the CSI and PSI but with their focus on protecting US interests and the unilateral process by which they were created:

So far, many states have gone along with CSI and PSI. However, the high costs of compliance evoke images of colonialism and hegemony. The stationing of U.S. Customs officials in the sovereign ports of foreign states might be seen as intrusive. PSI and CSI may also limit the rights of commercial vessels operating internationally to remain free from arbitrary search and seizure. The initiatives are directed exclusively toward safeguarding U.S.-bound shipping. . . . Further, they exclude WMD and related shipments by the U.S. to its allies. On the whole, CSI and PSI lack transparency, reciprocity, and accountability; they are unilateral U.S. measures prompted by the 9/11 attacks.

It may be that this is the necessary cost of increased maritime security in the twenty-first century. If many countries are willing to accept this type of non-consulative and unilaterally-driven process that would indicate a very significant change in the way international regulations are framed and implemented. It would constitute a major shift from negotiated multilateralism of the post-war system to cooperative unilateralism under post-Cold War American hegemony.48

We believe that necessary changes or modifications to international legislation must be accomplished within the framework of the United Nations. The history of efforts to create new international conventions or modify existing ones has shown, however, that this can sometimes be a lengthy process. In the face of the new threats and the dangers they create, the international community must be prepared to act promptly to adopt procedures that provide effective responses to terrorism and proliferation.

The law of the sea has developed and evolved over centuries of the use of the oceans. Sometimes those changes can occur rapidly; other times—and more frequently—changes require a lengthy period. An example of the latter is the definition of piracy as it appears in the 1982 LOS Convention,49 a definition that has existed essentially unchanged for hundreds of years. In addressing the need to change the law, the political advisor to Striking Force NATO observes:

In recent years, efforts have been made to loosen the restrictive UNCLOS definition [of piracy]. The 1988 Rome Convention on Suppression of Unlawful Acts at Sea (SUA) dropped the high seas and private act limitations of Article 101, but SUA focuses on jurisdiction, not enforcement. The signatories are required to criminalize such acts,
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and to either exercise jurisdiction over persons in their territory, or to extradite them to another state with a valid stake in the action. Crucially, it does not authorize hot pursuit.

What then, can states and navies, legally do?

On the high seas, and within one’s own waters, boarding and arrest can be exercised under the universal jurisdiction rubric, or where the pirates are of that state’s nationality. . . .

Also relevant are recent anti-terrorist initiatives, such as the 2005 revisions to the SUA convention that allow states to agree that others may board vessels flying their flag after notification.

In practice, acts of piracy and maritime terrorism may be indistinguishable, the question of intent usually determined after the fact. Thus initiatives to suppress terrorism may assist in the fight against piracy, and vice versa.50

We believe a more straightforward approach is to make proliferation of weapons of mass destruction a global crime, like slavery or piracy. Today the law provides that warships of any nation have the right to visit a ship where there is reasonable ground for suspecting that the ship is engaged in slavery or piracy or is stateless.51 Given the new threats, it is not reasonable that action cannot be taken in cases of terrorism at sea.

Conclusion

Chile is dependent on the sea. In our opinion, Chile recognizes the threats created by the current international environment to the use of the oceans and is forward looking in identifying future circumstances that could affect the nation. The Chilean government has developed and articulated policies that provide appropriate guidance to government agencies in directing their organizations to carry out those policies. Specifically in the case of the navy, it has developed and adapted its means towards the objectives established by the government.

Effective responses to illicit acts require multilateral cooperation at both the international and regional level. While the possible solutions to the new threats are to be found principally working with the United Nations and the International Maritime Organization, we must look beyond them to various national public and private agencies and organizations that are in charge of maritime security. The solutions adopted to date are properly focused by involving not only governments
but also shipping companies, port authorities, customs officials, navies, coast guards, etc.

We believe that ensuring “good order at sea” worldwide requires an improved level of awareness, effective policy and integrated governance. The United Nations must be the structure within which States act to develop the long-term legal framework. We recognize, however, that there must be a mechanism, such as that provided by the International Maritime Organization, there to provide the short-term guidance required for the maritime power of States to effectively confront the threats not just as they arise, but hopefully before they appear.

The 1982 Law of the Sea Convention has been the vital legal structure to keep order at sea. Even if the prerogatives of the flag State are irreplaceable, port-State control has become an efficient complement. Even so, we think that whatever prerogatives the law of the sea confers upon individual States, the Presential Sea concept is a useful tool for the surveillance of the high seas adjacent to the exclusive economic zone. It provides an “area of responsibility” for States to provide the control of that sea space necessary to address the new threats, without affecting in the least the freedom of the seas. On the contrary, it preserves the freedom to use the seas and makes that use safer for mankind.

Notes

1. Fernando Guarelo Fitz-Henry.
3. *Id.*
7. CHILEAN MARITIME AUTHORITY (DIRECCION GENERAL DEL TERRITORIO MARITIMO), BOLETIN ESTADISTICOS MARITIMO 95 (2005).
9. *Id.* at 52.
10. *Id.* at 46.
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14. Id., art. 94.6

15. See, e.g., 1982 LOS Convention, supra note 13, art. 218. In addition, the IMO has encouraged the establishment of regional port State control organizations. Chile is a member of both the Vina del Mar (Latin America) and Tokyo (Asia and Pacific) regional Memorandums of Understanding.


18. 1982 LOS Convention, supra note 13.


21. In May 1990, Admiral Jorge Martinez Busch, commander-in-chief of the Chilean Navy, speaking in Vina del Mar, Chile, said, "The great task of the present generation is the effective utilization of our seas." Perhaps today's "great task" is to preserve the ability to effectively counter threats from and on the seas.

22. CHILEAN DEFENSE WHITE BOOK, supra note 8, at 24.


24. CHILEAN DEFENSE WHITE BOOK, supra note 8, at 24.


30. For a discussion of Maritime Domain Awareness from a US perspective, see Joseph L. Nimmich & Dana A. Goward, Maritime Domain Awareness: The Key to Maritime Security, which is Chapter IV in this volume, at 58.


32. Morgan & Martoglio, supra note 6, at 14.

34. Statement on Cooperation Against Piracy and Other Threats to Maritime Security, supra note 5.
38. See supra text accompanying note 17.
42. The forum was attended by delegations from Australia, Canada, Chile, China, Hong Kong, Japan, Malaysia, New Zealand, Solomon Islands, Philippines, Korea, Singapore, United States, Vanuatu and Vietnam.
45. For a discussion of the PSI, see Stuart Kaye, The Proliferation Security Initiative in the Maritime Domain, in id. at 141.
46. For a discussion of the RMSI, see Yann-huei Song, Security in the Strait of Malacca and the Regional Maritime Security Initiative: Responses to the US Proposal, which is Chapter VII in this volume, at 97.
49. 1982 LOS Convention, supra note 13, art. 101.
51. 1982 LOS Convention, supra note 13, art. 110.