

## Book Review: “Maritime Security and the Law of the Sea: Help or Hindrance?”

Edited by Malcolm D. Evans and Sofia Galani  
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The title *Maritime Security and the Law of the Sea: Help or Hindrance?* Is edited by Sir Malcolm D. Evans and Sofia Galani, Edward Elgar Publishing, 2020. It is a welcome contribution to the field of maritime security from a Public International Law Perspective. Sir Malcolm D. Evans is a Professor of Public International Law at the University of Bristol Law School and well-renowned for his academic works, among which he has published on the Law of the Sea, and maritime piracy, and is a specialist on the prohibition against torture, as well as various Public International Law topics, but for most of us, he is known by his widely spread and comprehensive textbook *International Law*.<sup>1</sup> Dr Sofia Galani is an Assistant Professor of Public International Law at Panteion University. She has published in the field of maritime security; the law of the sea; terrorism studies; and human rights. Thus, it is indeed exciting and promising to open their publication on Maritime Security!

Maritime security is important, not least because by value, 90 percent of global trade travels by sea.<sup>2</sup> In the 2000's several challenges to maritime security surfaced, such as organized criminal activities, e.g piracy, terrorism, trafficking in arms, drugs and humans, illegal unregulated fishing, pollution, dumping but also large search and rescue missions and the freedom of navigation have been in focus. The book investigates the area of Maritime Security, while it poses the question: “Does the 1982 Law of the Sea Convention (LOSC) help or hinder maritime security?” This is an underlying question and red thread that all contributors wrestle with.<sup>3</sup> The book approaches different maritime security threats, a blend of threats from state and non-state actors, finding that LOSC is broad enough to cover most of today's threats, such as preventing human trafficking by the provision on the slave trade in Art.108, repressing piracy in Art.100-107, act against drug trafficking in Art.108, and against pollution in its Chapter 7 and Art, 192-194. However, in the publications first Chapter called *The Interplay Between The 1982 United Nations Law of The Sea Convention: Help or Hindrance?* Evans and Galani find that some other new threats like the proliferation of WMDs and maritime terrorism seem to fall outside the language of LOSC.<sup>4</sup> Another problem is the use of flags of convenience are posing jurisdictional barriers to enforcement measures.<sup>5</sup>

<sup>1</sup>Evans, M. D. (ed.), *International Law*, 2018, 5th ed. Oxford University Press.

<sup>2</sup>“Tri-Service Maritime Strategy” (TSMS), entitled “*Advantage at Sea*,” *Infra note 5*.

<sup>3</sup> Evans/Galani, Chapter 1, p.3.

<sup>4</sup> *Ibid.*, p.11.

<sup>5</sup> *Advantage at Sea: Prevailing with Integrated All-Domain Naval Power*, (Arlington, VA: U.S. Department of Defense, December 2020), [https://media.defense.gov/2020/Dec/17/2002553481/-1/-1/0/TRISERVICESTRATEGY.PDF/TRISERVICESTRATEGY.PDF]. Navy, Marine Corps, Coast Guard release maritime naval strategy, U.S. Navy, December 17, 2020, [https://www.navy.mil/Press-Office/Press-Releases/display-pressreleases/Article/2449829/navy-

“This lends support to the argument that the emerging blend of threats and activities at sea represents a paradigm shift in the international law of the sea”, to cite Evans and Galani’s first Chapter.<sup>6</sup> Then they ask the question if there is a need for new tools or conventions other than LOSC that will strengthen maritime security. A need for paradigm shifts in the Law of the Sea?

It is evident that the field of maritime security is under pressure to accommodate new threats in the Cyber Security and Artificial Intelligence era. The editors point out that both NATO and the US have framed new maritime strategies, in the 2010s, to meet current threats.<sup>7</sup> However, after the *Maritime Security and the Law of the Sea: Help or Hindrance?* release, in December 2020, the U.S. Navy, Marine Corps, and Coast Guard (naval services) issued a new joint “Tri-Service Maritime Strategy” (TSMS), entitled “*Advantage at Sea*,” that represents a significant update to modern U.S. maritime defence and security thinking. The document highlights the importance of “security, and promise of a free and open, rules-based order”. This strategy confirms some of the new thinking in Evans and Galani’s book. Its focus is on the Indo-Pacific with China as a primary threat, already commanding the world’s largest naval force, and to a lesser extent Russia. The withdrawal of US forces from Afghanistan means that the primary operational roles of the US Navy, Marine Corps and Coast Guard will no longer be to support land wars in Asia. The strategy also confirms that multiple actors and phenomenon threatens maritime security and create vulnerabilities for adversaries to exploit and corrode the rule of law.

“Additional competitors, violent extremists, and criminal organizations all exploit weak governance at sea, corruption ashore, and gaps in maritime domain awareness. Piracy, drug smuggling, human trafficking, and other illicit acts leave governments vulnerable to coercion. Climate change threatens coastal nations with rising sea levels, depleted fish stocks, and more severe weather. Competition over offshore resources, including protein, energy, and minerals, is leading to tension and conflict. Receding Arctic Sea ice is opening the region to growing maritime activity and increased competition.”<sup>8</sup> It also calls for investment in new technologies, such as advanced uninhabited platforms and Artificial Intelligence.<sup>9</sup>

*Maritime Security and the Law of the Sea: Help or Hindrance?* aims to answer such questions in nine Chapters by different distinguished authors in the field of the Law of the Sea and maritime security.

In Chapter 2, *Beyond Seablindness: A New Agenda for Maritime Security Studies*, Christian Bueger and Timothy Edmunds analyze today’s concept of maritime security.<sup>10</sup> They start with an exposé of the historic evolution of the subject. They embrace the more modern notion of positive security, originally launched by the professor of peace and conflict, Professor Johan Galtung. According to Galtung negative peace is the absence of direct personal violence. Instead, positive peace is the absence of structural violence. Achieving positive peace, then, is to change the social structure that enables stratification, inequality, and disequilibrium.<sup>11</sup> The concept of positive peace is what Bueger and Edmunds embrace when defining maritime security, in a security matrix that builds on “four core domains” found by Bueger, “national security, marine environment, economic development, and human security”.<sup>12</sup>

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marine-corpscoast-guard-release-maritime-strategy/]. Michael Sinclair, Roderick H. Mchaty, Blake Herzinger, *Implications of the Tri-Service Maritime Strategy for America’s naval forces*, Brookings Institute, March 2021.

<sup>6</sup> *Ibid.*

<sup>7</sup> *Ibid.*

<sup>8</sup> TSMS, p.5.

<sup>9</sup> TSMS, p.8.

<sup>10</sup> Christian Bueger and Timothy Edmunds, Chapter 2, *Beyond Seablindness: A New Agenda for Maritime Security Studies*, pp.25.

<sup>11</sup> Galtung, Johan. “Violence, Peace, and Peace Research.” *Journal of Peace Research*, vol. 6, no. 3, Sage Publications, Ltd., 1969, pp. 167–91.

<sup>12</sup> The matrix builds on Christian Bueger, What Is Maritime Security, *Maritime Policy*, p.159, 2015, pp.160-161.

They highlight the importance of new mechanisms, such as the CGPCS regime for the piracy problem in Somalia, that “bring together a “heterogenous” set of actors, not only states, but also organizations, industry associations, think tanks, civil and military representatives”.<sup>13</sup> The authors point out that such organizations “although non-binding in nature exert a normative pull like the CGPCS has paved way for the development of a legal system based on a memorandum of understanding by which piracy suspects can be arrested, transferred, prosecuted and jailed across a number of jurisdictions.<sup>14</sup> They also point to capacity-building as crucial but notice that involvement in local ownership, can mean different things to different actors.<sup>15</sup>

Burger and Edmunds's conclusions consist of five areas in particular that require further attention for research. They highlight these five issues: 1. changing landscape of sea power transformed the marine environment, blue economy, and human security, with emphasis placed on maritime crimes and law enforcement at sea. 2. formal and informal rules for maritime security governance and address the “fragmentation” of maritime law 3. how to build international security cooperation. 4. more attention to be paid to the connection between land and sea, such as the transformation of crimes to maritime crimes. 5. revisit capacity-building and political functions and invite more local ownership to such processes. Indeed Chapter 2 gives a theoretical and quizzical framework to the following Chapters.

Chapter 3 is by Richard Barnes and Mercedes Costello, *Fisheries and Maritime Security: Understanding and Enhancing the Connection*, which provides a fresh look at the topical issue of fishing as a maritime security threat. The Chapter takes on a broader interpretation of maritime security from a conceptual framework, such as presented in Chapter 2 by Bueger and Edmunds. It is emphasized that “aggressive and uncontrolled foreign” overfishing is a contributing factor to the piracy problem in Somalia and the Gulf of Guinea.<sup>16</sup> The Chapter is interesting as it tries to “deepen the dialogue about how fisheries fit within the broader framework of maritime security.”<sup>17</sup> Thus, it aims at an inclusive view not only looking at illegal unreported fishing (IUU) but also how fisheries overall can contribute to instability and security issues. The authors wrestle with the pertinent question of how IUU and other uncontrolled or mismanaged fishing activities fit into maritime security and the reason why, including threats to livelihood, food insecurity, ecology, and bad enforcement. The authors point out that a number of post-LOSC global and regional treaties advance fisheries provisions: “to provide a complex and cooperative operational regime that supports detailed compliance and enforcement rules of both legal and non-legal nature.”<sup>18</sup> The authors conclude by calling for sensitivity towards the subject of fisheries and security policies to avoid future maritime disputes.

Chapter 4 is written by Volker Roeben, *High-end Maritime Security, As Legal Argumentation*. The Chapter discusses the treaty interpretation of LOSC out of the Richard methods of treaty interpretation

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<sup>13</sup> The Contact Group on Piracy off the Coast of Somalia, commonly abbreviated as CGPCS, is an international governance mechanism established in New York on January 14, 2009 to facilitate the discussion and coordination of actions among states and organizations to suppress Somali piracy. The CGPCS was established in response to United Nations Security Council Resolution 1851 (2008), later recalled and replaced with United Nations Security Council Resolution 1918 (2010). To date, more than 60 countries and international organizations have become part of this forum, all of which are working towards the prevention of piracy off the Somali coast.

<sup>14</sup> Bueger/Edmunds., p.38.

<sup>15</sup> *Ibid.* p.45.

<sup>16</sup> Richard Barnes and Mercedes Costello, *Fisheries and Maritime Security: Understanding and Enhancing the Connection*, p.49.

<sup>17</sup> *Ibid.*

<sup>18</sup> *Ibid.*p.82.

laid down in Art.31 and 32 of the Vienna Convention on the Law of Treaties from 1969 (WK). This chapter is of special interest to me specialising in treaty law. <sup>19</sup>He proposes an objective interpretation of LOSC, in accordance with the primary rule of treaty interpretation found in Art.31 WK. Thus, he uses a literal interpretation with an “objective grammar” instead of what he thinks is the prevailing interpretation of LOSC, which is subjective interpretation serving states and sovereignty interests and based on Art.31 (4) WK. Roeben examines case law with a focus on the Exclusive Economic Zone (EEZ). There is an interesting comparison between the different positions taken by tribunals in the South China Sea Award and Chagos Marine Protected Area Award.<sup>20</sup> However, this Chapter might need some insights from the reader on treaty interpretation as it is rather complicated but highly interesting. Roeben wants us to see a shift towards an “objective grammar interpretation” instead of just the traditional contentment with that LOSC has established an “objective legal regime”.

Chapter 5 is by Anne Petrig and is called *The Commission of Maritime Crimes With Unmanned Systems: An Interpretive Challenge for the United Nations Convention on the Law of the Sea*. The chapter is a highlight for everyone (as me) interested in maritime crimes and piracy. This is because Petrig takes UNCLOS provisions on piracy as the predominant example of how hard it is to adapt new evolutions, such as unmanned systems, to the interpretation of UNCLOS when it comes to maritime crimes, without having to sacrifice a rule-based interpretation inherent in criminal law statutes. First, she explores the possible new use of unmanned systems in the hands of criminals. She gives the recent example of how the Houthi rebels used remote-controlled boats to carry out attacks against various targets, such as the oil-tanker *Al-Madinah* as well as against an oil depot near the Yemeni border in the Strait of Hormuz in 2018, and such attacks have continued.<sup>21</sup> She emphasizes that explosive devices can easily be adapted to remote-controlled vessels. Remote-controlled vessels are also efficient for smuggling, e.g., remote-controlled submarines are perfect to be used in drug trafficking.

Also, next Chapter 6, by Kara Chadwick, deals with the question of unmanned systems: *If Unmanned Maritime Systems Will Shape the Future for Naval Operations: Is International Law Ready?* This contribution is made more from a practitioner’s point of view. It examines the development of unmanned maritime technology systems (UMS) and then discusses three areas of importance for use of UMS by navies: legal classification, the assertion of jurisdiction by coastal states over military UMS, and legal and practical considerations that might arise when using UMS in law enforcement tasks at sea in support of maritime security.<sup>22</sup> It is pointed out that UMS appeal to the military because of their endurance, capacity to expand their operations, and low costs.<sup>23</sup> Chadwick examines if UMS fits the definition of ship or vessel in LOSC, and notes that LOSC does not define either term nor do other international treaties make any significant definition as to whether UMS are ships or vessels. She concludes that many academics and professional

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<sup>19</sup> Svanberg, Katinka, *An Introduction to Treaty Law*, Norstedts Juridik, 5<sup>th</sup> ed. 2015.

<sup>20</sup> *The South China Sea Arbitration Award of 12 July 2016 the Republic of Philippines v. The People's Republic of China*, PCA Case N° 2013-19. *The Chagos Marine Protected Area Arbitration (Mauritius v. United Kingdom)*, Final Final Award, ICGJ 486 (PCA 2015), 18th March 2015.

<sup>21</sup> Petrig, p.108, see also: “The Saudi-led coalition said it intercepted and destroyed an unmanned explosives-laden boat launched from Yemen by the Iran-aligned Houthi group on September 19, 2019. Since 2017, in fact, there have been several reports of attacks or discovery of these unmanned explosive vessels in the country”, Shay, Shaul, *The threat of Houthi unmanned explosives-laden boats*, The International Institute for Counter-Terrorism, Israel, 02/10/2019, [https://www.ict.org.il/Article/2456/The\_threat\_of\_Houthi\_unmanned\_explosives-laden\_boats#gsc.tab=0]

<sup>22</sup> Petrig, p.134

<sup>23</sup> Chadwick, p.132.

bodies do include UMS in the ship/vessel category, but that there is a lacuna in current international law and uncertainty that needs to be addressed.<sup>24</sup>

Whether UMS are classified as ships has importance for the jurisdiction of coastal states, e.g. the right to transit passage and innocent passage, and the right and obligations of naval vessels in coastal states waters, and this is a question Chadwick investigates.<sup>25</sup> There is a very satisfying discussion of whether a naval UMS has the right to act against maritime crimes based on LOSC; to chase pirates, intercept slave trading, do counter-narcotics operations, hot pursuit or assert freedom of navigation.<sup>26</sup> The main conclusion in this Chapter is that current international law can apply *mutatis mutandis* to UMS because otherwise changes and updates are unavoidable.<sup>27</sup>

In Chapter 7 Andrew Murdoch focuses on *Ships Without Nationality: Interdiction on the High-Seas*. Addressing the issue of maritime crimes committed by, or on board, ships without nationality on the high seas. The author notes that there is not only a problem with “stateless vessels”, but criminals also use the switching of flags on the high seas to avoid interdiction. Moreover, a sanctions regime under the United Nations Security Council can demand a vessel to deregister under a mandatory sanctions regime, such as the United Nations Sanctions Committee under Resolution 2321 on North Korea.<sup>28</sup> His chapter then goes on to describe the jurisdiction of flag states on the high seas in Art. 91 and 92 in LOSC and registration of vessels flying its flags, Art.94.<sup>29</sup> Then, he continues on how to ascertain jurisdiction over ships without nationality in LOSC Art.110.<sup>30</sup> Murdoch gives an account for firstly the “broad view”; that on the high-seas interdiction is indeed possible of “stateless” vessels, as they are international “pariahs” and can be interdicted on the high seas, citing several court cases, such as the *ASYA case*.<sup>31</sup> The broad approach has been used by the European Commission against illegal migration at sea on board stateless vessels.<sup>32</sup> The “narrow view” on the contrary, is mostly based on academic writings such as by Barnes, Lowe, Churchill and Guilfoyle. It supports a more circumscribed right, that beyond boarding, needs a “nexus” to the interdicting state “that would allow enforcement measures against the ship.”<sup>33</sup> After discussing the two opposite views Murdoch concludes that although LOSC is silent on the subject, national courts and state practice appears to favor the broader view, that international law admits enforcement jurisdiction over vessels without nationality, including seizure.<sup>34</sup> He also underscores the importance of a system where flag states give their ships enough documentation and have systems in place to confirm nationality.<sup>35</sup>

*Tackling Maritime Security from a Port State's Perspective* is the title of Chapter 8, by Sofia Kopela. “The port state is an important factor in implementing and enforcing international standards related to maritime security and therefore preventing and deterring security threats worldwide”, to cite

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<sup>24</sup> *Ibid.*, p.142.

<sup>25</sup> *Ibid.*, p.146.

<sup>26</sup> *Ibid.*, p.152-154.

<sup>27</sup> *Ibid.*, p.156.

<sup>28</sup> Murdoch, p.159

<sup>29</sup> *Ibid.*, pp.159.

<sup>30</sup> *Ibid.*, p.166.

<sup>31</sup> *Naim Molvan v. Attorney General for Palestine (The "Asya")*, Judicial Committee of the Privy Council, 20 April 1948, 81 Ll L Rep 27, Murdoch, *ibid.*, p.168,

<sup>32</sup> Murdoch, p.171.

<sup>33</sup> *Ibid.*, p.171-172

<sup>34</sup> *Ibid.*, p.177.

<sup>35</sup> *Ibid.*, p.179.



Kopela.<sup>36</sup>The chapter is a welcome contribution as it assesses the role played by port states within the existing regulatory framework related to maritime security, such as the IMO Measures: the SOLAS Convention, and the ISPS Code. Their provisions concerning port states are explained in detail. Kopela emphasizes that enforcement of SOLAS and the ISPS Code depends much on implementation in practice.<sup>37</sup>The problem is often that states lack the expertise and resources to enforce the ISPS Standards. Different measures have been adopted by the IMO to strengthen implementation, such as an auditing system, and a self-questionnaire. The discrepancies in enforcement and implementation have also been the object of the conclusion of regional port Memorandums of Understanding (MOU) to enhance and harmonize measures adopted by ports in the region.<sup>38</sup>The World Custom Organization has also taken the initiative to tackle the problems of closed cargo units.<sup>39</sup>The chapter moves on to examine unilateral port state initiatives with a focus on the US.

The Chapter ends with conclusions that emphasize that port-states play a key role in tackling maritime security threats. However, port-state jurisdiction has not been expanded in the same ways as has happened with respect to the protection of the spacefaring environment. Port-states can deny entry to their ports of dangerous vessels, while flag-state jurisdiction is mandatory. More unilateral initiatives are called for to secure ports and help the shipping industry.<sup>40</sup> The final Chapter 9, *Towards the Code of Conduct for the South China Sea: Maritime Security Dimensions*, is by Keyuan Zou. This is the only Chapter with a purely regional approach, focusing on the South China Sea. This is a region where six years ago the landmark decision, *The South China Sea Arbitration (The Republic of Philippines v. The People's Republic of China)*, was awarded, where the Permanent Court of Arbitration (PCA) denied Chinese expansionist claims of historic rights to the area and through installations.<sup>41</sup>The PCA rejected China's claims based on archipelago rights out of artificial reefs and installations. Zou starts with the safety of navigation through the Malaccan strait and describes clashes between China and US in China EEZ on military activities in the EEZ.<sup>42</sup>The Chapter then deals with piracy and the Regional Cooperation Agreement on Combatting Piracy and Armed Robbery Against Ships in Asia (ReCAAP)<sup>43</sup> agreement which aims to suppress piracy in national jurisdictions when armed robbery at sea occurs in national waters. The agreement obliges contracting states to combat piracy and armed robbery at sea, to seize ships and arrest pirates and to rescue their victims. It also establishes an information-sharing Centre in Singapore. The ReCAAP has been seen as a model agreement for other regional arrangements. Then, Zou looks into the work on a code of Conduct in the South China Sea underway but hampered by China.<sup>44</sup> Thus, he turns to security issues related to China's claims in the South China Sea and makes the following striking observation: "the South China Arbitration Case was "part of the overall rebalancing strategy of the United States in order to

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<sup>36</sup> Kopela, p.180

<sup>37</sup> *Ibid.*, p.190.

<sup>38</sup> *Ibid.*, 193.

<sup>39</sup> *Ibid.*, p.194

<sup>40</sup> *Ibid.*, p.199-201.

<sup>41</sup> *The South China Sea Arbitration Award of 12 July 2016*, PCA Case N° 2013-19.

<sup>42</sup> Zou, p.205.

<sup>43</sup> The Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia ([ReCAAP](#)) is the first regional government-to-government agreement to promote and enhance cooperation against piracy and armed robbery against ships in Asia. The ReCAAP Agreement was launched in November 2006 with 14 Asian Contracting Parties including North, Southeast, and South Asian countries. It has 21 Contracting Parties today, including Europe (Norway, the Netherlands, Denmark, the United Kingdom and Germany), Australia, and the United States.

<sup>44</sup> *Ibid.*, p.213.

contain a rising China".<sup>45</sup> The Chapter's conclusions are that a multilateral maritime security cooperation framework is at the top of the South East Asian country's agenda.<sup>46</sup>

Whilst the book is extensive and detailed across many topics there is limited analysis of transnational crimes committed at sea, for example trafficking in humans, migrants and narcotics, pollution, dumping and other crimes against the maritime environment, along with search and rescue missions. This may be good material for the second edition of this fascinating and incisive book.

This book is important for anyone interested in the evolving discipline of Maritime Security and the legal structure on which it is based with up-to-date research on this expansive and exciting topic. The authors are well-known within their field and have already conducted significant research on their respective areas of expertise. The volume is insightful and quite easy reading even for someone who is not an expert in international law.

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<sup>45</sup> *Ibid.*, p.216.

<sup>46</sup> *Ibid.*, p.217.