

# YO HO HO AND A BUCKET OF CASH THE NEED TO ENHANCE REGIONAL EFFORT TO COMBAT PIRACY AND ARMED ROBBERY AGAINST SHIPS IN SOUTHEAST ASIA

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## Abstract

*The problem of piracy is that the world press nowadays often focuses on waters off the coast of Somalia and the Gulf of Aden. That is understandable given the recent phenomenal upsurge of piratical activities in that poverty stricken part of the world. Poverty, along with degradation of the rule of law, is often a catalyst for criminal acts, and if that situation occurred in maritime neighborhood, it usually takes form of piracy and armed robbery against ships. Southeast Asia is one of those places. The primary purpose of this essay is to examine the deficiencies of regional efforts to combat piracy and armed robbery against ships in Southeast Asia. To provide readers with an understanding of the legal difficulties involved with piracy and armed robbery in Southeast Asia*

**Keywords:** Piracy, armed robbery against ships, regional cooperation

## I. INTRODUCTION

...Soon after the pirates had boarded the tanker ... Bedlam erupted on the ship's decks as the pirates tried to round up the frightened crew... [The pirates] were on the bridge. They switched on the public address system and started beating the captain until his shouts for the crew to surrender blared over the ship's loudspeakers. 'Please, they are killing me,' he cried. Sixteen crewmen eventually gave up. Each was asked his name, then bound and blindfolded.<sup>1</sup>

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<sup>1</sup> Peter Gwin, 'Dark Passage: The Strait of Malacca. Pirates haunt it. Sailors fear it, Global trade depends on it', *National Geographic*, October 2007, Feature Article, p. 4. available at <<http://ngm.nationalgeographic.com/>>

Put aside imaginations of “Avast, me hearties!” screamed by swash-bucklers with cutlasses between their teeth as they go swinging through the riggings. Modern day “gentlemen of fortune” are less associated with adventurism and romanticism as was the case with images of Henry Morgan and Calico Jack. Their effects on sea-borne trade, however, like their counterparts in yestercenturies, modern day pirates are equally destructive.

On the problem of piracy, the world press nowadays often focuses on waters off the coast of Somalia and the Gulf of Aden. That is understandable given the recent phenomenal upsurge of piratical activities in that poverty stricken part of the world. Poverty, alongwith degradation of the rule of law, is often a catalyst for criminal acts, and if that situation occurred in maritime neighborhood, it usually takes form of piracy and armed robbery against ships. Southeast Asia is one of those places. Being one of the most densely populated areas in the world and witness to numerous local conflicts, Southeast Asia had become a largely poor and “lawless” region. As a result, not a small number of its denizens resorted to criminal acts, including ordinary fishermen with few means to make ends meet.

The primary purpose of this essay is to examine the deficiencies of regional efforts to combat piracy and armed robbery against ships in Southeast Asia. To provide readers with an understanding of the legal difficulties involved with piracy and armed robbery in Southeast Asia, Part II will briefly elaborate the inadequacy of existing international legal framework to effectively deal with the problem. Part III will discuss the positive and negative points of cooperation between countries in the region in fighting piracy and armed robbery against ships; part III will also attempt suggest possible improvements for regional cooperation.

## **II. PIRACY IN SEA, A PROBLEM SINCE THE ANTIQUITY**

*That our sails may meet favorable winds  
That the sea lanes be peaceful and secure  
That gold, pearls, wealth and valuables fill our ships full with glory  
With pious hearts do we offer up this excellent wine.*<sup>2</sup>

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<sup>2</sup> Chinese sailors’ seagoing incantation proffered to the heavens. See Joseph Cum-

Labeling piracy in Southeast Asia as a recent trend is false. Chinese history recorded this phenomenon as far back as the 15th century. Shortly after ascended the throne as the third emperor of the Ming Dynasty, Emperor Yongle commissioned the building of a massive fleet composed of ships that dwarfed any European vessels of the time, appointed at the helm of this ancient carrier battle group was Admiral Zheng He. Yongle's instruction to the Muslim Admiral was to go beyond the horizon to establish order, to make manifest the wealth and power of the Middle Kingdom, to hand out gifts for foreign Kings and accept tribute – alongwith submission – in return. Those that refused were pacified by force, as was the case with pirates along the Strait of Malacca.<sup>3</sup> Returning from his first voyage in 1407, Zheng He engaged and defeated the 5000-strong Palembang-based pirate band under the command of Chen Zuyi.<sup>4</sup>

## **A. Piracy Prone Waters**

Recently, Abdul Rahim Hussein, a senior official of the Malaysian National Security Council, stated that incidents of piracy in the Strait of Malacca have dropped to zero as of 2009, thanks to joint anti-piracy efforts of Indonesia, Malaysia and Singapore.<sup>5</sup> The Strait's bleak fame as a pirate haven started from the 90s on to the early years of 21<sup>st</sup> century. According to the International Maritime Bureau (IMB), there are 70 incidents of piracy in 1998.<sup>6</sup> After the financial crisis swept trough the region, sea-borne attacks climb trough 148 in 1999 and 220 in 2000.<sup>7</sup> If

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mins, *History's great untold stories: obscure events of lasting importance*, (Sidney: Murdoch books, 2006), p. 58.

<sup>3</sup> Id., pp. 58, 60, 64-65.

<sup>4</sup> Gene M. Chenoweth, 'Melaka, "Piracy" and the Modern World System', *Journal of Law and Religion*, 13 (1996-1998), 107-125 (117-118). Chen Zuyi and his lieutenants were captured, brought to the Forbidden City and beheaded as an example of.

<sup>5</sup> 'Piracy in the Malacca Strait is Zero', *Tempo Interaktif*, 19 May 2009, (in Indonesian). available at <http://www.tempointeraktif.com/>; Abd Rahim Bin Hussin, 'The Management of Straits of Malacca: Burden Sharing as the Basis for Cooperation', presentation at the Langkawi International Maritime and Aerospace Exhibition (LIMA) International Maritime Conference, 2005.

<sup>6</sup> ICC – IMB, *Piracy and Armed Robbery against Ships, Annual Report*, 1 January – 31 December 1998, (January 1999). Available by request to the IMB.

<sup>7</sup> ICC – IMB, *Piracy and Armed Robbery against Ships, Annual Report*, 1999 and

we compare that with 2008 where ‘only’ two incidents occurred, previous years’ numbers seems astronomical.<sup>8</sup>

While this might be gleeful news to some, it must not be taken for granted. The Strait of Malacca always becomes one of the focuses in anti-piracy efforts because of its importance as an artery of world’s economy. There are more than 50,000 vessels passing through the narrow strait annually.<sup>9</sup> It carries substantial amount of energy traffic, nearly 50 percent of the world’s crude oil and 66 percent of its natural gas is transported through this narrow strait,<sup>10</sup> and most of it is for Japan and China’s ever burgeoning thirst for energy. Statistics as such easily makes it one of the planet’s busiest – and most important – waterways.

Viewed on maps, the Strait of Malacca – and subsequent Strait of Singapore – seems able to accommodate all kinds of ships ever envisioned, unfortunately that assumption is false. In average, the Strait of Malacca has a depth of only 25 meters, hence unable to accommodate Leviathans such as Ultra Large Crude Carriers (ULCC) and Capsize-class bulk carriers.<sup>11</sup> Such vessels can only pass through another important Sea Lines of Communications (SLOC), which is Lombok – Makassar line. From 2000 to 2008, there were several low level piracy attempts

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2000, respectively. The trend continued until 2005, as a result, the Straits of Malacca and Singapore were listed as areas of “perceived enhanced risk” by the Lloyd’s Joint War Committee, along with an increase in insurance costs for commercial shipping.

<sup>8</sup> ICC – IMB, *Piracy and Armed Robbery against Ships, Annual Report*, 1 January – 31 December 2008, (January 2009).

<sup>9</sup> Strait of Malacca is one of the “chokepoints” of world oil transit. Chokepoints are narrow channels along widely used global sea routes. They are a critical part of global energy security due to the high volume of oil traded through their narrow straits. Other chokepoints include the Suez Canal, Strait of Hormuz, and the Bab el-Mandab. See Energy Information Administration Homepage [online], *World Oil Transit Chokepoints*, Available at <<http://www.eia.doe.gov/>>; For a more complete overview of the strategic importance of the Strait of Malacca, see Donald B. Freeman, *The Straits of Malacca: gateway or gauntlet?*, (Quebec: McGill-Queen University Press, 2003).

<sup>10</sup> Chennai 2004, ‘Pirates on the Prowl: High Seas, Low Security’, *Businessline*, May 31, 2004, cited in: Kevin X. Li and Jin Cheng, ‘Maritime Law and Policy for Energy Security in Asia: A Chinese Perspective’, *Journal of Maritime Law and Commerce*, 37 (2006), 567-587 (569).

<sup>11</sup> With a draft (distance from waterline to keel) of over 25 meters, such ships are called *post-Malaccamax*. The term *Malaccamax* refers to the largest ships that can pass through the Strait of Malacca.

in these waters, even on large crude tankers.<sup>12</sup> Despite the relatively low intensity of these attacks, it is only a matter of time before it grows into something more sinister like ship seizure and ransoming, if not dealt with appropriately and promptly.

Aside from Strait of Malacca and other SLOCs, Southeast Asia's total SAY km<sup>2</sup> waters are also home to numerous pirate prone areas and ports. Attacks ranging from simple maritime mugging to seajacking involving brutal killings of the crew are reported to take place throughout the region. In recent years, perhaps as a result of vigilant efforts in Strait of Malacca, focus of pirate attacks has shifted to littoral South China Sea (off the coast of Peninsular Malaysia), Vietnam (around Vung Tau), and ports on the eastern coast of Kalimantan to name a few.<sup>13</sup>

### **III. REGULATIONS AGAINST PIRACY AND OTHER CRIMINAL ACTS AT SEA**

Since the crime of piracy has been with us since humans first sailed the seven seas, so does the prohibitions to it.<sup>14</sup> One of the first written laws specifically enacted to address the problem of piracy was the Piracy Act 1698 passed by the English Parliament.<sup>15</sup> The 1698 Act provides that all natural borne subjects and denizens (regardless of nationality) of the English Kingdom who commit piracy or robbery or any act of hostility against other His Majesties subjects at sea, shall be deemed to be pirates felons and robbers, and for those convicted of piracy, a penalty of death and confiscation of lands and property awaits, "as pirates

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<sup>12</sup> Analysis of *Piracy and Armed Robbery against Ships, Annual Reports*, 2005 – 2008.

<sup>13</sup> *Id.*

<sup>14</sup> Although Justinian's Digest did not offer a definition of piracy and did not specifically criminalize piratical acts; it may cover acts committed by pirates by way of extension. It maintained that the *exercitor* (person who has the management of the ship), is liable for almost any loss, theft or damages occurred within the ship under his custody, he is also liable for acts committed by his crew. Charles Henry Monro (trs), *The Digest of Justinian*, I vols, (Cambridge: Cambridge University Press: 1904), pp. 294-299.; See also Phillip A. Buhler, New Struggle With An Old Menace: Towards A Revised Definition Of Maritime Piracy, *Currents: International Trade Law Journal*, 8 (Winter 1999), 61-70, FN 23.

<sup>15</sup> *An Act for the more effectuall Suppressions of Piracy 1698* (11 William 3 c 11).

ought to have and suffer”.

The 1698 Piracy Act was soon followed by enactments of similar legislations by European Imperials such as France. In the olden days, as it is now, inter-state commerce (mainly spice from the colonies) and human migration was conducted primarily by sea. Any acts of piracy threatened those activities and hence, infringe the interests of all nations involved in transnational commerce. This is the reason why the crime of piracy is international in nature and pirates are deemed as “enemies of all mankind” (*hostis humani generis*).<sup>16</sup>

After enactments of national laws by many states, the first concluded international legal instrument pertaining piracy was the Declaration of Paris 1856 right after the Crimean War.<sup>17</sup> The Declaration’s huge contribution to the fight against piracy was its abolition of privateering. Privateers are non-naval vessel owned by private persons, sanctioned by governments to actively engage in hostilities against enemies of the said government.<sup>18</sup> Usually, privateers preyed on commercial shipping of the enemy in order to deny them of war materials and supplies. Both France and United Kingdom, the instigators of the Declaration, refrained from using privateers during the Crimean War because they already had powerful navies and have no need of “outside help” against Russian Empire. Moreover, since privateers were in it for the money and not for King and Country, they were difficult to control and no guarantee of them never to plunge into outright piracy.<sup>19</sup>

<sup>16</sup> “Pirates are common enemies, and they are attacked with impunity by all, because they are without the pale of the law. They are scorners of the law of nations; hence they find no protection in that law. They ought to be crushed by us [...] and by all men. This is a warfare shared by all nations”. See Alberico Gentili, *De Jure Belli Libri Tres [Three Books on the Law of War]*, trans. by John C Rolfe (New York: Oceana Publications, 1964), p. 423.

<sup>17</sup> Declaration Respecting Maritime Law. Paris, 16 April 1856. Natalino Ronzitti (ed), *The Law of Naval Warfare, A Collection of Agreements and Documents with Commentaries*, (Amsterdam: Martinus Nijhoff, 1988), p. 64.

<sup>18</sup> Privateers such as the famous Sir Francis Drake was even made a knight by his king, as seen from the prefix Sir before his name, symbolising the state’s acknowledgement over the privateer’s use of force and pillage against enemy nation’s vessels. The said acknowledgement was given through issuance of a “Letter of Marque”, a formal document issued by one country authorizing one of its private citizen to arm a ship and seize vessels of enemy nation.

<sup>19</sup> Edward Teach, famously known as Blackbeard, was an example of privateer turned

Landmark condemnation of piracy was attained with the adoption of the United Nations Convention on the Law of the Sea (UNCLOS) 1982.<sup>20</sup> Definition of piracy in UNCLOS 1982 is as follows:

Piracy consists of any of the following acts:

- a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed
  - (i) on the high seas, against another ship or aircraft, or against persons or property on board such 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).

A pirate ship is a private ship that is intended to be used by the person controlling it, to commit acts of piracy.<sup>21</sup> Piracy can also be committed by a warship or other government ship only if the crew has committed mutiny and taken control of the ship to engage in acts of piracy.<sup>22</sup>

The above definitions of piracy and pirate ship in UNCLOS 1982 are a verbatim copy of the provisions on piracy contained within the high seas convention 1958.<sup>23</sup> In turn, the definition of piracy in the high seas convention reflected the drafters' understanding of the concepts of piracy in the previous century. As we will see, this outdated concept has many shortcomings to address the problem of contemporary piracy in general and piracy in Southeast Asia in particular.

First, UNCLOS 1982 maintained that for a hostile act at sea to be construed as piracy, it must be committed only on the high seas or otherwise at places outside the jurisdiction of any state.<sup>24</sup> Criminal acts at sea

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pirate.

<sup>20</sup> United Nations Convention on the Law of the Sea, (Montego Bay, 10 December 1982), 1833 UNTS 397, Art. 101.

<sup>21</sup> *Id.*, Art. 103.

<sup>22</sup> *Id.*, Art. 102.

<sup>23</sup> Convention on the High Seas (Geneva, 29 April 1958), 450 UNTS 81, art. 15.

<sup>24</sup> UNCLOS 1982, *supra* note 21, Art. 101(a)(i) and (ii).

in Southeast Asia occurred rarely on the high seas. Most armed attacks occurred within the 12 nautical mile limit of territorial sea, sometimes even at ports.<sup>25</sup> The Strait of Malacca is a good example, at its entry point on the western side, the strait is very spacious with an approximately 200 Nm distance between the coasts of Malaysia and Indonesia but the closer a ship gets into Singapore, the Strait gets more and more narrow. At its narrowest part, the strait has a breadth of only 8,4 Nm which is completely divided into territorial waters of littoral states.<sup>26</sup> The situation is the same in the Strait of Singapore where the width is only 15 Nm and 11 Nm wide at the exit point into the South China Sea.<sup>27</sup>

The depth factor further complicates matters. Around a point known as “the one fathom bank”, big draft ships can only navigate through an area of two NM wide with irregular depths, even as shallow as eleven metres.<sup>28</sup> Any vessels but the smallest is compelled to navigate with extreme caution and minimum speed, an ideal moment for the tiger (pirates) to pounce on the prey.

If an attack occurred in these territorial waters as it usually does, then such attack is not piracy under international law. Thus, there are no advantages of its qualification as piracy *jure gentium*, e.g. universal jurisdiction and right of hot pursuit.

The second and third element of UNCLOS 1982 definition of piracy is the “two ships” and “private ends”. Article 101(a) stipulated that an act is piracy if it is committed by the crew or passengers of “a private ship” against “another ship”. Furthermore, the unlawful attack must only be motivated by monetary considerations. These two elements reflected the concept of piracy in the 16<sup>th</sup> century until its eradication in the early 19<sup>th</sup> century. Those days, what is called by “a pirate” was (1) a person working on board a ship; (2) the ship was used solely to attack other ships; (3) in order to take whatever cargo or valuables carried by

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<sup>25</sup> Approximately only 10 – 15 percent of attacks occurred in the Strait of Malacca (traffic separation scheme), while the rest occurred within territorial waters of Indonesia, Malaysia and Singapore. See *supra* note 13.

<sup>26</sup> Michael Leifer, *Malacca Singapore and Indonesia*, 2 vols, ed. By Gerard J. Mangone, International Straits of the World (Alphen aan den Rijn: Sijthoff & Noordhoff, 1978), p. 53.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*, p. 59



the victim ship (or take possession of the victim ship itself to be used as another pirate ship); and (4) sold the booty for money, the money gained was therefore divided amongst the persons involved in the act.<sup>29</sup>

Three years after the conclusion of UNCLOS 1982, a fateful event brought to light the obsolescence of the above concept of piracy. On October 7<sup>th</sup>, 1985, four men claimed to represent the Palestine Liberation Front, took control of the cruise ship *MV Achille Lauro* as it sailed from Alexandria to Port Said.<sup>30</sup> The hijackers, who previously posed as passengers, demanded the release of fifty Palestinian in Israeli prisons. It is clear that in situations such as this, UNCLOS 1982 regime on piracy could not be applied since: (1) no other ship involved in the incident as “pirate ship”;<sup>31</sup> and (2) the primary motivation was political rather than monetary.<sup>32</sup> Another problem is multiple motivations for the attack, if the act aimed to get money and the money gained is used in furtherance of political goals, it is unclear whether such a case fulfills the element “for private ends”.<sup>33</sup>

Another shortcoming of the UNCLOS 1982 definition is on one type of violence at sea informally called “seajacking”, *argot* for ships earning this fate is “phantom ships”. Seajacking is the act of seizure of a victim ship; the stolen ship is then repainted, renamed and re-documented to appear as a different, legitimate ship.<sup>34</sup> Furthermore, the

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<sup>29</sup> “Piracy, in its original and strict meaning, is every unauthorized act of violence on the Open Sea against another vessel with intent to plunder (*animo furandi*)”. L. Oppenheim, *International Law: A Treatise*, I vols, (London: Longmans, 1905), p. 325.; See also Ethan C. Stile, ‘Reforming Current International Law to Combat Modern Sea Piracy’, *Suffolk Transnational Law Review*, 27 (2004), 299-326 (304-305).

<sup>30</sup> ‘1985: Gunmen hijack Italian cruise liner’, *BBC on this day*, available at <<http://news.bbc.co.uk/onthisday/>>

<sup>31</sup> The four armed highjackers boarded the cruise ship posed as tourists.

<sup>32</sup> It is worth to note that the private ends element had already been contended as early as 1844 when the United States Supreme Court held that “Where the act (Act of 1819) uses the word ‘piratical,’ it does so in a general sense [...] hostile in its character, wanton and criminal in its commission [...] In short, it means that the act belongs to the class of offences which pirates are [...] perpetrating, whether they do it for purposes of plunder, or for purposes of hatred, revenge, or wanton abuse of power. *United States v. Brig Malek Adhel*, 43 U.S. 210, (1844), par. 15.

<sup>33</sup> A possible scenario in Southeast Asia would involve a hijack of a ship and sold the booty to fund separatist or terrorist movement.

<sup>34</sup> An example of seajacking is the fate of Malaysian oil tanker SUCI which was

newly acquired ship is used for regular purposes which are not necessary unlawful, such as carriage of goods by sea. Phantom ships cannot be categorized as pirate ship according to article 103 of UNCLOS 1982 since it is not used to commit piracy against another vessel. Therefore, a state's law enforcement vessel is not empowered to seize a suspected phantom ship because it's not a pirate ship by definition.<sup>35</sup> In addition, the victim ship seized either within territorial sea or on ports (the same problem as the "high seas" element above).

Realizing these deficiencies within UNCLOS 1982, the International Maritime Organization (IMO) sponsored the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988 (SUA 1988).<sup>36</sup> The SUA 1988 stipulated that an act is an offence under the convention if the perpetrator unlawfully and intentionally seizing control of a ship by force or threat of force or intimidation; performs acts of violence against a person on board a ship, causes damage to the ship or to its cargo which is likely endanger the safe navigation of that ship.<sup>37</sup>

If we see the definition of offence by the SUA 1988, it is clear that the convention eliminates both the two-ships and the private ends elements. An offence still occurs disregarding the motivations, as long as it is done unlawfully and intentionally. SUA 1988 also does not take into consideration of where the source of attack came from, be it from other

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boarded by six armed men who tied up the seventeen-man crew, repainted the funnel, and reportedly changed the ship's name to the GLORY II. See Niclas Dahlvang, 'Thieves, Robbers, & Terrorists: Piracy In The 21st Century', *Regent Journal of International Law*, 4 (2006), 17 (17). Stolen vessels can easily be given new flag and identities to appear legitimate. Flags of convenience like Panama and the Bahamas are known for not asking too many questions.

<sup>35</sup> UNCLOS 1982, *supra* note 21, Arts. 105 and 102 "taken by piracy and under the control of pirates"

<sup>36</sup> Malvina Halberstam, 'Terrorism on the High Seas: The Achille Lauro, Piracy and the IMO Convention on Maritime Safety', *American Journal of International Law*, 83 (1988), 269-310 (270).

<sup>37</sup> Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, (Rome, 10 March 1988) 1678 UNTS 222, Art. 3. According to the definition provided in SUA 1988 Convention, virtually all kind of acts involving the use of force that may endanger safe navigation of a ship (e.g. disabling ship communication, violence or threat of violence against pilot, disruption of steering, et cetera) is an offence under the convention.

ships, passengers on board the ship (or stowaways or members of the crew), or from land (while berthing). However, SUA 1988 still maintains an element similar to the high seas element of the UNCLOS 1982, Article 4 SUA 1988 stated that the convention applies if the ship is navigating or is scheduled to navigate into, through or from waters beyond the outer limit of the territorial sea of a single State, or the lateral limits of its territorial sea with adjacent States. In other words, it covers acts of piracy committed either on the EEZ or Contiguous Zones, but it does not cover attacks committed within the twelve Nm limits of territorial waters (including internal and archipelagic waters).

Despite its importance for the advancement of anti-piracy effort in the Strait of Malacca, only Singapore is a party to the SUA 1988. It is regrettable that countries most affected by piracy such as Indonesia and Malaysia, are not parties to the convention.<sup>38</sup>

As we can see from the above elaboration, the most problematic and unsolved legal barrier for categorizing most unlawful acts at sea in Southeast Asia as piracy is *locus delicti*. In 2001, the IMO adopted a Code of Practice for the Investigation of the Crimes of Piracy and Armed Robbery against Ships.<sup>39</sup> Aware of the *locus delicti* issue, the IMO divided piratical acts into two categories; the first is piracy according to UNCLOS 1982 that's only occurred on the high seas, the second is "armed robbery against ships" that occurred within national waters of a state. Despite using the word "robbery", the scope of the definition is the same as piracy on the high seas, the code defined the offence as any unlawful act of violence or detention or any act of depredation, or threat thereof, other than an act of piracy, directed against a ship or against persons or property on board such a ship, within a State's jurisdiction over such offences.<sup>40</sup>

The next important legal instrument on piracy and armed robbery

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<sup>38</sup> The Philippines and Singapore are parties to the SUA 1988. See IMO Homepage [online], *Status of Conventions by Country*, available at <<http://www.imo.org/Conventions/>>

<sup>39</sup> IMO, 'Code of Practice for the Investigation of the Crimes of Piracy and Armed Robbery against Ships' (29 November 2001), A 22/Res.922. Note that this resolution is not binding upon states.

<sup>40</sup> *Id.*, Annex., §2.

against ships is the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP).<sup>41</sup> ReCAAP obliges state parties to prevent and suppress piracy and armed robbery against ships; to arrest the suspected perpetrators; to seize pirate ships or ships used to commit armed robbery against ships; to seize ships under pirate control and seize property on board such ships; and to rescue victims of piracy and armed robbery against ships.<sup>42</sup>

In definitional matters, the ReCAAP, unlike the SUA 1988 and IMO Code, reintroduce the restriction that armed robbery against ships as acts committed only for private ends.<sup>43</sup> Despite that supposed drawback, ReCAAP gave very concrete ways to curb piracy and armed robbery against ships by establishing an Information Sharing Centre; impose upon state parties the obligation to cooperate on extradition and mutual legal assistance; and capacity building.<sup>44</sup>

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<sup>41</sup> Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia, (Tokyo, 11 November 2004), 2398 UNTS 199.

<sup>42</sup> *Id.*, Art. 3.

<sup>43</sup> *Id.*, Art. 1. The exclusion of the element of motive in the SUA 1988 was a direct response to Achille Lauro incident, which was committed for political ends, not private monetary purposes. That way, the SUA 1988 was designed to answer terrorist acts at sea. On the other hand, the ReCAAP was not designed as a legal framework for anti-terrorism due to re-inclusion of private ends motive as an element of offence. Also note that ReCAAP's preamble does not recall any Security Council Resolutions on terrorism.

<sup>44</sup> See part III for discussion.

#### **IV. WHAT HAS BEEN DONE TO CURB PIRACY IN SEA AND ITS DEFICIENCIES**

Association of Southeast Asian Nations (ASEAN) member countries had envisioned the achievement of an ASEAN Community by 2020,<sup>45</sup> ASEAN Community is a dynamic, cohesive, resilient and integrated community based on three pillars: Security, Economy and Socio-Cultural.<sup>46</sup> The Fourteenth ASEAN Summit held in Thailand at March 2009 had produced an important document in the effort to materialize the security pillar of that goal, that document is the ASEAN Political-Security Community Blueprint.<sup>47</sup> The blueprint calls for a more intensive regional strategy and actions to meet all threats to regional security and stability, including non-traditional security threats such as transnational crime.<sup>48</sup> Piracy and armed robbery against ships often involves international crime syndicates. Even in cases that doesn't involve cross border syndicate, culprits of the crime may move across borders, making it a transnational problem. Within ASEAN framework, the highest body dealing with transnational crime is the ASEAN Ministerial Meeting on Transnational Crime (AMMTC). In its second meeting, the AMMTC adopted the ASEAN Plan of Action to Combat Transnational Crime (TNC Plan of Action),<sup>49</sup> which in turn further elaborated in the Work Programme to Implement the ASEAN Plan of Action to Combat Transnational Crime (TNC Work Programme).<sup>50</sup> The Plan of Action and the Work Programme outlined pillars to curb piracy somewhat similar to the ones found in ReCAAP: sharing of information, mutual legal assistance in criminal matters, training and capacity building.

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<sup>45</sup> ASEAN, 'ASEAN Vision 2020', (Kuala Lumpur, 15 December 1997), available at <<http://www.aseansec.org/>>

<sup>46</sup> ASEAN, 'Declaration of ASEAN Concord II', (Bali, 7 October 2003), available at <<http://www.aseansec.org/>>. Regional economic integration and common welfare cannot be reached without political stability and secure environment.

<sup>47</sup> ASEAN, 'ASEAN Political-Security Community Blueprint', (Cha-am, Thailand, 1 March 2009), available at <<http://www.aseansec.org/>>

<sup>48</sup> *Id.*, §B.4.1.

<sup>49</sup> ASEAN, 'ASEAN Plan of Action to Combat Transnational Crime'. (Yangon, 23 June 1999), available at <<http://www.aseansec.org/>>

<sup>50</sup> ASEAN, 'Work Programme to Implement the ASEAN Plan of Action to Combat Transnational Crime', (Kuala Lumpur, 17 May 2002), available at <<http://www.aseansec.org/>>

## **I. Information Sharing**

Expeditious flow of information and effective coordination between stakeholders is necessary in dealing with transnational crimes, especially the ones that took place at sea. The most logical way to effectively achieve that is by establishing a centralised body that has the capacity not only to facilitate exchange of information between governments, but also to serve as a “hotline” for shipmasters and other users of waterways to report any actual or attempted piracy or armed robbery.

The IMB has been giving us an example of the effectiveness such body in the form of the IMB Piracy Reporting Centre (PRC). The PRC is based in Kuala Lumpur where it maintains a 24-hour watch on the world’s shipping lanes, receiving reports of piracy and armed robbery from ship crews (and the public in general), and forward the reports to law enforcement agencies. The centre also issued warnings on piracy hotspots for the shipping industry. One point that has to be remembered is that while the PRC succeeded in serving the shipping industry, it is at a relative disadvantage because it is not formed by any government. Law enforcement agencies belonging to some countries in the region might be reluctant to cooperate wholeheartedly with such private institution, more so considering their assumption that it’s controlled by – and serve the interests of – western corporations.<sup>51</sup>

There is another disadvantage aside from institutional as explained above. In its reports, the PRC does not differentiate between acts of piracy that occurred at the high seas and threats against ships other than piracy which occurred within the jurisdiction of a state.<sup>52</sup> This may create some confusion, for example, criminal acts that took place at the entry of the Malacca Strait but closer to Indonesian territorial waters than Malaysia might be misinterpreted as occurred within Indonesian area of responsibility, despite the possibility that it happened at international waters. This may creates reluctance from the part of littoral states to fully trust and cooperate with the PRC due to the potential bad image

<sup>51</sup> The PRC receives funding primarily from the business community.

<sup>52</sup> The IMB put Piracy AND armed robbery against ships into a single definition: “any act of boarding or attempting to board any ship with the apparent intent to commit theft or any other crime and with the apparent intent or capability to use force in furtherance of that act.” See ICC – IMB, *Piracy and Armed Robbery against Ships, Annual Reports* (various years).

may caused by its reports.

The other notable effort in information sharing is the Information Sharing Centre (ISC) formed under the framework of ReCAAP. A significant distinction of the ISC as compared to the PRC is that the ISC was created by governments as a means of international cooperation and has a status of an international organisation.<sup>53</sup> This way, the ISC has greater potential to “be taken seriously” and to achieve effective coordination with law enforcement agencies of littoral states, the first responders with powers of authority in dealing with criminal acts at sea. Its status also speaks of stable funding from contracting parties and support from IMO and other international organisations.<sup>54</sup>

The main client of the ISC is governments. They serve to receive and manage information relating to incidents of piracy and armed robbery among contracting parties,<sup>55</sup> and if there is a reasonable grounds to believe that threat of piracy and armed robbery is imminent, the ISC is to provide an appropriate alert to the contracting parties.<sup>56</sup> Each contracting parties is to designate a focal point responsible for its communication with the ISC and with each other’s focal points,<sup>57</sup> there is no mechanism for communication through channels other than the focal points. ReCAAP does not provide a way for masters to communicate directly with the ISC, there is no other alternatives for them other than contacting authorities of coastal states.

If there is a threat of piracy or armed robbery to a ship, a master should first inform the nearest coastal state response center, the coastal state then pass the information to the designated focal point in their country, the focal point then would send report to the ISC and ask for assistance to detect, arrest perpetrators and rescue the victim ship, in turn the ISC would alert focal points of other contracting parties of the incident.<sup>58</sup> This arrangement might be problematic in some cases, particularly if it happened in a tight, busy and cross territorial traffic such

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<sup>53</sup> ReCAAP, *supra* note 42, Arts. 4 and 5.

<sup>54</sup> *Id.*, Art. 6.

<sup>55</sup> *Id.*, Arts. 7(a) and (b).

<sup>56</sup> *Id.*, Art. 7(d).

<sup>57</sup> *Id.*, Art. 9.

<sup>58</sup> ReCAAP Homepage [online], *ISC Information flow and Response Chart*. Available at <http://www.recaap.org/>

as the Strait of Malacca. Shipmasters may be reluctant to report to the national authorities because of the time it takes to go through national criminal law procedure such as *procès-verbal*,<sup>59</sup> this is undesirable remembering their tight schedule of cargo delivery.<sup>60</sup> Other than that, vessels are expected to report to the *nearest* coastal state law enforcement base. In the case of Malacca Strait, that means ships should know individual bases – and “phone numbers” of – the police forces and naval forces of Thailand, Malaysia, Indonesia and Singapore, no single 911 number. Furthermore, ships crossing the Strait must maintain a regulated speed at a regulated path, making it difficult to buy some time for the procedure to kick in.

As a regional organisation with membership of all Southeast Asian nations, ASEAN could use its advantages and take the initiative to form a coordinative information sharing body, combining the positive points of the PRC and ISC. That has not yet happened, however. In section concerning sea piracy, the TNC Work Programme outlined actions that will be taken by ASEAN in a very limited scope.<sup>61</sup>

Another existing form of cooperation in the field of information sharing that can be used as a model for future cooperation is the tri-lateral information exchange agreement between Indonesia, Malaysia and the Philippines.<sup>62</sup> The agreement aimed to promote cooperation and introduce an information and intelligence exchange system along with communication procedures among the three countries. All three coun-

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<sup>59</sup> In Indonesia, for example, the law requires *procès-verbal* to be conducted in front of a designated police or other law enforcement investigator, a time consuming procedure. Chief of Police Decision No. Pol.Skep/1205/IX/2000.

<sup>60</sup> This is the reason why shipmasters prefer to report incidents to the IMB.

<sup>61</sup> 1. Member countries to submit all national laws and regulations and international agreements and conventions applicable on piracy and armed robbery at sea to the ASEAN Secretariat;

2. Member Countries to submit directory of Focal Points to the ASEAN Secretariat;

3. ASEAN Secretariat to write to INTERPOL as well as other think-tanks in the region to undertake national studies to determine trends and “modus operandi” of piracy in South-east Asian waters.

<sup>62</sup> Agreement on Information Exchange and Establishment of Communication Procedures, (Malaysia – Philippines – Indonesia), (Putrajaya, Malaysia, 7 May 2002). (MAPHILINDO ICA)



tries shared porous sea boundaries with one another,<sup>63</sup> a situation rather similar to the Strait of Malacca. Moreover, the surrounding areas such as the Sulu archipelago, Mindanao and Sulawesi has been plagued with separatism and sectarian conflicts, a trigger of transnational crimes like arms smuggling and armed robbery against ships. The MAPHILINDO ICA explicitly spelled out on what areas the parties will cooperate, including hijacking, sea piracy and armed robbery.<sup>64</sup> A positive point of the MAPHILINDO ICA is that it solved matter of jurisdiction by simple agreement; it stated that a person arrested for an offense shall be dealt with in accordance with the laws of the arresting Party, provided that notification is given to the country of nationality.<sup>65</sup>

From the above elaboration we could see that regional effort in combating piracy and armed robbery will be benefited even more from a centralised reporting authority that is: (1) formed by governments and has the status of an international organisation, or created within the structure of existing and regionally well known international organisation such as ASEAN; (2) acts as a liaison, facilitate flow of information and coordinate cooperation not only between governments and government agencies, but also involving actors in the business sector and other user of waterways; and (3) maintains a reporting system which categorised criminal incidents according to its *locus delicti*.

## **2. Cooperation In Legal Matters**

Cooperation in criminal justice, especially about law enforcement, jurisdiction and extradition, is indispensable to be able to successfully handle the problem of sea piracy and armed robbery against ships. The TNC Plan of Action put in place a comprehensive cooperation in legal matters and law enforcement. On legal matters, it encouraged ASEAN member states to, among others:<sup>66</sup>

1. Work for the criminalization in ASEAN Member Countries of spe-

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<sup>63</sup> Sulu and Sulawesi seas.

<sup>64</sup> MAPHILINDO ICA, *supra* note 63. Art. 3. Other areas including on terrorism, money laundering, smuggling of goods and persons, illegal entry, drug trafficking, theft of marine resources, marine pollution and arms trafficking.

<sup>65</sup> *Id.*, Arts. 5(4) & (5).

<sup>66</sup> TNC Plan of Action, *supra* note 50.

cific transnational crimes, such as illicit drug trafficking, money laundering, terrorism, piracy, arms smuggling and trafficking in persons

2. Develop multilateral or bilateral legal arrangements to facilitate apprehension, investigation, prosecution, and extradition, exchange of witnesses, sharing of evidence, inquiry, seizure and forfeiture of the proceeds of the crime in order to enhance mutual legal and administrative assistance among ASEAN Member Countries
3. Study the possibility of creating a regional programme on witness protection
4. Coordinate with the ASEAN Senior Law Officials Meeting on the implementation of the ASEAN Legal Information Network System. On law enforcement, it encouraged member states to:<sup>67</sup>
  1. Develop programmes for joint tactical exercises and simulations
  2. Develop an exchange programme among ASEAN officials in the policy, legal, law enforcement and academic fields
  3. Enhance cooperation and coordination in law enforcement, intelligence sharing

In relation to the above, the most notable achievement by ASEAN countries is the Treaty on Mutual Legal Assistance in Criminal Matters, concluded at Kuala Lumpur in 29 November 2004 (ASEAN MLA Treaty).<sup>68</sup> The ASEAN MLA Treaty has the ultimate purpose to enhance cooperation between contracting parties in the field of prevention, investigation and prosecution of criminal acts, including on court proceedings. An example of provisions of the ASEAN MLA Treaty that could deter transnational crimes is that the parties shall assist each other in tracing property derived from the commission of an offence, restraining or freezing dealings of such property, and confiscation and subsequent recovery of the property to its rightful owner.<sup>69</sup> This would negate profits for transnational criminal syndicates. With membership of almost all Southeast Asian countries,<sup>70</sup> the ASEAN MLA Treaty has

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<sup>67</sup> Id.

<sup>68</sup> Treaty on Mutual Legal Assistance in Criminal Matters, (Kuala Lumpur, 29 November 2004), 2336 UNTS 271.

<sup>69</sup> Id., Arts. 2(1)(h) and (i).

<sup>70</sup> From ten Southeast Asian states, only Myanmar and Thailand are not party to the ASEAN MLA Treaty.

a great potential to serve as a legal framework – and basis for future design – for regional cooperation in combating piracy and armed robbery against ships. However, the treaty still left a few things to be desired.

ASEAN MLA Treaty explicitly excludes the matter of extradition from its scope of application,<sup>71</sup> despite the similarity of some of its contents provisions with extradition treaties.<sup>72</sup> This implies that contracting parties still prefer extradition to be regulated under separate extradition treaties between them. On the subject of extradition, one important instrument to be remembered is the SUA 1988 convention.

Article 11 of the SUA 1988 Convention (2005 Protocol to the SUA Convention) ease the extradition of perpetrators of offences between parties to the convention by two ways. First, state parties are obliged to include offences under the convention as an extraditable offence in extradition treaties between them (both existing and future treaties).<sup>73</sup> Second, it opens the possibility for the convention to serve as a legal basis for extradition in the absence of extradition treaty between the parties.<sup>74</sup> Unfortunately, regional effort in combating piracy and armed robbery against ships cannot enjoy the benefits of the 2005 Protocol to the SUA 1988 Convention since none of ASEAN countries have acceded to the 2005 Protocol to the SUA 1988 Convention.<sup>75</sup> For these reasons, it is recommended that future regional extradition agreement be agreed upon by all ASEAN states, incorporating piracy and armed robbery against ships as an extraditable offence, thus eliminating the need to form bilateral treaties between states.

Further, the ASEAN MLA Treaty allows a requested party to refuse to give assistance to the requesting party if the act in question had occurred in the territory of the requested party and where it is not an offence against the law of the requested party.<sup>76</sup> This limitation is understandable due to the general nature of the convention; it covers as-

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<sup>71</sup> ASEAN MLA Treaty, *supra* note 69, Arts. 2(1)(a) and (c).

<sup>72</sup> See United Nations General Assembly, 'Model Treaty on Extradition', UNGA Res 45/116, (1990).

<sup>73</sup> SUA 1988 Convention, *supra* note 38, Art. 11(1).

<sup>74</sup> *Id.*, Art. 11(2).

<sup>75</sup> IMO Homepage [online], *Status of conventions by country*, available at <<http://www.imo.org/Conventions/>>

<sup>76</sup> ASEAN MLA Treaty, *supra* note 69, Art. 3(1)(e).

sistance in all steps of criminal justice system, irrespective of the types of offences. In the future, however, it is recommended that the ASEAN MLA Treaty be amended to include a list of definitions of specific transnational crimes and attach a stronger obligation to cooperate on investigations, prosecutions and proceedings of those crimes. Furthermore, future agreement(s) should also impose an obligation for state parties to enact laws categorising any acts of piracy and armed robbery against ships as a criminal offence under their national laws, without regard to the actual location of the commission (covering the entire bodies of water of all contracting parties). National legislations should also have similar definition of offence and comparable penalties.

### **III.COOPERATION IN LAW ENFORCEMENT**

In matters of law enforcement, an area in need of concerted effort is the right of hot pursuit or similar right thereof. Under international law, the right of hot pursuit allows a warship or a military aircraft of coastal state to pursuit foreign vessel which has violated that state's law within its territorial waters and to arrest it on the high seas.<sup>77</sup> In case of piracy, warships of a state have the right to pursuit and seize pirate ship only if it is found on the high seas or any other place outside the jurisdiction of a state.<sup>78</sup> Both of these rights end when the pirate / criminal ship enters the territorial waters of another state.<sup>79</sup> This legal limitation to the right to pursuit pirates and marine criminals is unsuitable for Southeast Asia where countries' maritime delimitations are closely packed to one another. Criminals from country A could commit armed robbery in territorial waters of country B and ran away to hide in the territorial waters of country C; the authorities of country B or A could only chase the criminals up to the limits of their own territorial waters. Regional cooperation is crucial to deal with situation in Southeast Asia. An ideal kind of cooperation must not only include informing one another of suspected pirate vessels, but also one that enables law enforcement ships of one country to chase suspected pirates / armed robbers into the territorial

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<sup>77</sup> UNCLOS 1982, *supra* note 21, Art. 111; High Seas Convention, *supra* note 24, Art. 23.

<sup>78</sup> UNCLOS 1982, *Id.*, Art. 105.

<sup>79</sup> *Id.*, Art. 111(3).

waters of another country.

Fortunately, countries in the region have realised that kind of co-operation. For the Strait area, Indonesia and Singapore have been conducting a joint coordinated patrol in the Strait of Singapore and the Phillip Channel. These patrols were initiated in 1992 and have been very successful never since, proven by the fact that the area of operations already free of robberies in the first two years.<sup>80</sup> Indonesia also has a similar bilateral coordinated patrol agreement with Malaysia, named Optima Malindo. The Indo – Malay patrol is conducted three times a year with 20-days duration per period of operation involving all maritime institutions of both countries. After witnessing continuous success over the course of several years, the three riparian states to the Strait of Malacca have agreed on a trilateral agreement on coordinated patrols in 2004,<sup>81</sup> since the joint patrols began to be carried out, the crime rate in the 500-mile long strait has decreased by about 70 percent.<sup>82</sup>

Perhaps the most striking feature of the MALSINDO Corpat is the limited right of hot pursuit contained therein. A warship from one country will be allowed to enter the territorial waters of another country when chasing a pirate ship, provided that this is communicated first to the host country.<sup>83</sup> Due to the national security sensitivities of the issue, open source data on the field results of this limited right of hot pursuit is nonexistent. However, in order to avoid needless disputes and to smoothening cross-territorial pursuit, it is recommended that future patrol agreements also includes arrangement on exchange of *shipriders* among the three countries.

Shiprider agreements involve a hosting of law enforcement personnel from a coastal state on board a warship of another state; the

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<sup>80</sup> ‘Singapore Ministry of Defence, Singapore and Indonesia Participate in Indo-Sin Coordinated Patrols (ISCP) and Joint Socio-Civic Activities’, *Ministry of Defence, Singapore*, 9 October 2001, news release, available at <<http://www.mindef.gov.sg/>>

<sup>81</sup> ‘Launch of Trilateral Coordinated Patrols - MALSINDO Malacca Straits Coordinated Patrol’, *Ministry of Defence, Singapore*, 20 July 2004, News release, available at <<http://www.mindef.gov.sg/>>

<sup>82</sup> ‘Indonesian, Malaysian Customs Conduct Coordinated Patrols in Malacca Strait’, *Kompas*, 31 July 2009, available at <<http://english.kompas.com/>>

<sup>83</sup> ‘Indonesia, Malaysia, Singapore Launch Coordinated Patrol of Malacca Strait’, *The Jakarta Post*, 20 July 2004. <available at <http://yaleglobal.yale.edu/>>

hosted law enforcement personnel – called a shiprider – will have the authority to give permission to chase pirates from its own territorial waters into the territorial seas of the coastal state.<sup>84</sup> The practice of using shipriders is often found in the drug war where the United States have concluded more than twenty bilateral agreements with countries in the Caribbean.<sup>85</sup> In the context of piracy, the United Nations Security Council acknowledged the merits of shiprider agreements when it adopted Resolution 1851 (2008) in response to the recent resurgence of piracy off the coast of Somalia.<sup>86</sup> This resolution sheds light on recent developments of international law on piracy, despite the fact that the Security Council insistently stated that the Resolution apply only with respect to the situation in Somalia and shall not be considered as establishing customary international law. Furthermore, aside for permitting cross-border pursuit, shipriders will also play a role in support of criminal investigation and prosecution. Navy seadogs generally are not trained in law enforcement, even if some of them do, they cannot be expected to gather evidence and assume that it would be admissible and sufficient in foreign countries. It is the shiprider that will carry out arrests, seizure, interrogation, gathering of evidence and other crime scene investigations in accordance with their national law.<sup>87</sup> Incorporating shiprider regime into future MALSINDO Corpats would not only push forward anti piracy efforts in the strait, but it would also serve as a precedent for anti-piracy efforts in other parts of the world.

If trilateral cooperation in the Malacca area is improving, the same cannot be said about conditions in the convergence of three maritime borders of Indonesia, Malaysia and the Philippines, also known as the tri-border sea area. The only form of patrol cooperation is bilateral, and even that is very limited.<sup>88</sup> The inexistence of trilateral coordinated joint

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<sup>84</sup> Michael Byers, 'Policing the High Seas: the Proliferation Security Initiative', *American Journal of International Law*, 98 (2004), 526-545 (539)

<sup>85</sup> *Id.*, p. 538.

<sup>86</sup> See United Nations Security Council, Resolution 1851 (2008). UNSC/Res/1851 (2008).

<sup>87</sup> For example, see 'Agreement Between the Government of Barbados and the Government of the United States of America Concerning Co-Operation in Suppressing Illicit Maritime Drug Trafficking', (United States – Barbados), (25 Juni 1997), *Digest of United States Practice in International Law*. available at <<http://www.state.gov>>

<sup>88</sup> "Corpat Philindo" between Indonesia and the Philippines is conducted four times a

patrol between Indonesia, Malaysia and the Philippines is regrettable since these same countries have concluded the MAPHILINDO ICA that can be used to support the patrols.

#### **IV. EXTRA REGIONAL PARTICIPATION**

It is an unfortunate fact that not all countries in Southeast Asia have the necessary financial resources to deal with marine security in general and piracy and armed robbery in particular. Indonesia and the Philippines, the only two archipelagic states in the region with the largest waters, are still in a relatively bad shape as a result of the financial crisis in the late 90s. Without a doubt, cooperation of countries from outside the region is vital to maintain and improve anti-piracy efforts. However, that cooperation should never take form of the presence of force. Any gung-ho attitude of unilaterally planning to send armed patrols<sup>89</sup> will be met with certain opposition<sup>90</sup> and sometimes with equally hawkish attitude.<sup>91</sup> Aid from wealthy countries should only be limited in forms of equipment and training, such as the recent donation of three patrol boats from Japan for the Indonesian maritime police.<sup>92</sup>

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year, but each patrol involves only one vessel from each country and lasts for only 10 days, while the “Ops Phimal” between the Philippines and Malaysia consists of only two patrols annually. See Ian Storey, “‘Triborder sea’ is SE Asian danger zone”, *Asia Times Online*, 18 October 2007. available at <<http://www.atimes.com/>>.

<sup>89</sup> Admiral Thomas Fargo, the commander of American forces in the Pacific, told a Congressional committee that the Navy was considering armed patrols in the Strait of Malacca, without first consulting with littoral states. This speech caused a diplomatic tension between US and Malaysia. See ‘Piracy and Terrorism’, *The New York Times*, 10 April 2004. available at <<http://www.nytimes.com/>>.

<sup>90</sup> Indonesia and Malaysia had rejected out of hand a Singapore proposal for a fourth country -- meaning the United States -- to take part in patrolling the strait. See *The Jakarta Post*, *supra* note 85.

<sup>91</sup> See for example ‘To Secure the Malacca Strait, Indonesia Still Hasn’t Signed Re-CAAP’, *Antara*, 1 September 2006, (In Indonesian). available at <<http://www.antara.co.id/print/1157122267>>

<sup>92</sup> See for examples: Japan’s ten million dollar aid for maritime surveillance system for the Indonesian Navy: M. Rizal Maslan, ‘Jepang Bantu Sistem Penginderaan di Indonesia’, *Detik News*, 6 October 2009, (in Indonesian), available at <<http://www.detiknews.com/>>; Japan’s aid of three maritime patrol boats for Indonesian National Police: Indra Subagja, ‘Rajawali Jepang Jaga Malaka’, *Detik News*, 30 November 2007, (in Indonesian), available at <<http://www.detiknews.com/>>; see also United

## V. CONCLUSION

It is a matter of course that the most sure-fire way to curb piracy, and indeed all crimes, is to eliminate poverty and guarantee the availability of decent source of living. Having said that, one cannot help but wonder how long it will take before littoral seas in ASEAN is free from piracy and armed robbery against ships, most ASEAN countries are still struggling economically and hence, each are focusing their time and resources to combat poverty and domestic problems.

Other than long-term solution to the underlying causes of crimes, fortunately there are things that could be done by ASEAN states to combat piracy in its waters as has been elaborated in Part II and III above. There is an urgent need for ASEAN to step up cooperation among its member countries and with the international community in combating piracy and armed robbery against ships. Concerning definition and scope of crimes, ASEAN states would be benefited from a new regional convention specifically tailored for the ASEAN situation, it should treat armed robbery against ships as a transnational crime and subject to international jurisdiction for the treaty's member states, however, it should also incorporate the "ASEAN Way" and ensure that "nobody gets offended", by mandating a close cooperation not just in information sharing and command-level cooperation, but also cooperation in day-to-day patrol, particularly attachment of shipriders trained in law enforcement.

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States' aid of fifteen maritime patrol boats for the Indonesian National Police: 'AS Hibahkan 15 Kapal Ke Polri', *NCB-Interpol Indonesia*, 15 September 2008, available at <<http://www.interpol.go.id/>> (in Indonesian).