

LEGAL ISSUES ON THE ATTACKS AGAINST VESSELS IN THE STRAITS OF MALACCA

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Abstract

Piracy that occurs in the straits of Malacca has become a serious problem that need to be solved. The United Nations Office on Drugs and Crime (UNODC) has been combating piracy in this particular area since 2009. In an attempt to do so, UNODC creates a Counter Piracy Program (CPP) that has been implemented in several African Countries. However, UNODC doesn't define the limitation of piracy which described in 1982 UNCLOS that only defines it as piracy on high seas. Whereas, piracy is not only takes place on high seas but also within territories of the states jurisdiction. The lack of ability to implement the provisions in national scope become another problem in regards preventing piracy in the Straits of Malacca.

Pembajakan di selat Malaka menjadi masalah yang serius yang haru segera dipecahkan. The United Nations Office on Drugs and Crime (UNODC) telah berupaya memberantas pembajakan dalam bidang ini sejak tahun 2009. Dalam upayanya untuk melakukan itu, UNODC membuat Program Anti Pembajakan (PAP) yang telah diimplementasikan di beberapa negara Afrika. Akan tetapi, UNODC tidak mendefinisikan pembajakan seperti yang dilakukan dalam UNCLOS tahun 1982 yang hanya mendefinisikan hal tersebut sebagai pembajakan di laut bebas. Akan tetapi, pembajakan tidak hanya terjadi di laut bebas, akan tetapi juga terjadi dalam yurisdiksi wilayah suatu negara. Kurangnya kemampuan untuk melaksanakan ketentuan-ketentuan pada tingkat nasional menjadi masalah lain dalam hal memberantas pembajakan di Selat Malaka.

Keywords: transnational organized crime, piracy, the united nations office on drugs and crime, counter piracy program, straits of malacca.

I. INTRODUCTION

The United Nations Office on Drugs and Crime (UNODC) has been working in combating piracy off the Coast of Somalia since 2009. UNODC counter piracy program (CPP), implemented first in Kenya, now with a broadened mandate includes Kenya, Seychelles, Mauritius, Tanzania, Maldives and Somalia, has been valued as a comprehensive and effective program in taking measures and implementing interna-

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tional law articles upon Somali pirates.² However, UNODC doesn't deal with the limitation of piracy definition as described by the United Nations Convention on the Law of the Sea 1982 (the LOSC). This would include to a new method of "piracy" that takes place, not only in the Horn of Africa but also in the Straits of Malacca. The Straits of Malacca which is used for international navigation are partially within territorial waters of three littoral States in which the area would clearly fall under national jurisdiction of coastal States. One can not deny that attacks against vessel are not only taking place on High Seas but also within territories of States jurisdiction.

Resolution A.1025 (26) of the International Maritime Organization (IMO), adopted in 2009, makes a clear division between piracy, as accordance to the LOSC, and armed robbery. Armed robbery is defined by the Resolution as :

*"any illegal act of violence or detention or any act of depredation, or threat thereof, other than an act of piracy, committed for private ends and directed against a ship or against persons or property on board such a ship, within a State's internal waters, archipelagic waters and territorial sea", this definition includes "any act of inciting or of intentionally facilitating an act described..."*³.

The definition is trying to fill out the absent of the LOSC in regulating crimes which take place in an area that does not fall under the category of high seas which may be endangering international traffic of vessels. The resistance and the lack of ability to implement its national jurisdiction upon those perpetrators would cause a new legal problem to Indonesia as one of littoral States in the Straits of Malacca.

II. THE STATUS OF THE STRAITS OF MALACCA

The status of a strait used for international navigation was formally recognized by the adoption of a decision by the International Court of

² United Nations Office on Drugs and Crime, "UNODC and Piracy", available at: <http://www.unodc.org> accessed on 14 October 2013.

³ The International Maritime Organization, Code of Practice for the Investigation of Crimes of Piracy and Armed Robbery Against Ship, Annex to Resolution A 1025 (26), adopted in 2 December 2009.

Justice (ICJ) on the Corfu Channel Case in 1949. The location of the incident was claimed to be part of Albania's territorial waters. Its existence is important for both Albania and Greece, as part of the channel is within territorial waters of both States.⁴ Minefield claimed to be laid in the channel and causing the loss of material and immaterial damages to British's ships *Saumarez* and *Volage*. The Court declared that Albania had failed to notify the existence of those mines to *Saumarez* and *Volage* when through the waterway, that connects one part of high seas and another part of the high seas, and it was indeed violating the right of innocent passage under international law. Therefore, Albania was held responsible⁵ and thus the Channel of Corfu is recognized as used for international highways and the right of innocent passage cannot be prohibited by a coastal State.⁶ The geographical consideration made by the ICJ is also recognized by The LOSC, stipulating the right of transit passage of a vessel when through straits used for international navigation, *between one part of the high seas or an exclusive zone and another part of the high seas or an exclusive economic zone*,⁷ in a *continuous and expeditious* manner,⁸ and that right *shall not be impeded*⁹

The Straits of Malacca, as one of the busiest international straits, are playing an important role in international maritime traffic, located in the Southeast Asia. The strategic location, surrounded by Indonesia, Singapore and Malaysia, that connects Indian Ocean and Pacific Ocean, makes it recognized as straits used for international navigation under the LOSC. It is known as the longest straits in the world used for international navigation¹⁰ with approximately 800 km long, 400sqm as its narrowest width¹¹ and at some point only 21.8m depth¹², as well as

⁴ The International Court of Justice decision of the 1949 Corfu Channel Case (Merits)

⁵ *Ibid.*

⁶ *Ibid.*

⁷ Law of The Sea, opened for signature 10 December 1982, 1833 UNTS 3 (entered into force 16 November 1994).

⁸ *Ibid.*

⁹ *Ibid.*

¹⁰ Editor's Note, Navigational Safety in the Straits of Malacca, Singapore Journal of International and Comparative Law, No.2, 1998.

¹¹ Takai Susumu, Suppression of Modern Policy and the Role of the Navy, NIDS Security Reports No.4, 2003.

¹² Colonel Zubir Karim, The Strategic Significance of the Straits of Malacca, Australian Defence Force Journal, Australia, Issue No. 172, 2007.

the shortest waterway for vessels destined to Japan, Taiwan, and South Korea¹³ carrying oil from Persian Gulf.¹⁴ The width of the narrowest point in the Phillip Channel of the Singapore Strait creating a blockage forcing all vessels through the Straits to reduce its speed and making them openly insecure for any attacks.¹⁵

In 1971, the government of Indonesia together with the government of Malaysia recognized the use of the Straits of Malacca for international shipping,¹⁶ not an international waterway, following the fact that Indonesia and Malaysia signed a delimitation treaty¹⁷ by extending their territorial waters from 3 to 12 miles,¹⁸ while the Indonesian Government also signed a delimitation treaty with Singapore in 25 May 1970¹⁹. The LOSC authorizes Indonesia, Singapore and Malaysia as coastal States to the extent of 12 nautical miles as breadth of territorial sea,²⁰ under this condition, the Southern half of the Strait of Malacca and the whole area of the Strait of Singapore fall under the jurisdiction of coastal states²¹ and they are bound with the provisions of providing any vessel through the Straits applying the right of transit passage²².

¹³ Joyce Dela Pena, "Maritime Crime in the Straits of Malacca: Balancing Regional and Extra Regional Concerns", *Stanford Journal of International Relations*, Spring 2009.

¹⁴ Chia Lin Sien, "The Importance of the Straits of Malacca and Singapore", *Singapore Journal of International and Comparative Law*, 1998.

¹⁵ Martin N. Murphy, *Contemporary Piracy and Maritime Terrorism : The Threat to International Security*, Routledge, 2007.

¹⁶ Michael Leifer and Doliver Nelson, "Conflict of Interest in the Straits of Malacca", *International Affairs* (Royal Institute of International Affairs 1944-), vol. 49, no. 2, 1973.

¹⁷ Treaty between The Republic of Indonesia and Malaysia Relating to the Delimitation of the Territorial Seas of the Two Countries in the Straits of Malacca, signed in 17 March 1970 (entered into force in 8 October 1971).

¹⁸ Chia Lin Sien, *Op. Cit.*

¹⁹ Agreement Stipulating the Territorial Sea Boundary Lines between Indonesia and the Republic of Singapore in the Straits of Singapore (entered into force in 29 August 1974).

²⁰ *Ibid.*

²¹ Robert C. Beckman, "Issues of Public International Law Relating to Piracy and Armed Robbery Against Ships in the Malacca and Singapore Straits", *Singapore Journal of International and Comparative Law*, vol.3, 1999.

²² *Ibid.*

III. FORM OF ATTACKS AGAINST VESSELS

The LOSC only addresses a form of attack against vessel as piracy. To conclude an act as piracy it requires that act shall be, as stipulated in Article 101 of the LOSC, *“illegal acts of violence or detention, or any act of depredation, committed for private ends, by the crew or the passengers of a private ships or a private aircraft, and directed :*

- a. on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;
- b. against a ship, aircraft, persons or property in a place outside the jurisdiction of any state;
- c. any act of voluntary participation in the operation of a ship or of an aircraft with the knowledge of facts making it a pirate ship or aircraft;
- d. any act of inciting or of intentionally facilitating an act describe in subparagraph (a) or (b).

The article specifically stipulates that when an illegal act of piracy is committed, the act shall fulfill classifications that it takes place in the high seas or in a territory that doesn't belong to any sovereign state, carries out for the purpose of private ends and committed by one ship against another ship. The article may easily be applied for any classic act of piracy; however, the current development in Somalia when unlawful takeover of a ship located, the article is frequently hard to meet the requirements. This condition is similar to the situation in the Straits of Malacca, where attack against vessel does not fulfill piracy elements.

To classify an act as piracy it shall be conducted on the high seas that were concluded originally from the canon shot sovereignty principle to the extent of approximately three nautical miles, by which, at that time States determine their territorial seas where they apply their jurisdiction. When pirates committed acts of piracy on the high seas and later take the hijacked vessel towards a territorial sea of a state, it becomes difficult to take measures upon it. Evidently, on September 2008, Somali Coast Guard hijacked Ukrainian *MV Faina*, loaded with refurbished Soviet tanks and significant number of ammunitions which further taken onto the territorial sea of Somalia and not released after receiving ransom. The most phenomenal piracy was committed in 1980 against Vietnamese boat people during their voyages to flee Vietnam.

The boat people had been victim by assaults, robberies, and the women onboard were raped repeatedly. The transiting coastal State were criticized for not taking measures against the offenders since there is no available legal basis for any actions committed on territorial sea.

The purpose of the act shall be private end which requires correct interpretation when brought into its application. In October 1985, *Achille Lauro*, an Italian ship was hijacked within the territorial sea of Egypt, by Palestinian passengers demanding the release of Palestinian prisoners by the Israeli Government. The incident was proven to be failed to meet the private end, as it was indicated conducted on the basis of political motivation, and high seas elements as required by the LOSC. Similar incidents are also commonly committed in the Gulf of Aden when Somali pirates suspected of committing piracy, they argued the action was not for private ends but merely for political motivation by claiming they are members of insurgents opposing the Somali Transitional Federal Government or combating illegal fishing and preventing the waste dumping.²³

The two ships requirement is also difficult to meet when comparing incidents between classic acts of piracy with contemporary attacks. It was originally accredited to classical act of piracy where a targeted vessel is hijacked during its journey by passenger of another vessel, however, the contemporary acts of piracy are sometimes do not fulfill the criteria. For instance, a robber climbed up a vessel when anchored in a harbor or a disguised passenger hijacking a vessel when on board would not constitute a two ships requirement.

According to the IMO Working Group's report, Low – Level Armed Assault and Robbery is a type of incident that regularly take place in the Straits of Malacca which prescribed as "*it is generally carry out in the vicinity of land from small high – speed craft by groups of petty thieves armed with machetes, clubs and, occasionally, low velocity weapons such as pistols and shotguns. The vast majority of the attacks by such groups are carried out at night, generally between 22:00 hrs and 04:00 hrs. The perpetrators are judged to come from criminal and fishing*

²³ Robin Geiß and Anna Petrig, *Piracy and Armed Robbery at Sea : the Legal Framework for Counter-Piracy Operations in Somalia and the Gulf of Aden*, Oxford University Press, 2011.

communities based close to the area of attack"²⁴

Applying the criteria within the scope of Article 101 of the LOSC to contemporary act of piracy is difficult since pirates understand that there is a loophole in our legal system to disable its application by not meeting the LOSC requirements and since some parts of the Straits of Malacca are either within Indonesia, Malaysia and Singapore jurisdiction concludes that any attack committed cannot be classified as act of piracy under the LOSC.²⁵

The hijacking of Malaysian tanker Suci in the Straits of Malacca in 1996²⁶ and the attack of the *Crest Jade I*, in the Straits of Singapore²⁷ are two incidents that took place in the Straits of Malacca which can't be qualified as piracy within the LOSC, since the vessel were attacked in the territorial waters either one of three littoral states.

Malaysian gas oil tanker Suci left Singapore for Borneo was hijacked, presumably in Indonesian waters, by six armed pirates, carrying 3000 metric tons of gas oil onboard. Fifteen crew members were set a drift into the sea by a life boat blindfolded while the other two crew members were taken as hostages and released later unharmed. The tanker was repainted and named *Glory II* and re-registered under Honduras domestic law as San Lorenzo.²⁸ Later on 1998, Japanese bulk carrier, Tenyu was hijacked by Indonesian pirates, when sailing from Indonesia to South Korea, with its cargo onboard and reappeared in Southern China after being reflagged as Honduran vessel. Those pirates were released without any charges by the Chinese Government how-

²⁴ Robert C. Beckman, Op. Cit. Type of incidents (1) Low-Level Armed Assault and Robbery; (2) Medium-Level Armed Assault and Robbery; and (3) Major Criminal Hijack. Beckman in his paper suggested the category of major criminal hijack should be referred as major transnational organized crime at sea since the incident involving economic losses and go far beyond of navigational safety.

²⁵ Robert C. Beckman, "Combating Piracy and Armed Robbery Against Ships in Southeast Asia : The Way Forward", Ocean Development and International Law, vol. 33, 2002.

²⁶ Niclas Dahlvang, "Thieves, Robbers and Terrorists : Piracy in the 21st Century", Regent Journal of International Law, 4 Regent J. Int'l L 17, 2006.

²⁷ The International Maritime Organization, Reports on Acts of Piracy and Armed Robbery Against Ships : May 2013, London, 2013.

²⁸ David Marley, Modern Piracy : a Reference Handbook (Contemporary World Issues), ABC-CLIO, LLC, 2011.

ever the Indian Government, by the power of the universal jurisdiction under the LOSC, captured and prosecuted them.²⁹

Crest Jade 1 was attacked in the Strait of Singapore by four thieves climbed up the vessel and escaped with vessel stores when alarm was activated, similar situation happened as well to *Crest Jade 2821* near Batam Island, an Indonesian territory. *Crest Jade 2821* was attacked during its journey destined to Bentulu, Sarawak, Malaysia. The perpetrators escaped with offshore drilling equipments but later captured and prosecuted.

IV. ACT OF TERRORISM COMMITTED AT SEA

International Law has not yet provided a definite legal definition of acts of terrorism however there is a tendency to consider piracy and armed robbery as acts of terrorism. The purpose of pirates is to obtain financial advantage while terrorists, cited by the General Assembly (GA) Resolution 51/210, aim for political motivation. The first resolution on terrorism was Resolution 3034³⁰ adopted by the GA by impliedly avoids to determine the definition by limiting an act of terrorism as *endangering and taking innocent human lives or jeopardizing fundamental freedoms* and invites member States to take all appropriate measures under their domestic jurisdiction in order to eradicate terrorist acts.

The Declaration on Measures to Eliminate International Terrorism³¹ classifies any act that *intended or calculated to provoke a State of terror in the general public, a group of persons or particular persons for political purposes are in any circumstances unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or any other nature that may be invoked to justify them as criminal act.*

The Security Council 1373, acting under Chapter VII, explicitly condemns terrorist acts *as a threat to international peace and security*

²⁹ NiclasDahlvang, Op. Cit.

³⁰ Bibi Van Ginkel, the Practice of the United Nations in Combating Terrorism From 1946 to 2008: Questions of Legality and Legitimacy, Intersentia, 2010.

³¹ Adopted by the General Assembly in 1995.

and reaffirms the inherent right of individual or collective self-defense and establishing compulsory obligation of all States to refrain from organizing, instigating, assisting or participating in terrorist acts. Once again, the Security Council reaffirms, without making any acknowledgement, by the adoption of Resolution 1566 (2006), that terrorism is criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organization to do or to abstain from doing any act, which constitute offences within the scope of and as defined in the international conventions and protocols relating to terrorism, are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial and ethnic religious or other similar nature.

The 1997 International Convention for the Suppression of Terrorist Bombings describes terrorist acts under particular issues related to the use of explosive or lethal devices committed by any person against public place, government or infrastructure facilities and public transportation system with intention to cause death or serious bodily injury or to cause extensive destruction to cause major economic loss. The 1999 International Convention for the Suppression of the Financing of Terrorism definitely justifies on what amount, if committed, by any means, unlawfully and willfully, providing or collecting funds would constitute an offence if the funds used in supporting any offences that defined by treaties listed.

Related to maritime, they recall the 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime (the SUA Convention)³² and the 1979 International Convention against the Taking of Hostages (the Hostage Taking Convention).

The nexus between piracy, armed robbery and act of terrorism was came into discussions right after the *Achille Lauro* incident, committed by Palestinian activists, Abu Abbas faction of the Palestine Liberation Front, and strengthened by the 9/11 attacks, followed by the hijacking

³² Helmut Turek, *The Resurgence of Piracy : a Phenomenon of Modern Times*, University of Miami International and Comparative Law Review, 2009.

of *MV Limburg*, in 2002, a French crude oil tanker, just off Coast of Yemen, in Arabian Sea. The attack killed one Bulgarian crew member and damaged the hull of the vessel. It was believed to have been carried out by Al-Qaeda and known as the first successful attack. Later in 2004, Abu Sayyaf, an Islamist separatist, based on the Southern Philippines, believed to have successfully attacked *Super Ferry 14* just off the Manila harbor. It was acknowledged as the deadliest terrorist incident which caused sixty three people killed and fifty three people missing and presumed dead. Moro insurgents and Abu Sayyaf, in the Philippines, and Tamil Separatist of Sri Lanka are well known by using sea as their field of operations.

All cases involving taking of hostages and carried out at sea, not limited to high seas, fulfill the elements required by the 1988 SUA Convention³³ and the 1979 Hostage Taking Convention³⁴. Both Conventions would be relevant for Indonesia, as one of the littoral States in the Straits of Malacca, to implement measures to against offenders in providing safety navigation in any event attacks against vessel take place in the area. The Conventions establish a compulsory obligation to prosecute alleged individual whenever the individual is present within States' jurisdiction, however, Indonesia is not a party to any of those two conventions, on the other side, Malaysia and Singapore are parties to both of them.³⁵

V. STATE RESPONSIBILITY

International Maritime Bureau (IMB) in its 2009 annual report indicated that between 2005 – 2009 more than 1400 actual and attempted acts of piracy and armed robbery occurred around the world. It announced that all vessels should be vigilant in prone areas where attacks repeatedly take place. Indonesia and Malaysia, including the Straits of

³³ Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, open for signature 10 March 1988, 1678 UNTS 221 (entered into force 1 March 1992).

³⁴ The 1979 Hostage Taking Convention, opened for signature 17 December 1979, 1316 UNTS 205 (entered into force 3 June 1983).

³⁵ Captain J. Ashley Roach, Global Conventions on Piracy, Ship-Jacking, Hostage-Taking and Maritime Terrorism, CIL Workshop on Maritime Crimes, January 2011.

Malacca, are rated as the most dangerous water.

As Straits known as one of the busiest lane for international maritime traffic, all littoral States of the Straits of Malacca share the same burden under the LOSC, to work together protecting its territorial waters for safety navigation.³⁶ Indonesia, as a State with the largest archipelagic waters is in deep concern with any attack within its territorial waters however it is undeniable that Indonesian navy lacks of capability in protecting its territorial sea. Illegal fishing, people smuggling and armed robbery have made Indonesia as a major focus of international attention for its efforts in combating any illegal acts.

The LOSC confirms the obligation of States to work together *to the fullest possible* in suppressing piracy³⁷ and placed piracy under universal jurisdiction where any State may establish its jurisdiction over the unlawful act contrary to international law³⁸. The reluctance to prosecute pirates is not only caused by the vacuum of legal basis for any attack within a State's territorial waters but also there are few considerations on the impact of the capture for the State concerned. If we observe the article 105, carefully, it is only the State that captured the offender who may establish prosecution and the trend shows that capturing States sometimes come into an agreement with another State to prosecute them. Related to this transfer of pirates, international law recognized the principle of non-refoulement, a prohibition of sending an individual to countries where their rights would likely be abused. This is not an easy job since a capturing State may not have the privilege to monitor the legal process. For example, if Somali pirates returned to Somalia and prosecuted under Islamic Law, they could face a death sentence or having their hand chopped off for committing robbery. If this is happening, pirates could declare they had been victim of torture or unfair trial which may open up the possibility of requesting asylum. Asylum would be another new problem to the capturing State, Coastal States have an obligation to ensure the safety of its territorial water used as for international navigation as recognized by the ICJ Decision in the 1948 Corfu Channel Case even though the Court failed to find Albania

³⁶ *Ibid.*

³⁷ *Ibid.*

³⁸ *Ibid.*

as a responsible party for the laying mines, the Court believed that Albania considered as knew or should have known the existence of those mines laid in its territorial waters. The ILC Articles on State Responsibility clearly states that any State shall bear international responsibility for any wrongful act whenever the act is attributable and constitute a breach of its international obligation. An act would not be considered attributable to States if the committed act is done by an individual not acting on behalf of or under the direction of a concerned State. The ICJ in its decision related to the *Diplomatic and Consular Staff Case* found that Iranian Government responsible for any damage suffered by the U.S. since the demonstration carried out by Iranian students in front of the U.S premises' and taking over of the U.S. embassy were acknowledged by the Iranian officials however it had failed to take any necessary measures in preventing the students from entering the *internationae* of the embassy.

The Security Council, under chapter VII, has adopted Resolutions 1816, 1831, 1838 1846 and 1851 concerning Somali pirates determining the situation on the horn of Africa as a situation that threatens international peace and security. The Resolutions adopted based on the fact that Somalia, as a failed State, does not have the capacity to prevent any illegal act carried out within its territory and to take measures against Somali pirates. The resolutions confirm the right of cooperating States, with the consent of Somali Transitional Federal Government (TFG), to take measures against Somali Pirates, including within Somali territorial waters.³⁹ The Resolutions are silent in making definitions of armed robbery however the idea to differentiate armed robbery with piracy is to deal with the inadequacy of piracy definition under the LOSC, which sometimes partly takes place in territorial waters. This is shown by the authorization of the Security Council for any cooperating States to take measures not only on the high seas but also onto the territorial waters of Somali. The authorization described by the Resolutions is clearly in contradiction with the scope of action that is applicable only on the high seas.

The fact that triggered the adoption of the SC Resolutions was the

³⁹ Siti Noor Malia Putri, The Effectiveness of International Law in Combating Contemporary Crimes at International Waters, Faculty of Law Universitas Padjadjaran, June 2010.

hijacking of the contracted World Food Programme's (WFP) humanitarian support to Somali people. *MV Semlow* and *MV Miltzow* were hijacked by Somali pirates while unloading food in the Port of Merka, Somalia. Further, *MV Rozen* hijacked in the north of Hafun, in the State of Puntland, and took six Sri Lankan nationals and six Kenyans crew members as hostages. Regardless the incidents took place within the territorial waters of Somalia, the Security Council has the competence to take any (necessary) measures in order to maintain international peace and security by determining whether a situation as either threat to the peace, breach of the peace or act of aggression.⁴⁰

This situation will become a great problem if the Security Council values that Indonesian government lacks of capacity in providing safety international navigation through the Straits of Malacca.

In order to provide safety navigation at the Straits of Malacca in order to carry out its international obligation, Indonesia has come into several agreements with Malaysia and Singapore as littoral States. Indonesia has agreed to have coordinated patrols not only with Malaysia or Singapore, in form of bilateral cooperation, but also a trilateral cooperation.⁴¹ However, one may value the coordinated patrols is not sufficient enough in reducing number of incidents in the Straits of Malacca, but regardless its efficiency, The Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ship in Asia (ReCAAP), in its website, has announced that there is a significant declining number of incidents in Asia and acknowledged as the lowest number incidents in the last four years, even though Indonesia and Malaysia are not bound with the agreement⁴²

⁴⁰ United Nations Charter, (entered into force 24 October 1945).

⁴¹ Arif Havas Oegroseno, Threats to Maritime Security and Responses Thereto: a Focus on Armed Robbery Against Ships at Sea in the Straits of Malacca and Singapore: the Indonesian Experience, Department of Foreign Affairs Republic Indonesia, 2008.

⁴² Robin Geiß and Anna Petrig, Op. Cit. Current members of ReCAAP are Bangladesh, Brunei Darussalam, Cambodia, China, India, Japan, Laos, Myanmar, Norway, Philippines, Singapore, South Korea, Sri Lanka, Thailand and Vietnam. Denmark and the Netherlands has notified their intention to accede ReCAAP.

VI. CONCLUSION

Piracy and armed robbery at sea are crucial problems for any Coastal States to solve. The absence of the LOSC in addressing armed robbery issue is seen as a loophole for any offender to escape legal prosecution. The obligation to work together with other States in suppressing piracy has been stipulated explicitly by the LOSC however the obligation does not cover the establishment of jurisdiction by capturing State, on the other side, armed robbery as it is commonly takes place within State's territory would bring confusion in taking legal measures upon the offender. A foreign flagged vessel may not be intervened unless there is an authorization, so when an incident takes place on a vessel located in a territorial water of another State, a harboring State will find difficulty in establishing legal process.

Lacking of capacity in providing safety navigation is also one of major concerns, especially for Indonesia in combating armed robbery in the Straits of Malacca. The Security Council as the organ of the United Nations may act under Chapter VII to determine a situation as stipulated in Article 39, have taken action upon Somali pirates on the basis of uncertain political condition in Somali which is seen as the inability of Somali's Government to suppress piracy on the high seas.

BIBLIOGRAPHY

Books

- Geiß, Robin and Anna Petrig, *Piracy and Armed Robbery at Sea : the Legal Framework for Counter-Piracy Operations in Somalia and the Gulf of Aden*, Oxford University Press, 2011.
- Marley, David. *Modern Piracy : a Reference Handbook (Contemporary World Issues)*, ABC-CLIO, LLC, 2011.
- Murphy, Martin N. *Contemporary Piracy and Maritime Terrorism : The Threat to International Security*, Routledge, 2007.
- Van Ginkel, Bibi, *the Practice of the United Nations in Combating Terrorism From 1946 to 2008: Questions of Legality and Legitimacy*, Intersentia, 2010.

Journal Articles

- Beckman, Robert C. "Issues of Public International Law Relating to Piracy and Armed Robbery Against Ships in the Malacca and Singapore Straits", *Singapore Journal of International and Comparative Law*, vol.3, 1999.

- Dahlvang, Niclas. "Thieves, Robbers and Terrorists : Piracy in the 21st Century", *Regent Journal of International Law*, 4 *Regent J. Int'l L* 17, 2006.
- Editor's Note, "Navigational Safety in the Straits of Malacca," *Singapore Journal of International and Comparative Law*, No.2. 1998.
- Karim, Colonel Zubir. "The Strategic Significance of the Straits of Malacca", *Australian Defence Force Journal, Australia*, Issue No. 172, 2007.
- Leifer, Michael and Doliver Nelson. "Conflict of Interest in the Straits of Malacca", *International Affairs (Royal Institute of International Affairs 1944-)*, vol. 49, no. 2, 1973.
- Pena, Joyce Dela. "Maritime Crime in the Straits of Malacca: Balancing Regional and Extra Regional Concerns", *Stanford Journal of International Relations*, Spring 2009.
- Sien, Chia Lin. "The Importance of the Straits of Malacca and Singapore", *Singapore Journal of International and Comparative Law*, 1998.
- Turek, Helmut. "The Resurgence of Piracy : a Phenomenon of Modern Times", *University of Miami International and Comparative Law Review*, 2009.

Internet References

- United Nations Office on Drugs and Crime, "UNODC and Piracy", available at: <http://www.unodc.org> accessed on 14 October 2013.

Treaties

- Agreement Stipulating the Territorial Sea Boundary Lines between Indonesia and the Republic of Singapore in the Straits of Singapore* (entered into force in 29 August 1974).
- Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation*, open for signature 10 March 1988, 1678 UNTS 221 (entered into force 1 March 1992).
- Law of The Sea*, opened for signature 10 December 1982, 1833 UNTS 3 (entered into force 16 November 1994).
- The International Maritime Organization, *Code of Practice for the Investigation of Crimes of Piracy and Armed Robbery Against Ship*, Annex to Resolution A 1025 (26), adopted in 2 December 2009.
- The 1979 Hostage Taking Convention*, opened for signature 17 December 1979, 1316 UNTS 205 (entered into force 3 June 1983).
- Treaty between The Republic of Indonesia and Malaysia Relating to the Delimitation of the Territorial Seas of the Two Countries in the Straits of Malacca*, signed in 17 March 1970 (entered into force in 8 October 1971).
- United Nations Charter*, (entered into force 24 October 1945).

Cases

- The International Court of Justice decision of the 1949 Corfu Channel Case (Merits)

Others

- Susumu Takai. *Suppression of Modern Policy and the Role of the Navy*, NIDS Security Reports No.4, 2003.
- The International Maritime Organization, *Reports on Acts of Piracy and Armed Robbery Against Ships : May 2013*, London, 2013.
- Oegroseno, Arif Havas. *Threats to Maritime Security and Responses Thereto: a Focus on Armed Robbery Against Ships at Sea in the Straits of Malacca and Singapore : the Indonesian Experience*, Department of Foreign Affairs Republic Indonesia, 2008.
- Putri, Siti Noor Malia. *The Effectiveness of International Law in Combating Contemporary Crimes at International Waters*, Faculty of Law Universitas Padjadjaran, June 2010.
- Roach, Captain J. Ashley. *Global Conventions on Piracy, Ship-Jacking, Hostage-Taking and Maritime Terrorism*, CIL Workshop on Maritime Crimes, January 2011.