Regional cooperation for antipiracy measures in South East Asia: study of the Malacca Strait

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REGIONAL COOPERATION FOR ANTIPIRACY MEASURES IN SOUTH EAST ASIA

Study of the Malacca Strait

By

YUICHI MONJI

Japan

A Dissertation submitted to the World Maritime University in partial Fulfilment of the requirements for the award of the degree of MASTER OF SCIENCE

In

MARITIME AFFAIRS

(Maritime Safety and Environmental Administration)

2014
DECLARATION

I certify that all the material in this dissertation that is not my own work has been identified, and that no material is included for which a degree has previously been conferred on me.

The contents of this dissertation reflect my own personal views, and are not necessarily endorsed by the University.

(Signature): .................................

(Date): ................................. September 22, 2014

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Last, but not the least, I wish to extend my deepest appreciation to my wife for supporting while living in Sweden.
Title of Dissertation: Regional Cooperation for Antipiracy Measures in South East Asia

Degree: MSc

Piracy has been called “enemies of mankind”. International society has made great efforts to eliminate piracy for a long time by creating many conventions and resolutions. However, pirates are still thriving today, so the question why pirates can survive now was the starting point of this dissertation.

Pirates in South East Asia have existed for a very long time in modern history compared to the rest of the world. Especially the Malacca Strait has been the choke point for maritime shipping in history because there are a lot of natural obstructions in the area, which brought not only danger in navigation but also a natural base for pirates. This area has some unique features; therefore, general interpretations of conventions do not always apply.

This dissertation starts by examining the limits of international conventions regarding piracy. After introducing the international response to piracy in South East Asia, a discussion about regional cooperation framework is done, especially ReCAAP.

Finally, based on the discussions already done before, this dissertation tries to propose some solutions to overcome current challenges, as well as proposals for future development of antipiracy measures in South East Asia. This study does not touch piracy in other areas but focuses on the Malacca Strait.

KEYWORDS: Piracy, ReCAAP, Malacca Strait, Limit, Coordination

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<tr>
<td>ARF</td>
<td>ASEAN Regional Forum</td>
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<tr>
<td>ASEAN</td>
<td>Association of Southeast Asian Nations</td>
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<td>EiS</td>
<td>Eyes in the Sky</td>
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<td>ICC</td>
<td>International Chamber of Commerce</td>
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<td>IEG</td>
<td>Intelligence Exchange Group</td>
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<td>IMB</td>
<td>International Maritime Bureau</td>
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<td>IMO</td>
<td>International Maritime Organization</td>
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<td>ISPS Code</td>
<td>International Ship and Port Facility Security Code</td>
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<td>JCC</td>
<td>Joint Coordinating Committee</td>
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<td>PSC</td>
<td>Port State Control</td>
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<td>ReCAAP</td>
<td>Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia</td>
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<td>ReCAAP Information Sharing Centre</td>
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<td>SOLAS</td>
<td>International Convention for the Safety of Life at Sea</td>
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<td>SOP</td>
<td>Standard Operational Procedure</td>
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<td>SSAS</td>
<td>Ship Security Alert System</td>
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<tr>
<td>SUA</td>
<td>Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation</td>
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TOR  Terms of Reference

INTRODUCTION

As maritime shipping has been growing, its system and relationship between not only business fields but also among countries became more complicated and closer. As a result, when some problem or accident happens, the global cooperation is often required as a minimum essential. The piracy problem is clearly one of the gravest concerns for international maritime shipping so the international community has had to tackle this problem.

Japan, for instance, is a giant maritime shipping country, which means that Japan cannot survive without maritime shipping. Therefore, Japan has made great efforts to secure the sea lanes. Especially, the Malacca Singapore Strait in South East Asia has been a critical point where most Japanese vessels pass through, so the piracy issue has been a great choke point for Japan. Actually in 1999, the Panama flagged Motor Vessel Alondra Rainbow, on which two Japanese and 15 Filipinos were onboard was captured by armed robbery just after leaving an Indonesian port Kuala Tanjong, and crews were forced to drift in a lifeboat for eleven days until they were rescued. When she was seized in the Indian Ocean, the name had already changed to Mega Rama and some of the cargo was discovered in Manila (Ministry of foreign affairs, 2001).

According to the International Maritime Bureau (IMB), 300 piracy incidents were reported in 1999 and Alondra Rainbow was one of them. Almost all incidents were caused not by terrorists but by people who targeted cargo for the purpose of money. However, the critical problem was related with sovereignty. Needless to say, there are several coastal states including archipelagic states in the South East Asia Sea, which have complicated landforms and vast size of the sea, especially the Malacca Singapore Strait is surrounded by many countries located within a narrow area. Some countries claimed that the territorial sea was overlapping and yet the boundary unclear
(Kesumawardhani. 2008). In addition, there was not enough cooperation in that region. Consequently even though a local patrol vessel found the pirates and chased them, the pirates could easily escape only by crossing the border towards other country. This is because at that time law enforcement body operated within their territorial area which border was adjacent to other countries, there was no competent cooperation scheme against particular piracy incidents (Murakami. 2001).

Therefore, after the Alondra Rainbow, the Japan government recognized the necessity to launch a legal cooperation framework for anti-piracy and held the Regional Conference on Combating Piracy an Armed Robbery against Ships in 2000 and participating countries accepted the Tokyo Appeal and Model Action Plan for piracy and armed robbery against ships. Hence, the Prime Minister Koizumi proposed to create a regional cooperation scheme to enhance the ability to combat piracy and armed robbery against ships, which resulted in the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP). Moreover, the Japan Coast Guard launched Heads of Asian Coast Guard Agencies Meeting in 2004, which aimed to strengthen the relationship among Coast Guard Agencies in the Asian region and discuss not only piracy and armed robbery but also general law enforcement issues (Yuzawa. 2008).

Despite international efforts and anxieties including Japan, piracy in the South East Asia has been still serious and most incidents have concentrated in the Malacca Strait and adjacent area where many antipiracy efforts have already been taken. This fact means that further measures can be taken or there are some barriers preventing those efforts over the Strait. This study will concentrate only on the piracy issue over the Malacca Strait and targets to find out key factors which prevent transnational cooperation or will be able to enhance the current framework such as ReCAAP.
Chapter 1 aims to recognize what the term “piracy” means from legal point of view. Chapter 2 focuses on the sea piracy issues over the Malacca Strait in the South East Asia and finds out features of pirates and armed robbery against ships in the area as well as responses of international society against piracy, and chapter 3 picks up ReCAAP for analyzing advantages and limitations for regional cooperation against piracy. Finally chapter 4 will discuss the way to improve antipiracy measures over the Malacca Strait.
Chapter 1
Piracy in General

1.1. Background

The sea piracy issue has a long history. Since the dawn of history, such as the era of the Roman Empire in the Mediterranean Sea, human beings have been dependent on the ocean and maritime shipping for their development, and at the same time piracy has existed concurrently with maritime shipping. As indicated by the fact that the word “piracy” is derived from the Latin term *pirata*, which means a sailor, the act of pirates were not always regarded as a crime but as a nature of “The weakest always goes to the wall” before international maritime order had been formed. For example, the Vikings were originated from Scandinavian and they were one of the best known pirates during the medieval age. Their occupation was attacking and raiding other ships and coasts in a wide area from the coasts of Western Europe to Eastern Europe to the coasts of North Africa (Maritime connector, n.d.), and they did trade with other nations by plundering.

In the fifteenth century, the Age of Exploration, Spain and Portugal were powerful enough to discover new worlds including Americas, Africa, Asia, and so on. In addition, they were trying to lay the groundwork for an international maritime law regime represented by the Treaty of Tordesillas in 1494, which divided the whole world between Spain and Portugal. On the other hand, other rising European countries who were seeking to pursue two top runners supported pirates, sometimes secretly, sometimes explicitly such as the Privateers and the Buccaneer. As a result, pirates became rich enough to be able to establish organized and stronger fleets as though they were a regular navy. In order to reject monopoly, those countries also asserted the doctrine of “freedom of the sea”, which the Dutch jurist Hugo Grotius mentioned in
his book that the sea is common to all because it is limitless; this doctrine became a widely accepted foundation of modern international law (Elleman, Forbes, & Rosenberg, 2010).

Since then piracy has attracted many people as a lucrative market to earn a great deal of money. However, as countries were built up and developed their own navy, pirates came to be regarded as a dangerous illegal force, causing governments to concentrate on the piracy issue by making laws and augmenting their navies. As a result, piracy was suppressed as a crime and was not spotlighted until the 1980s.

Then, why could piracy come back to the front stage of the world history? There may be several factors as the answer, one of which is that piracy had not vanished, but was just outside the spotlight of global interests. After two big world wars followed by the cold war, maritime shipping changed from “security first” to “economy first”, which meant interest in maritime affairs became lower as well as security presence. Instead the number of merchant vessels carrying valuable properties increased, so pirates were again blessed with good hunting fields and markets.

### 1.2. Definition of Piracy

As already mentioned above, piracy has been existing while sometimes changing its position in the long history. In this manner, to understand the definition of sea piracy would be a suitable first step to focus on this issue. International laws that govern relationships between sovereign states or between sovereign states and international organizations would be the best references.

Now piracy is considered to be applicable to international jurisdiction based on the United Nations Convention on the Law of the Sea (UNCLOS) Part VII Article 105, which provides that every state may seize a pirate ship and arrest pirates on the high
seas; hence, the state may decide upon the penalties to be imposed. In other words, the notion of piracy is exceptional of flag state jurisdiction, which is provided in UNCLOS Article 92 and 94 that ships under the flag of a state shall be subject to its exclusive jurisdiction on the high seas and every state shall effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag. Basically, when a crime happens on a ship on the high seas, no foreign flag state can interfere with the issue because the flag state should deal with it. Then, why is piracy an exception? In the past pirates used to hoist their original flags such as Jolly Roger, which meant they were not under protection of any state. In addition, as a practical problem there was a geographical limit for flag states to completely execute their jurisdiction against their own vessels crossing the globe; hence, international cooperation fighting against piracy was one of the empirical solutions.

1.2.1. UNCLOS

There is a doctrine named the freedom of the seas, which was formed in the seventeenth century and means that the seas is proclaimed to be free to all and belonging to none. However, in middle of the twentieth century, mankind tried to extend national claims over offshore resources for further development including growing of the long distance fishing fleet, global oil transport and developments of the seabed (United Nations, 2012). These movements resulted for coastal states in new threats to fishing stocks, oil pollution and wastes from ships, and nations independently began to claim expansion of their sovereignty in order to protect local resources, which brought tensions of national conflicts over their rights and sovereignty (Hollis, 2013). Throughout a long time of discussions to reach international consensus of maritime order, the United Nations Convention on the Law of the Sea (UNCLOS) was adopted
in 1982. The Convention regulates all aspects of rights and obligations of ocean resources such as navigational rights, territorial sea limits, economic jurisdiction, legal status of resources on the seabed beyond the limits of national jurisdiction, passage of ships through narrow straits, conservation and management of living marine resources, protection of the marine environment, a marine research regime, a binding procedure for settlement of disputes between States (United Nations, 2012). Piracy is described as:

**UNCLOS Part VII Article 101. Definition of piracy**

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).

(UNCLOS, 1982)

In short, piracy is any illegal acts of violence against another ship or person on board for private ends occurring on the high seas.

As the United Nations Security Council stated repeatedly in the Resolution 1897 (2009), UNCLOS set out the legal framework applicable to combating piracy and
armed robbery at sea as well as other ocean activities. It should be noted that UNCLOS enshrined conventional maritime customs into a legal regime (Rothwell, 2009). However, it is not enough to cover every piracy phenomenon. First, attacks that happen in the same ship involving crew or passengers do not fit this definition, and secondly where attacks occur is limited only to the high seas, not including territorial waters. Thirdly, neither political nor ideological purposes for piracy attacks is not piracy because the definition fits only for private ends (Public International law, 2013). Especially the last part is very ambiguous to certify what motivated the hijacking group, whether it was private ends or not.

According to article 100 of UNCLOS, the international society has the duty to repress piracy when they encounter the piracy on the high seas or in any other place outside the jurisdiction of any state, which is the reason that piracy is called the enemies for mankind. Furthermore, if a ship is hijacked, the ship may retain or lose its nationality, depending on the law of the state (article 104).

Any state may seize a pirate ship and the property on board on the high seas as well as any state who seizes it may execute its jurisdiction over the ship and property (article 105). However no state may execute its sovereignty on the high seas (article 89) except on the ships under the flag of one state that should be subject to its exclusive jurisdiction on the high seas (article 92) Therefore, the legal status of piracy should be regarded as an exception to the flag state duty.

1.2.2. SUA Convention

The Achille Lauro hijacking case in 1985 depicted these legal gaps. The Italian cruise ship Achille Lauro during a 12 day cruise from Alexandria to Port Said with about 680 passengers and about 350 crew, was hijacked on 7 October by an armed
group who was claiming to be the members of the Palestinian Liberation Front. They demanded the release of 50 Palestinians held in prison in Israel. An American tourist was killed by the armed group during negotiations and still 12 Americans were left on board. The situation became very tense, so the Italian and the United States authorities were unable to cooperate. Each government formed a crisis management team and tried to solve this case separately. Both teams were rushing around to confirming intelligence in order to catch the situation correctly (Adams, 2005). This hijacking involved many relevant and neighboring countries, such as Israel, Syria and Egypt; therefore, it was considered that the different political powers potentially disturbed a quick solution. However, the most serious problem with this case was that it was not regarded as “piracy” because the armed group that hijacked the ship had already embarked, and their demand was purportedly for political purposes. As a result, the international community enthusiastically recognized the importance of new regulations following UNCLOS.

In 1988 the IMO adopted the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (SUA). This Convention aimed to respond to be urgent need to develop international co-operation between states in devising and adopting effective and practical measures, prosecution and punishment to accomplish prevention of all unlawful acts against maritime navigation safety.

The SUA Convention defines piracy in Article 3 that any person who commits an offence if that person unlawfully and intentionally or attempts to:

(a) Seize or exercise control over a ship by force or threat

(b) Perform an act of violence against a person on board that is likely to endanger the safe navigation of that ship
(c) Destroy a ship or causes damage to a ship or cargo which is likely to endanger the safe navigation of that ship

(d) Place or cause to be placed on a ship, by any means whatsoever, a device or substance which is likely to destroy that ship, or cause damage to that ship or its cargo which endangers or is likely to endanger the safe navigation of that ship

(e) Destroy or seriously damage navigational facilities or seriously interferes with their operation which may cause danger to the ship

(f) Communicate false information thereby endangering the safe navigation of a ship

(g) Injure or kill any person, in connection with subparagraphs (a) to (f).

According to the SUA Convention, each state shall take appropriate measures to implement its jurisdiction over the crimes provided in Article 3 when the crimes meet following cases; if a ship flying the flag of the state is involved in the crime, if the crime occurred in the territory of that state, or if the crime is caused by a national of that state; in addition, each state may also establish its jurisdiction if a national of that state is threatened, injured or killed by the crime (SUA, Article 6).

The SUA Convention does not use the word “piracy” but characteristics of the definition above obviously states that the term “unlawful act” includes piracy. Indeed, the SUA Convention was created in part to make sure that politically motivated attacks on ships could be prosecuted by the international community (Dutton, 2012). In addition, the Convention also secured the extensive definition of piracy that includes attacks within territorial waters or in port if the ship is scheduled for international voyage pursuant to Article 4 that says this Convention applies if the ship is navigating or is scheduled to navigate over the limit of the territorial sea of a single state, or the
lateral limits of its territorial sea with adjacent states (Dutton, 2012). One of the differences from UNCLOS is that piracy is not regarded under the exercise of universal jurisdiction in the SUA Convention, but only signatory states may prosecute it.

The SUA Convention succeeded in establishing an international legal regime for prosecuting unlawful acts; however, as the security issues have grown and become more complicated, some gaps came out in the open. For instance, the SUA Convention does not make provision for procedures of boarding a foreign vessel in order to deal with the crime on board. These concerns became urgent on the agenda after the bombing against USS Cole in 2000 and September 11 attacks in 2001, so the Convention was amended in 2005 as the 2005 Protocol to the SUA Convention (Adamson, 2005).

1.2.3. SUA 2005 Protocol

Just after the September 11 attacks in 2001, the United Nations General Assembly urged IMO to strengthen implementation of international security, so IMO adopted Resolution A.924 (22), Review of measures and procedures to prevent acts of terrorism which threaten the security of passengers and crews and the safety of ships, which resulted in the “Protocol of 2005 to the Convention for the Suppression of Unlawful Acts against the safety of maritime navigation” (SUA 2005 Protocol). In the protocol, the international community extends new offences as the maritime crime including the intentional transport of any material, equipment, and software that is possible to be integrated as a tool of Biological, Chemical, or Nuclear (BCN) weapon except for peaceful use (CNS, 2012).

One of the most important achievements of this amendment is Article 8 that modifies boarding provisions and cooperation procedures. According to Article 8, if a
state Party wants to board a ship flying the flag of another state in accordance with reasonable grounds to suspect that the ship or person on board is involved in unlawful acts covered by this Convention outside territorial sea of any states, the state Party shall request the flag state for confirmation of nationality of the ship at first. Then if the nationality is confirmed, the state (requesting Party) shall ask the flag state to embark and take appropriate measures such as cargo inspection, questioning persons on board and searching the ship. The flag state shall take actions as follows: permit the requesting Party to board and to exercise his jurisdiction, implement law enforcement against the ship with its own authority or with the requesting Party, decline the permission for the requesting Party to implement law enforcement against the ship. When some evidence is found as the result of any boarding conducted pursuant to this article, the flag state may authorize the requesting Party to detain the ship, cargo and persons on board. The requesting Party shall report the flag state of the result of boarding. In this case, the flag state has the right to exercise jurisdiction over a detained ship, cargo and persons on board including seizure, arrest and prosecution.

In accordance with this provision, a state Party may notify the IMO Secretary-General that the requesting Party is granted authorization to board and exercise its jurisdiction towards the ship flying another flag of state Party if there is no response from the flag state within four hours of acknowledgement of receipt of a request to confirm nationality. This notification can be withdrawn at any time, and generally this clause is called the “four hour rule” (Hayashi, 2011).

In short, the SUA 2005 Protocol makes multinational maritime law enforcement procedure clearer than ever by setting a detailed definition and concrete conditions. There is no doubt that flag state duties is a back-born of international principles;
however, this kind of efforts which try to set international operational standard can be a breakthrough.

1.2.4. SOLAS and ISPS Code

The September 11 attacks also resulted into amendments to the International Convention for the Safety of Life at Sea (SOLAS) by adding chapter XI-2 “Special measures to enhance maritime security”, and to establish the International Ship and Port Facility Security Code (ISPS Code). The ISPS Code is a comprehensive set of measures to enhance the security of ships and port facilities (IMO, 2014) and the objective of the Code is to establish a cooperation framework in order to detect security threats and take adequate and appropriate preventive measures covering domestic and international levels. A Contracting Party shall conduct security assessment based on threat identification and shall set security levels.

Paragraph 1.13 of Regulation 1 in chapter XI-2 defines that:

Security incident means any suspicious act or circumstance threatening the security of a ship, including a mobile offshore drilling unit and a high speed craft, or of a port facility or of any ship/port interface or any ship to ship activity.

Moreover, paragraph 8.9 of Part B of the ISPS Code states that the ship security assessment should consider all possible threats such as:

(1) Damage to or destruction of the ship or of a port facility
(2) Hijacking or seizure of the ship or of persons on board
(3) Tampering with cargo, essential ship equipment or systems
(4) Unauthorized access or use, including presence of stowaways;
(5) Attacks from seaward while at berth or at anchor
(6) Attacks whilst at sea.

Features of above six acts are likely assumed piracy, therefore, the term “security incident” is considered to have a broader meaning than the terms “piracy”, “armed robbery against ships” and “unlawful acts”. It is often said that as the definition extends, the focus point will diverge. Although provisions and measures under SOLAS chapter XI-2 and the ISPS Code definitely contribute to the suppression of piracy from a preventive point of view, the ISPS Code is mainly targeting any illegal violence at sea including piracy; therefore, UNCLOS is often regarded as the textbook in considering anti-piracy measures.

1.3. Definition of Armed Robbery

The IMO defines armed robbery in Resolution A. 1025 (26) “Code of practice for the investigation of crimes of piracy and armed robbery against ships”, stating that the “armed robbery against ships” meets the components as follows:

(a) Any illegal acts of violence or detention or any act of depredation, or threat thereof, other than an act of piracy,

(b) Committed for private ends,

(c) Directed against a ship or against persons or properties on board

(d) Within a state’s internal waters, archipelagic waters and territorial sea

In addition, any inciting or intentionally facilitating acts described above are also included under this article. There are some similarities and differences between the definition of piracy under UNCLOS and this instrument. One of the remarkable differences is the area of application, that is, armed robbery is the act committed within a state’s jurisdiction. This clause describes clearly that armed robbery should be a crime under domestic law in each state. Therefore, the problem is the interpretation of
the terms “armed” or “robbery”. This is because if a state prosecutes somebody for armed robbery as defined in the provisions above in its domestic law by applying some existing clauses, there may be some gaps in interpretation between its conventional law provision and definition under IMO.

1.4. Remarks on the legal definition of piracy

This analysis of definition on piracy and armed robbery against ships has displayed some problems that the international society is facing today.

The first problem is excessive number of international instruments defining piracy. The number of instruments with regard to anti-piracy or maritime security shows great efforts of international society, and it is reasonable that some instruments created in different period or by different members should prepare different definitions of piracy because the term piracy also has many aspects and its style has changed with the times. However, too many definitions possibly make the vision of piracy ambiguous.

In addition, the most serious problem is a lack of a common understanding of the definition of so called “piracy”. This is mainly because of interpretation that every state starts discussions from their domestic legal point of view, and this stance means that states have faced piracy problems in the past by establishing their own domestic laws. However, as international cooperation has become crucial today, it is believed that the national point of view is even more worthless than before because nations have to limit their assertiveness as well as doing authorized things while getting along with other countries under consensus of cooperation and in this context, a good approach to help nations to do particular things with some level is to define goals and objects at first. Therefore, a future international framework or existing international framework
will have to clarify tangible definitions of “piracy” or elements of the act of piracy (Graf, 2011).
Chapter 2
Piracy in South East Asia

2.1. Geopolitics

The Malacca Strait is connecting the Pacific Ocean and the Indian Ocean, hence from ancient times this place has been known as an important point for maritime shipping. The number of vessels passing the strait recorded 77,973 in 2013 and is expected to keep increasing in the future (Marine Department Malaysia, 2014). The Malacca Strait also has a unique geographical view. The strait is a long and narrow waterway, about 600 nautical miles long and between 11 nautical miles and 200 nautical miles wide (Lowe, 2012).

Thus, there are numerous rocks, shoals and inhabited islands with mangrove which can be a good hiding place for pirates. The coastal states, that is, Indonesia, Malaysia and Singapore have set the border on the geographical median line in the strait, which means there is no high seas over the main traffic lanes in the strait. Although coastal states have responsibility of exercising control over maritime crimes happening within their territorial waters. Law enforcement authorities of coastal states are improving because insufficient ability to implement effective measures has been long been a concern for not only coastal states but also the international community (Takai, 2003).

In addition, most countries in South East Asia were low income countries at that time, so worldwide depression distracted governments to invest in maritime security issues. For instance, it was reported that only thirty percent of Indonesian navy vessels were seaworthy in 2003 due to budgets restraint (Siboro & Abhiseka, 2003). In short, this area has been suffering from threats involving piracy and armed robbery because of geographical and political reasons.
2.2. Legal status of the Malacca Strait

According to the International Hydrographic Organization (IHO), the north and south limits of the Malacca Strait reach to the coasts as follows:

On the North: The southwestern coast of the Malay Peninsula
On the South: The northeastern coast of Sumatra as far to the eastward as Tanjong Kedabu thence to Klein Karimoen

(IHO, Limits, 1953)

Indonesia proclaimed the Djuanda Declaration in 1957 stating that the Indonesian geography was an Archipelago state of united islands and seas as one jurisdiction area (Hadinoto, 2008). This concept was accepted in Part IV of UNCLOS and Indonesia became one of the archipelagic states in the world by ratifying UNCLOS in 1985 (Patmasari, Artanto, Lokita, Sutisna & Hafidin, 2008). In short, the Malacca Strait is composed of internal waters, territorial sea and archipelagic waters.

Internal waters are described in UNCLOS that “waters on the landward side of the baseline of the territorial sea” (article 8), and the territorial sea means the area “up to a limit not exceeding 12 nautical miles” (article 3) which is measured from baselines. The archipelagic waters mean “the waters enclosed by the archipelagic baselines drawn in accordance with article 47” (article 49). These three areas are provided respective legal status for foreign ships who want to navigate through such areas and states who have the sovereignty over such areas; hence, this part will clarify the rights and duties for ships and coastal states.
2.2.1. The right of innocent passage

Both the territorial seas and the archipelagic waters accept the right of innocent passage under article 17 and article 52 of UNCLOS, so all ships are allowed to navigate through the territorial seas and the archipelagic waters continuously and expeditiously unless the navigation of ships is considered to be “prejudicial to the peace, good order or security of the coastal State” (article 19). With regard to submarines and other underwater vehicles, it is required to navigate on the surface while showing their flag in the territorial sea (article 20). Foreign ships who want to exercise “the right of innocent passage through the territorial sea shall comply with all laws and regulations” adopted by the coastal state as well as complying international regulations relating to the prevention of collisions at sea (article 21).

UNCLOS states that the coastal states have the rights as follows:

(1) Adopt laws and regulations, such as the safety of navigation, the protection of navigational aids, and marine scientific research and hydrographic surveys (article 21)

(2) Establish sea lanes and traffic separation schemes for the purpose of safety of navigation (article 22)

(3) Require foreign ships to use such sea lanes and traffic separation schemes (article 22)

(4) Take the necessary steps in its territorial sea to prevent passage which is not innocent (article 25)

(5) Take the necessary steps to prevent ships who is outside internal water and is proceeding to internal waters or calling at a port from breaching any of conditions which those ships shall be admitted (article 25)
(6) Suspend temporarily the innocent passage of foreign ships after being announced if such suspension is essential for the protection of its security (article 25)

(7) Levy charges on a foreign ship passing through the territorial sea as payment only for specific services rendered to the ship (article 26)

(UNCLOS, 1982)

On the other hand, duties of the coastal states related to the right of innocent passage are as follows:

(1) Shall give due publicity to all laws and regulation related to innocent passage through the territorial sea (article 21)

(2) Shall clearly indicate sea lanes and traffic separation schemes on charts and publish such charts (article 22)

(3) Shall not disturb the right of innocent passage except in accordance with UNCLOS (article 24)

(4) Shall give appropriate publicity to any danger to navigation within its territorial sea (article 24)

(5) Shall give prior announcement in case of temporary suspension of the innocent passage of foreign ships (article 25)

(UNCLOS, 1982)

As well as the rights and duties of the coastal state, the archipelagic state may suspend temporarily the innocent passage of foreign ships in its archipelagic waters if that is necessary for the protection of the security of the state (article 52). Some different features from the coastal state is the right of archipelagic sea lanes passage which is provided in article 53. If an archipelagic state may designate sea lanes and traffic separation scheme through its archipelagic waters and the adjacent territorial
sea, all ships and aircraft enjoy “the right of archipelagic sea lanes passage” (paragraph 2), which is described as the “continuous, expeditious and unobstructed transit” (paragraph 3) through the sea lanes, while some duties and rights given to the archipelagic state, ships and aircraft using the archipelagic sea lanes apply articles in part III, stating with regard to straits used for international navigation (article 54).

2.2.2. Straits used for international navigation

The notion of straits used for international navigation and related right is born as the result of a big change trying to increase the breadth of the territorial sea from three nautical miles to twelve nautical miles in the Third United Nations Law of the Sea Conference (Oral, 2012). Some countries including the United States opposed such change because they tried to secure the wide high seas for freedom of navigation. Consequently while UNCLOS accepted twelve nautical miles as the outer limit of the territorial sea, the notion proposed by the opposition countries also was also adopted through discussion as part III of UNCLOS (Oral, 2012).

UNCLOS part III regulates straits used for international navigation where are “used for international navigation” (article 37) and connect “between one part of the high seas or an exclusive economic zone and another part of the high seas or an exclusive economic zone” (article 37).

When navigating through such straits, all ships and aircraft have the right of transit passage that means the freedom of navigation “solely for the purpose of continuous and expeditious transit of the strait” (article 38). Ships and aircraft shall “proceed without delay through or over the strait” (article 39) and shall “comply with generally accepted international regulations, procedures and practices” for safety and for pollution protection (article 39). “Ships in transit passage shall respect applicable
sea lanes and traffic separation schemes” (article 41). Besides, as article 40 states foreign ships “may not carry out any research or survey activities without the prior authorization of the states bordering straits. Indeed, this right of transit passage is clearly protected in provisions. The right of transit passage “shall not be impeded” (article 38) and shall not be suspended (article 44).

On the other hand, states bordering straits also have rights and duties. The sovereignty or jurisdiction of the states bordering the straits is subject to provisions in part III of UNCLOS. The rights of states bordering straits are stated as:

(1) Establish sea lanes and prescribe traffic separation schemes” for safety passage of ships (article 41)

(2) Adopt laws and regulations concerning specific matters such as the safety of navigation, the prevention and control of pollution, and the prevention of fishing including the stowage of fishing gear (article 42)

(UNCLOS, 1982)

Meanwhile, states bordering straits are imposed duties as follows:

(1) Shall clearly indicate all sea lanes and traffic separation schemes on charts which shall be announced (article 41)

(2) Shall not impair the right of transit passage by adopting laws and regulations relating to transit passage (article 42)

(3) Shall not hamper transit passage (article 44)

(4) Shall give appropriate announcement of any danger to navigation or overflight within or over the strait (article 44)

(5) Shall be no suspension of transit passage (article 44)

(UNCLOS, 1982)
In comparison the right of innocent passage and the right of transit passage, it can be said that the nature of them is almost same that aims to guarantee the freedom of navigation (Wolfrum, 2009). However, as important difference from the right of innocent passage, there are some features in the right of transit passage. At first, all ships and aircraft enjoy the right of transit passage (article 38) while the right of innocent passage is reserved to ships (article 17). Secondly, unlike the right of innocent passage (article 20), submarines and any underwater vehicles are not required to navigate on the surface under the right of transit passage. Thirdly, the right of transit passage cannot be hampered nor suspended (article 44) while the right of innocent passage can suspend temporally (article 25). Finally, the coastal states may establish laws and regulation relating to the international navigation safety for all ships, while the burdens of coastal states such as giving appropriate publicity to any danger to navigation within the strait (article 44) would remain.

In short, it can be said that even in the territorial sea, the right of all ships to enjoy freedom of navigation is guaranteed stronger than the right of innocent passage; therefore, both Indonesia and Malaysia, as coastal States of the Malacca Strait perceived such notion of free and unimpeded passage where was under their sovereignty as a threat to national security and an infringement of sovereignty (Leifer & Nelson, 1973). In 1971, Malaysia, Indonesia and Singapore declared the Joint Statement on 16 November 1971, stating that Indonesia and Malaysia agreed that the Malacca Strait and Singapore Strait were not international straits although they fully recognized the principle of innocent passage, and they asserted their sovereignty that the safety of navigation in the Malacca Strait and Singapore Strait was the responsibility of three coastal states (Leifer & Nelson, 1973).
2.2.3. Views on the Malacca Strait

Finally, the sovereignty over the Malacca Strait will be discussed by dividing into three areas: internal waters, territorial sea, and archipelagic waters. As article 2 of UNCLOS states, the sovereignty of a coastal State extends to its internal waters, and the sovereignty of an archipelagic State extends to its archipelagic waters (article 49) and its territorial sea (article 2). With regard to the territorial seas, the sovereignty of the coastal state extends to its territorial seas with some exceptions related to the right of innocent passage. Article 27 states:

1. The criminal jurisdiction of the coastal State should not be exercised on board a foreign ship passing through the territorial sea except
   (a) if the consequences of the crime extend to the coastal State
   (b) if the crime is of a kind to disturb the peace of the country or the good order of the territorial sea
   (c) if the assistance is required by the master or by the flag state
2. The above provisions in paragraph 1 do not apply the case if a foreign ship passing through the territorial sea after leaving internal waters.
5. Except as provided in Part XII or with respect to violations of laws and regulations adopted in accordance with Part V, the coastal State may not take any steps on board a foreign ship for any crime committed before entering the territorial sea who is proceeding from a foreign port and only passing through the territorial sea without entering internal waters.

The most important thing in article 27 is that if the crime was occurred on the ship which was navigating the territorial sea while exercising the right of innocent
passage, the coastal state would not have criminal jurisdiction unless the master of the ship or the flag state require assistance. In addition, as paragraph 5 indicates, if the ship is coming from a foreign port and just passing through the territorial sea, the coastal state cannot exercise its criminal jurisdiction even though the ship committed a crime before entering the territorial sea except under particular conditions (Tryfon, 2014).

2.3. Trends and Statistics

According to the ICC IMB 2013 Annual Report (2014), after over 400 attacks in the world were reported in 2009, the number of incidents of piracy and armed robbery against ships increased and reached a peak of 439 in 2011 as the worst figure. In the year 2012, the number of attacks dropped drastically from 132 down to 297. Following was a gradual decrease of 11% to 264 in 2013. It is reported that the decrease in attacks carried out by Somali pirates is the biggest contributor to the drop in the number of attacks. In terms of the regions, 128 incidents out of 264 occurred in South East Asia (see Figure 1), which means 48% of the attacks are concentrated in this area.
When focusing on incidents in South East Asia (see Figure 2), attacks within the territorial waters occupy 92% (see Figure 3), and most of them happened when ships anchored followed by steaming. Especially in Indonesian anchorages and territorial waters, the report showed there was a high number of “low level opportunistic thefts” which contributed to pushing up the number of incidents in Indonesia and over a third of such incidents were reported in the last quarter of 2013 (Mukundan, 2014). Furthermore, the pirates tend to have moved or migrated their traditional bases in the Malacca Strait between Indonesia and Malaysia to the south or the east in the open sea in order to evade patrol forces (Ramones, 2013). This change in movements may indicate some achievement of the efforts against piracy in this area as well as new coming ominous storms.
Figure 2. Attacks in South East Asia region in 2013


Figure 3. Attacks by location in South East Asia, 2013

2.4. Features of piracy and armed robbery

Takai (2003) advocates that acts of piracy within the Malacca Strait can be categorized into three types according to their targets or the purpose of attack. The pirates generally bring light arms, such as knives, pistols and rifles, embark the target ship, and finish their business in quite a short time by using high speed craft. Although they may take some crew as hostage, it is rare that they are used to get ransom. In fact, in many cases they are confined so that the pirates can complete their business smoothly and escape from the ship safely.

The first type of attacks is “opportunistic theft”, which means that the pirates sneak on or attack vessels at anchor in ports by night or vessels steaming at a slow speed, stealing cash and small equipment on board. This type tends to increase as it is reflecting the Indonesian economic climate and the anti-piracy operation activities.

The second type is “armed robbery”. After the pirates attack cargo vessels under navigation and seize their cargo as planned, they sell out all cargo quickly; therefore, the investigation runs into difficulties and takes time to solve. They are considered to have some relationships with international criminal syndicates or corrupt local authorities, which can also distract investigation procedures.

The third type is “ship jacking”. They capture not only cargo but also the ship itself and sell everything in a short period. They change the name of the ship shortly after hijacking it into a new name which they already counterfeited documents and certificates to camouflage the ship according to their sales contract; on the other hand, they unload the stolen cargo and sell it off on various routes. Their ingenuity of tricks shows that assumedly there are huge international criminal syndicates behind.

In the year 2013, 114 incidents out of 128 are categorized into either the first or the second group, and only 3 hijacked cases were reported (ICC IMB, 2014). In
addition, pirates in this area seldom use heavy arms or harm people. In other words, the degree of damage caused by pirates in South East Asia is not very serious compared to that of the African continent. However, all the more paradoxically, it is still difficult to eliminate the piracy problem in South East Asia.

2.5. Challenges

The first concern is the limit of flag state duty. An increase of merchant ships under flag of convenience with less crew composed of various nationalities has been a recent trend, but this trend has not only weakened the ship security against maritime threats but also diluted the principle of flag state duties. The reason for this is that some countries who install flag of convenience have incompetent ability to exercise jurisdiction over their vessels as well as a diversity of stakeholders, such as different nationality of the master, crew, ship owner, operator, shipper and cargo receiver. This has made each relevant States hesitate to execute their jurisdiction positively over an incident. Another aspect in that, some masters allegedly do not report attacks in which they were involved because they already know that an investigation by the authorities is time consuming and would lead to financial losses, that is, salaries.

Another challenge is the boundary of the coastal state jurisdiction. Some pirates are connected with huge international criminal syndicates who make use of scientific technology, such as using powerful engines on small boats. This enable them to escape from pursuit easily. In addition, they have access to the global positioning system combined with other navigation tools (Takai, 2003). As already mentioned above, the Malacca Strait does not have the high seas but belongs to territorial waters of some coastal states. In general, the sovereignty of a coastal state extends within its territorial sea. Most coastal states around the Malacca Strait such as Indonesia and Malaysia
consider the act of piracy and armed robbery against ships as domestic crime with which only local law enforcement authority should struggle in accordance with the sovereignty of the coastal state. The problem is that the pirates are also well acquainted with the policy, and even worse, they abuse. Consequently, if pirates attack a ship within a state, they are able to escape easily from the pursuit of the local law enforcement authority by just crossing the border to a neighboring country because it is impossible for that country to execute its jurisdiction beyond the country border. Maritime border disputes such as Karang Unarang (Indonesia-Malaysia) and Pedra Branca (Singapore and Malaysia) have also hindered effective governmental cooperation (Low, 2010). In 2010, three Indonesian maritime enforcement officers who embarked on a Malaysian fishing boat in order to seize them for illegal fishing were arrested and detained by the Malaysian law enforcement authority (Osman, 2010).

2.6. International Response to the piracy and armed robbery

As already mentioned above, in the elementary sense, jurisdiction over the Strait depends on the coastal states. However, it is impossible to ensure the security of the Malacca Strait by any single country, and therefore, coastal states have tried to increase their law enforcement capability as the nature of sovereign States. With such background, the international society is expected to support or contribute to some methods towards the same goal. The following section introduces some transnational cooperation.

2.6.1. International Maritime Bureau (IMB)

The International Maritime Bureau (IMB) is a specialized division of the International Chamber of Commerce (ICC). IMB is a non-profit making organization,
established in 1981 in Kuala Lumpur, Malaysia as a focal point in the fight against all kinds of maritime crimes and malpractices. In particular, as suppression of piracy is one of the top priorities for IMB’s mission, they launched the Piracy Reporting Centre (IMB PRC) in 1992, which aims to raise awareness of the shipping industry, such as ship owners, masters, insurance companies, of the high risk areas and specific ports associated with piratical attacks or armed robbery. If the Piracy Reporting Centre, a single point of contact for ship masters, receives information from the master anywhere in the world with regard to piracy and armed robbery, the PRC immediately shares the information with the local law enforcement authorities and all ships in the ocean region (ICC-CCS, n.d.).

Furthermore, according to ICC IMB Piracy and Armed Robbery Against ships – 2013 Annual Report (2014), the services that IMB Piracy Reporting Centre provides are issuing online daily status reports on piracy and armed robbery to ships, as well as reporting piracy and armed robbery incidents at sea to law enforcement, Maritime Rescue Coordination Centres and the IMO. These services support local law enforcement activities with regard to piracy and armed robbery, assisting ship owners whose vessels have been attacked or hijacked, assisting crew members whose vessels have been attacked, and publishing comprehensive quarterly and annual reports with detailed piracy statistics.

### 2.6.2. Malacca Strait Security Initiative (MSSI)

The Malacca Strait Security Initiative (MSSI) or also known as the Malacca Strait Patrols (MSP) was launched in 2006 as a combined operation of practical cooperation measures for the security of the Malacca Straits and Singapore, carried out by Indonesia, Malaysia, Singapore and Thailand. MSSI is composed of the
Malacca Strait Sea Patrol (MSSP), the "Eyes-in-the-Sky" (EiS), and air patrols and the Intelligence Exchange Group (IEG). Under the mission of MSSP which was set up in July 2004, member states conduct coordinated patrols within their own waters and several control points as well as sharing information between ships and the Monitoring and Action Agency (MAA). It should be noted that this patrol is not combined patrol but a joint patrol, so there have been challenges inherent in coordination (Tarrant, 2010).

In order to reinforce sea patrols from the sky, the mission “Eyes-in-the-Sky” was launched in September 2005, which is combined and coordinated airborne surveillance over the Straits. Furthermore, in order to support this operation more strongly, the Intelligence Exchange Group was established in 2006 as an information sharing platform called the Malacca Strait Patrols Information System (MSP-IS) (MINDEF, 2008). MSP-IS was inaugurated in November 2006, which aggregates shipping databases and relevant maritime information real time updated by on scene sea and air units, has contribute to enabling the patrol forces to coordinate and respond promptly to maritime incidents in the Malacca Strait MINDEF, 2008).
2.6.3. Regional agreement (ReCAAP)

Responding to piracy in the Malacca Singapore Strait became a grave concern for international maritime shipping in the 1990s. Therefore, Japan took the initiative with the IMO and Association of Southeast Asian Nations (ASEAN) aiming to create an international cooperation scheme, and this effort reached the goal in 2004 through the Tokyo Appeal and Tokyo Model Action Plan at the “Asia Anti-Piracy Challenges 2000” Conference in Tokyo in April 2000. The Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP), which entered into force in 2006, is the first regional inter-governmental agreement, in order to promote and enhance cooperation against piracy and armed robbery in Asia. This
framework can be remarkable as a realization of regional cooperation in maritime security which is expected to complete forming a more comprehensive framework covering the entire South East Asia such as ASEAN (Bouno, 2007). Today ReCAAP is regarded as a successful example of an inter-governmental cooperation regime for antipiracy, and further study of the advantages and challenges of ReCAAP will be detailed in the next chapter.
Chapter 3
ReCAAP

3.1. Introduction

The Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP), well known as the first regional intergovernmental agreement for antipiracy entered into force in 2006, and as of 27 May 2014, there are nineteen member parties: Australia, the People’s Republic of Bangladesh, Brunei Darussalam, the Kingdom of Cambodia, the People’s Republic of China, the Kingdom of Denmark, the Republic of India, Japan, the Republic of Korea, the Lao People’s Democratic Republic, the Republic of the Union of Myanmar, the Kingdom of Netherlands, the Kingdom of Norway, the Republic of the Philippines, the Republic of Singapore, the Democratic Socialist Republic of Sri Lanka, the Kingdom of Thailand, the United Kingdom, and the Socialist Republic of Viet Nam (ReCAAP, 2014).

The mission of ReCAAP is to enhance regional cooperation through information sharing, capacity building and cooperative arrangements in combating piracy and armed robbery against ships, in an effort to be the information hub for combating piracy and armed robbery against ships in Asia (ReCAAP, 2014).

3.2. Framework

ReCAAP adopts the same definition of piracy as UNCLOS as well as the definition of armed robbery pursuant to IMO and keeps close relationship with IMO.

The ReCAAP Information Sharing Centre (ReCAAP ISC), established in Singapore on 29 November 2006, works for facilitating communication and sharing
information with regard to piracy among the contracting parties as well as fostering capacity building with not only other organizations but also the shipping industry in order to develop and improve anti-piracy measures (Crippa, 2012). More concretely, the functions with regard to information sharing are provided under Article 7 of the agreement as follows:

(a) to manage and maintain the quick flow of information relating to incidents of piracy and armed robbery against ships among the Contracting Parties

(b) to collect, collate, analyze and share any relevant information including statistics and reports among Contracting Parties, the shipping community and the International Maritime Organization concerning piracy and armed robbery against ships

(c) to provide an appropriate alert, whenever possible, to the Contracting Parties if there is a reasonable ground to believe that a threat of incidents of piracy or armed robbery against ships is imminent;

(d) to circulate requests and relevant information among the Contracting Parties;

(e) to perform such other functions as may be agreed upon by the Governing Council with a view to preventing and suppressing piracy and armed robbery against ships.

Article 13 legislates mutual legal assistance so that contracting parties should make an effort in assisting each other in criminal matters such as the submission of evidence related to piracy and armed robbery against ships if another contracting party so require. Hence, under article 12, contracting party shall make efforts to extradite
pirates or armed robbers to the other contracting party in accordance with its national laws and regulations.

3.3. Advantages

There are some key points under which ReCAAP can work effectively.

The first is that ReCAAP is the intergovernmental administrative body. In order to tackle the piracy and armed robbery problem, governments have to play significant roles in deploying patrol vessels to arrest perpetrators, saving the attacked ship or crew, conducting investigation, arranging fugitive warrant, and so on (Ito, 2008). ReCAAP ISC sets the focal point on each contracting party, which enables contracting parties to contact ISC directly without processing domestic procedure in each country (Ho, 2009). As article 7 states above, this focal point is required to handle several tasks with regard to piracy, armed robbery against ships and any relevant information as a point of contact of the party; hence ISC will be able to make contact with specified focal points who can concentrate on the ReCAAP mission that is expected to form a quick information web (ReCAAP, 2014). The key success factor of information sharing is to gather and provide accurate information promptly as much as possible, hence this system is beneficial.

The second advantage is the capacity building program. Capacity building projects are a good place for sharing best practices and experiences of the ReCAAP focal points as well as nurturing closer working relationship and network among focal points. For example, ReCAAP and the Philippine Coast Guard co-organized a meeting on 24-25 September 2013 in Manila, which aimed to improve inter ministry coordination and to share common challenges in the effort to suppress of piracy and
armed robbery against ships in Asia, discussing a mechanism to improve communications and to clarify areas for mutual support (ReCAAP, 2014).

The third advantage is that ReCAAP itself is the conducting cooperative arrangement body. ReCAAP ISC is an inclusive international organization and a simple but specialized agency in facilitating cooperation arrangements among whoever wants to benefit in fighting piracy and armed robbery against ships, such as contracting parties, governmental bodies, non-governmental organizations, the shipping industry, and maritime and research institutes (ReCAAP, 2014). In addition, cooperation should expand not only to the maritime field but also to ashore-based authorities, such as port authorities and customs because modern pirates are believed to build up well organized routes linked to international criminal syndicates. There are various types of arrangements such as meetings, courtesy calls and workshops, but one thing for sure is that ReCAAP has attained the position as a responsible anti-piracy organization in South East Asia from the international community, which will be the beachhead for future work.

3.4. Limitations

While ReCAAP has many advantages, there are some limitations in its capability.

As first, the absence of Indonesia and Malaysia is a big disadvantage. A great extent of the Malacca Strait lies within the territorial and archipelagic waters of Indonesia and Malaysia, thence discussion without participating sovereign nations could be less effective. In addition, as statistics show most of the incidents occur in Indonesian territorial waters. Even though both ReCAAP and two states claim that they keep close relationship towards the same goal, they are still neighbors but not in a family and this distance influences the working speed, especially when considering
expeditiousness of information relay. If they can work with the same framework, information from the local authorities in the two countries should contribute prominently to the accuracy and quickness of information sharing in order to respond, and warn other ships in the neighborhood, and increase international awareness about the incidents.

Secondly, ReCAAP is not an implementation body. As mentioned above, the two big pillars of ReCAAP are information sharing and capacity building; in other words, ReCAAP is just a coordination agency which has been expected to be pursuant to the agreement. Therefore, even though ReCAAP ISC shares reports on attacks with the focal points in each party soon after receiving, taking action depends on the respective operation center which has responsibility to dispatch patrol ships. Particularly, if the incident is trans-boundary, there could be time lags when coordinating operations (Ho, 2009).

A third limitation is that, ReCAAP ISC is not the initial center to receive the information from the ship masters. Regulation 6 of SOLAS chapter XI-2 provides for vessels engaged on international voyages to be equipped with a ship security alert system (SSAS) that should be activated in order to send a ship-to-shore security alert to a flag state authority when the ship is under security threat. Paragraph 6 in regulation 6 also states that when an administration receives the alert, that administration shall immediately relay the notification to the coastal states where the ship is navigating. In short, the signal will be transmitted to the flag state or an authority designated by the flag state which could be thousands of miles away from the ship at first and then will be forwarded to the nearest center in the coastal state. SSAS is activated when the ship is facing danger, which means time loss could cause a serious situation, therefore, if
ReCAAP could receive the SSAS from the vessels navigating in the Malacca Strait and adjacent area, it will shorten the response time greatly (Ho, 2009).

Lastly, ReCAAP itself cannot be the solution for eradication of piracy and armed robbery against ships. Whereas economic poverty is believed to be the main motive for being a pirate or an armed robber (Madihidj, 2013), international frameworks such as ReCAAP ISC which is reactive to the incidents is not the best way to resolve the root causes of the piracy issue.

3.5. Summary

After launching ReCAAP in 2006, it has been said that ReCAAP has built a foundation of regional integration to address common security challenges. Both ReCAAP ISC and capacity building programs have contributed to expanding the cooperation network and raised the capability to manage incidents at sea not only within South East Asian countries but also worldwide (Ho, 2009). In addition, the global situation change also changes the circumstance surrounding pirates and armed robbery, so ReCAAP is expected to develop a potential regional inter-governmental agreement. At the same time, ReCAAP still involves some limits and challenges from the early days, especially regarding cooperation with non-contracting parties in the South East Asian region, which is critical. In the next chapter, these challenges will be discussed further.
Chapter 4
Analysis and Discussions

4.1. Limits of UNCLOS and SUA Convention for piracy

The Malacca Strait, which is a critical point not only for coastal states but also for international shipping is composed of the territorial waters of the coastal states. Mankind has managed the ocean by separating it into two areas, which was the territorial waters and the high seas. The territorial waters have been governed by the coastal state, and the high seas has been governed by each flag states of ships navigating in the area. Is this consensus applicable for this Strait? As already introduced in Chapter 2, coastal states carried out Malacca Strait Security Initiative, so this part discusses how to improve suppression of piracy from the legal point of view.

4.1.1. Flag State duty

As maritime business is globalized, the business model became more complicated by involving a lot of stakeholders of different nationalities. Businessmen easily cross the boundaries and enormous cargos will follow them. There exists only a cost-benefit interest, and the nationality itself is not very important. The world has become smaller due to globalization, while international organizations have been behind global change.

In real the business field, it is not uncommon that a ship owner uses a ship flying a flag of convenience, and hires a foreign operator and multinational crew. In this story, how deep can the flag state administration be in touch with the respective elements of the ship? It has become harder than ever for flag states to handle their own flagged
ships. For instance, the Japan Coast Guard cannot repress maritime crime promptly from happening on the Japanese registered ships that are navigating thousands of miles away from Japan. Therefore, the appearance of Port State Control (PSC) concept was a natural transition. PSC, originally intended to back the flag state inspection, which is the inspection of foreign ships in national ports to verify that the condition of the ship and its equipment comply with the requirements of international regulations and that the ship is manned and operated in compliance with these rules (IMO PSC, 2014).

The flag State duty, secured under UNCLOS is the most fundamental principle and firmly maintained, because UNCLOS is a symbol of international customary law in the maritime field and many conventions are standardized on its nature (Henmi, 2009). The SUA Convention, for instance, paragraph 1 of article 8 clearly states the legal status on flag state as “The master of a ship of a State Party (the "flag State") may deliver to the authorities of any other State Party (the "receiving State")”. This shows that it is not easy to stand apart from the flag state duty principle if the international community tries to create a new regulation which supplements definition gaps over piracy under UNCLOS, simply because the notion of the new law must come from the same source of UNCLOS (Henmi, 2009).

In conclusion, in order to secure the flag state duty principle while the reality of the flag state duty has been weakened, the flag State who is responsible for the ship may accept some level of coastal states or foreign countries’ intervention in order to repress maritime crimes if it is impossible for the flag State to respond the incident in an appropriate timing. In other words, there is no way for the flag State to make agreements with coastal states and enable to form transnational applications of law enforcement or extradition. This idea will more or less dilute the flag State duty and will deviate from the spirit of UNCLOS, which means the due of social life time of
UNCLOS is coming. 32 years have passed since UNCLOS was adopted in 1982, and the international society has experienced new concerns that have never appeared before. Globalization has brought big impacts to the time space concept of the maritime community, and the concept of maritime boundary is facing the limit while maritime shipping has changed drastically. In order for the international society to tackle new concerns or try to organize new legal systems.

**4.1.2. Limitation in definition under UNCLOS**

The definition of piracy under UNCLOS has already been mentioned in Chapter 1 in this study, that is, the act of piracy is limited to happen in the two ships situation, on the high seas, and for the purpose of private ends. These words are the result of careful safeguard for abusing the Convention, but now piracy is no longer the same as before, resulting in many desperate defects in definition of the Convention. Regarding the Malacca Strait problem, UNCLOS there is no piracy because the Strait is not the high seas. Ultimately, major amendments to UNCLOS or a new fundamental convention in addition to UNCLOS can be one option. Having said that UNCLOS is the most fundamental rule in maritime law, other special rules can follow.

**4.1.3. SUA Convention for piracy**

The biggest barrier for the SUA Convention is that its legal binding power reaches only to the parties to it. The SUA Convention targets all unlawful acts against the maritime navigation safety including piracy, but does not limit the area where the unlawful acts happen. What the SUA Convention limits is the situation to be applied pursuant to article 4;
1. This 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.

2. In cases where the Convention does not apply pursuant to paragraph 1, it nevertheless applies when the offender or the alleged offender is found in the territory of a State Party other than the State referred to in paragraph 1.

In short, when the ship has good reason to believe that it is committing a crime navigating towards or from a judicial border. This convention also applies in article 11 provision for extradition:

1. The offences set forth in article 3 shall be deemed to be included as extraditable offences in any extradition treaty existing between any of the States Parties.

In addition, article 10 states about prosecution:

The State Party in the territory of which the offender or the alleged offender is found shall, in cases to which article 6 applies, if it does not extradite him, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case without delay to its competent authorities for the purpose of prosecution.

Thereby, the coastal State is able to prosecute the pirate under its domestic law if the local law enforcement authority could seize the pirate ship before she crosses the border, and the coastal State is able to request the member Party who is also signatory
of the SUA Convention for extradition or prosecution if the Party seizes the pirate ship within its jurisdiction area which was navigating from the coastal State into the Party.

It should be noted that the SUA Convention can be applied not only to piracy but also to armed robbery against ships and maritime terrorism, therefore, this Convention will bridge the gap in law enforcement and prosecution between countries. However, as of August 31, 2014, neither Indonesia nor Malaysia have joined the SUA Convention (Singapore has joined) and their participation is believed to be urgent for developing antipiracy efforts in the Malacca Strait.

Thus, the upcoming question is how these law enforcements or requests between adjacent countries should be operated, and one of the answers is MSP and ReCAAP.

4.1.4. The right of hot pursuit

In the case of the Malacca Strait, suppression of piracy and armed robbery against ships depend on the law enforcement ability of Indonesia, Malaysia, and Singapore plus cooperation capability among States. This section discusses the right of hot pursuit.

Generally the right of hot pursuit is defined as the right of a state to keep on pursuing a perpetrator for law enforcement from within territorial waters or its jurisdiction area towards the high seas. Article 111 in part VII of UNCLOS provides the right of hot pursuit as follows:

1. The hot pursuit of a foreign ship may be undertaken when the competent authorities of the coastal state have good reason to believe that the ship has violated the laws and regulations of that state. Such pursuit must be commenced when the foreign ship or one of its boats is within the internal waters, the archipelagic waters, the territorial sea
or the contiguous zone of the pursuing state, and may only be continued outside the territorial sea or the contiguous zone if the pursuit has not been interrupted. It is not necessary that, at the time when the foreign ship within the territorial sea or the contiguous zone receives the order to stop, the ship giving the order should likewise be within the territorial sea or the contiguous zone. If the foreign ship is within a contiguous zone, as defined in article 33, the pursuit may only be undertaken if there has been a violation of the rights for the protection of which the zone was established.

2. The right of hot pursuit shall apply mutatis mutandis to violations in the exclusive economic zone or on the continental shelf, including safety zones around continental shelf installations, of the laws and regulations of the coastal state applicable in accordance with this Convention to the exclusive economic zone or the continental shelf, including such safety zones.

3. The right of hot pursuit ceases as soon as the ship pursued enters the territorial sea of its own state or of a third state.

4. Hot pursuit is not deemed to have begun unless the pursuing ship has satisfied itself by such practicable means as may be available that the ship pursued or one of its boats or other craft working as a team and using the ship pursued as a mother ship is within the limits of the territorial sea, or, as the case may be, within the contiguous zone or the exclusive economic zone or above the continental shelf. The pursuit may only be commenced after a visual or auditory signal to
stop has been given at a distance which enables it to be seen or heard by the foreign ship.

5. The right of hot pursuit may be exercised only by warships or military aircraft, or other ships or aircraft clearly marked and identifiable as being on government service and authorized to that effect.

6. Where hot pursuit is effected by an aircraft:
   (a) the provisions of paragraphs 1 to 4 shall apply mutatis mutandis;
   (b) the aircraft giving the order to stop must itself actively pursue the ship until a ship or another aircraft of the coastal state, summoned by the aircraft, arrives to take over the pursuit, unless the aircraft is itself able to arrest the ship. It does not suffice to justify an arrest outside the territorial sea that the ship was merely sighted by the aircraft as an offender or suspected offender, if it was not both ordered to stop and pursued by the aircraft itself or other aircraft or ships which continue the pursuit without interruption.

7. The release of a ship arrested within the jurisdiction of a state and escorted to a port of that state for the purposes of an inquiry before the competent authorities may not be claimed solely on the ground that the ship, in the course of its voyage, was escorted across a portion of the exclusive economic zone or the high seas, if the circumstances rendered this necessary.

8. Where a ship has been stopped or arrested outside the territorial sea in circumstances which do not justify the exercise of the right of hot pursuit, it shall be compensated for any loss or damage that may have been thereby sustained.
In short, this provision set out that the right of hot pursuit shall be taken against foreign vessels which have been confirmed by the local law enforcement authority to infringe laws and regulations of that state on the spot when the ship was within their jurisdiction area.

The key point is paragraph 3 that hot pursuit should be ended as soon as the pirate ship enters the territorial sea of its own state or of a third state. Therefore, if the pirate ship crosses the border to the third state and comes back to the same state several days later, there is a question whether the right of “pursuit” is still applicable or not because the authority stopped pursuit once. Indeed, there are both views. On the one hand, one viewpoint insists that resumption of hot pursuit means a jurisdictional link between the two vessels has already been cut and it suffered a discontinuance incompatible with its essential concept, but on the other hand, another viewpoint contends that the pursuit may start again as soon as the pursued ship comes on the high seas again. Therefore, whether escaping to the other state’s territory so that hot pursuit might be considered to have ceased or not depends on the special circumstances of the case (Poulantzas, 2002). At any rate, the right of pursuit should cease when the offending ship escapes into the territorial waters of other state; therefore, some governmental agreements will be required to exercise the right of hot pursuit in the Malacca Strait.

4.2. Political Will

Maritime security is a common issue for all countries and each country has been making great efforts to suppress piracy. Then, why is piracy still alive? This is because the piracy problem cannot be solved by symptomatic treatment. Pirates anywhere in the world have respective underlying root motives, and these are not always exist in
the maritime field, but they are rather rooted deeper in the economy, ethics, or politics. In other words, piracy comes from the land and there is a limitation for maritime efforts alone. As Secretary-General Koji Sekimizu stated in a dialogue with Mr. Hartmut Hesse, a special representative for maritime security and antipiracy programmes in 2012 that IMO was coming to the point where IMO cannot do much more at sea. The IMO has been more focused on developing land capabilities for antipiracy measures, such as the Djibouti Code of Conduct, which is an agreement between West African and Red Sea states on stopping piracy (Debbie, 2012). However, challenges in Somalia and in the Malacca Strait are different, and the biggest difference is the counterpart of the international society including IMO, that is, Somalia is called a “failed State” while the coastal states of the Malacca Strait are sovereign states.

Without any doubt, any sovereign states should be respected for their sovereignty and international matters should be moved forward by discussion and negotiation. Those who represent nations and entities should stand on each political ambitions; therefore, as a natural consequence, negotiations need time and the result is the maxim of compromise. Discussions in creating UNCLOS, for instance, Harvard Research in International Law in 1932 who made preparatory study for formulating UNCLOS, proposed the right of hot pursuit in article 7 that:

In a place within the territorial jurisdiction of another state, a state may not pursue or seize a pirate ship or a ship taken by piracy and possessed by pirates; except that if pursuit of such a ship is commenced by a state within its own territorial jurisdiction or in a place not within the territorial jurisdiction of any state, the pursuit may be continued into or over the territorial sea of another state and seizure may be made there, unless prohibited by the other state.
Fifty years after discussion and negotiation among states, this clause has been modified. This example shows that it is necessary to look at the background of states when in consideration.

While ReCAAP was established in 2006, Indonesia and Malaysia have developed their own efforts against piracy with Singapore, and later Thailand joined. Although these countries joined discussion in creating ReCAAP, to date neither of them have joined the regional agreement yet. Both of them allegedly have different reasons why they reserve to join the new regional framework including outsiders.

Indonesia, Malaysia and Singapore felt that the characteristics of ReCAAP are duplicate with other existing multilateral frameworks for maritime security that included extra regional countries, such as ASEAN Regional Forum (ARF). ARF had been carrying out several maritime security initiatives to improve multinational cooperation in the region. Therefore, if extra regional countries are eager to get involved more, it should be limited to capacity building, information exchange, and the provision of training (Ho, 2009). This stance was shown in the Batam Joint Statement in 2005, stating that:

1. The primary responsibility over the safety of navigation, environmental protection, and maritime security in the Straits of Malacca and Singapore rests with the littoral states;
2. The measures taken in the straits should be in accordance with international law, and in particular be consistent with the UNCLOS and be cognizant of the sovereignty of the littoral states;
3. The international community, agencies such as the IMO, and the major user states have a role to play
In essence, this Statement admits international community and out regional parties to be involved in the Malacca Strait issues, while those actions should not intervene with the sovereignty of the coastal state.

4.2.1. Malaysia

As the basic stance, Malaysia contends that the littoral states themselves have the capacity to safeguard the straits. Malaysia depends on maritime trade and has focused on ensuring navigational safety and protection against environmental threats, in addition to countering piracy. As the first step, Malaysia reorganized its five maritime agencies into the Malaysian Maritime Enforcement Agency (MMEA), which was launched in March 2006. MMEA have conducted a lot of regional and international initiatives in order to boost security (Razak, 2007).

Malaysia recognizes that the Malacca Strait will continue to face numerous of challenges, thus the new step after concrete collaboration will be important, that is, capacity building, training and exploring modalities for burden sharing (Razak, 2007). Especially with regard to burden sharing, Malaysia seems to be negative to accepting that the international user countries regard the Malacca Strait as an international sea lane which they have the right to use. On the contrary they consider that responsibility to maintain and secure the waterway has always been on the littoral states (Razak, 2007).

4.2.2. Indonesia

It is said that countering piracy may be less important for Indonesia than patrolling its extensive maritime borders, handling maritime border disputes, and
fighting against maritime crimes and environmental degradation. In fact, the enforcement capacity of Indonesia is stretched by lack of funding and poor level of maintenance of patrol ships. Moreover, Indonesia is considered to be sensitive to securing its sovereignty and because of the poor approach from the countries outside of the region which may have a negative influence (Fukuda, 2007).

4.2.3. Absence of two States for ReCAAP

As already mentioned, Malaysia and Indonesia, plus Singapore and Thailand are conducting joint operations for antipiracy, named the Malacca Strait Security Initiative. This operation used to be poor and member countries appealed mostly their own right of sovereignty (Woolley, 2010); however, now it has improved since setting up the Joint Coordinating Committee (JCC) in 2006, which is integrated coordinating command for MSSI. In accordance with the new Standard Operational Procedure (SOP) and Terms of Reference (TOR), the right of hot pursuit is allowed up to 5 nautical miles of another country’s territory (Massey, 2008). Moreover the maritime situational awareness of the waters in the region has also greatly enhanced. In 2010, a bilateral and secured internet based system for real time maritime information sharing between Singapore and Indonesia was established (Lim, 2010).

Despite these efforts by the coastal states, Malaysia and Indonesia still have limited capability compared to their vast responsibility and there is a hint for the international society to contribute.

Some of the reasons why they are negative to participation of the outside region states is that they want to avoid interference by outsiders with their political issues. When establishing a new international framework, there are two approaches, namely top down type and bottom up type.
The first type is decided by governmental agreement. In other words, the objective of the framework is concluded at first with consensus of countries and then the process will go into detail. In this case, there might be some conflict. Firstly ambitious attempts at regime building by extra regional powers are unlikely to succeed due to major-power rivalries. Second, offers of external operational assistance may sour the coastal states on sovereignty concerns by extreme intervention by foreign powers. Third, it should be noted that in every country there is some powers who desire to preserve the status quo under existing international law as they are afraid to compromise their future as a result of coming negotiations (Huang, 2010). The other is pile up of simple operation cooperation such as information sharing, personal exchange, joint exercise, and so on. This cooperation should be given time to bear fruit and be based on a practical level, so that potential of intervention of political will might be minimized so that at the same time a practical cooperation framework can be formed easily (Huang, 2010).

In this context, the international society should respect the sovereignty of Malaysia and Indonesia, and refrain from superfluous interference based on political will so as to manipulate their efforts. However, this idea does not mean that the international community should keep away from the area because political will which has a big power to move the world is impossible to extinct, or rather can contribute to the area as a means to improve antipiracy efforts more efficiently and promptly.

4.2.4. The way forward

While the expressed as the good example of top down model, some member states of ReCAAP have territory disputes. ReCAAP has overcome these potential conflicts by the robust principle which is non-intervention in the internal affairs of
another state and respecting independence and sovereignty. Moreover, by setting common goal to fight with piracy, the operation regime that allows the member states to actively endorse their mission within their jurisdiction and ReCAAP focus on coordinating between states was examined elaborately to avoid any risk of political criticism. Now ReCAAP works as a secretariat division in South East Asia that gathers and shares information, issues regular reports, and coordinates capacity building. Furthermore, it will be possible for Indonesia and Malaysia to use the function in order to focus their assets on prioritized issues.

In addition, if these two countries become members of ReCAAP, the eyes from extra regional powers can work indirectly as some kind of arbitration in case political dispute happened between them. Of course, the basic stance of ReCAAP should keep on neutral and non-intervention grounds, yet eyes from the third party might deter or mitigate the political problems as a safeguard. Extra regional powers can also promote confidence and increase interoperability through exercises. Inter-governmental exercises build the operational expertise of local navies, deepen the relationship, and improve the ability for enforcement, which would facilitate future operational cooperation (Huang, 2010).

Furthermore, ReCAAP can assist in capacity building. Even today, capacity building projects, joint exercises, and information sharing are conducted between ReCAAP and Indonesia or Malaysia, but these will be promoted more smoothly after their acceptance. More tight communication and information sharing will be believed to enhance and clarify tasks and needs at operational levels, which will generate a virtuous cycle in not only the regime but also in the international community. In particular for Indonesia, with its limited budget and other priorities, Indonesia will be better able to promote maritime security (Huang, 2010).
On the other hand, ReCAAP of course would appreciate to welcome two countries because the absence of coastal states has been grave concern for a long time in order to consolidate the regime.

As conclusion, both ReCAAP and the Malacca Strait Security Initiative that Indonesia and Malaysia joined will be able to coexist. When considering the current ReCAAP regime, the Malacca Strait Security Initiative can exist as one of the operations where each sovereign states are required to patrol. There may be some issues to be authorized but not serious, because their domain are basically different and can be allocated accordingly. ReCAAP, as extra regional power, should respect each sovereignty and stand on a neutral ground with no intervention in domestic issues. Consequently, the mandate of extra regional powers should be limited to the administrative level, and not extending into the operational level.

4.2.5. Recommendations

If two coastal states join the ReCAAP, what possibility will be seen for its future? As a principle, antipiracy operation should be exercised by the local law enforcement authorities of each coastal states. Therefore, the cooperation scheme at the operation level can be improved.

The idea is borderless operations. At first, it is important to make definition of maritime crimes the same and uniform based on the same interpretation. Then, according to the Malacca Strait Security Initiative, for instance, they are conducting coordinated patrols now, but they can enhance it to the joint patrol. Some other member states who have not set up a cooperation system with adjacent member states should try to launch coordinated patrol. Joint patrol means that both countries’ law enforcement authority carry out missions under the ad hoc joint command like Joint
Coordinating Committee, with the aim to increasing the number of assets available for patrol at once in proportion to the incident level.

In some cases, a patrol ship may have to pursue beyond the border, hence both countries should make agreement accepting patrol ships of other states to execute their jurisdiction within the territorial waters when hot pursuit is confirmed. The other way is to dispatch a liaison officer onboard and if the ship needs to cross the border, the liaison officer will contact his headquarters to arrange the hot pursuit.

The ideas mentioned above can be carried out step by step, and even in such case, the Malacca Strait Security Initiative must be one of the successful models.

4.3. Conclusion

According to many reports, unlike piracy in Somalia and the Gulf of Guinea, pirates in South East Asia have been more general than others because most of them are poor fishermen as well as opportunistic thieves, so they intrude ships and steal small things during the night. However, South East Asia also has many complicated problems including economy, terrorism, religion, culture, and so on, and each problem need time to solve. If economic depression lasts for a long time, pirates in South East Asia will possibly to follow the Somali pirates’ style, which is conjectured to be a lucrative business. In addition, as nexus between pirates and terrorists is coming up serious concern, the situation surround piracy is fluctuate. Thereby the international society is required to form stronger jurisdiction and be more proactive as well as tackling the root causes of piracy.

It should be noted that naval efforts and enforcement agencies for antipiracy are not a fundamental solution. The maritime society including IMO are able to take the approach to the land by increasing discussion and joint programs as well as sea because
the acts of piracy do not complete on the sea but are connected with land areas such as ports, illegal markets, and international criminal syndicates. In addition, what is more, antipiracy operations to protect lives and properties are crucial and in order to organize wider and deeper connections through bilateral and multilateral cooperation, political will can play a critical role. In many cases, the places where pirates and armed robbery thrive are vulnerable in security; however, the international society should be reminded that they are in the middle of a long battle with piracy, and should respect sovereignty of every state while supporting them with a long term strategy, and not plotting to exploit them for political gain.
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APPENDIX

Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia

The Contracting Parties to this Agreement,

Concerned about the increasing number of incidents of piracy and armed robbery against ships in Asia,

Mindful of the complex nature of the problem of piracy and armed robbery against ships,

Recognizing the importance of safety of ships, including their crew, exercising the right of navigation provided for in the United Nations Convention on the Law of the Sea of 10 December 1982, hereinafter referred to as "the UNCLOS",

Reaffirming the duty of States to cooperate in the prevention and suppression of piracy under the UNCLOS,


Noting the relevant resolutions adopted by the United Nations General Assembly and the relevant resolutions and recommendations adopted by the International Maritime Organization,

Conscious of the importance of international cooperation as well as the urgent need for greater regional cooperation and coordination of all States affected within Asia, to prevent and suppress piracy and armed robbery against ships effectively,

Convinced that information sharing and capacity building among the Contracting Parties will significantly contribute towards the prevention and suppression of piracy and armed robbery against ships in Asia,

Affirming that, to ensure greater effectiveness of this Agreement, it is indispensable for each Contracting Party to strengthen its measures aimed at preventing and suppressing piracy and armed robbery against ships,
Determined to promote further regional cooperation and to enhance the effectiveness of such cooperation,

Have agreed as follows:

**Part I Introduction**

**Article 1**

**Definitions**

1. For the purposes of this Agreement, "piracy" means any of the following acts:
   (a) any illegal act 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 against persons or property on board such ship;
      (ii) against a ship, 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).

2. For the purposes of this Agreement, "armed robbery against ships" means any of the following acts:
   (a) any illegal act of violence or detention, or any act of depredation, committed for private ends and directed against a ship, or against persons or property on board such ship, in a place within a Contracting Party’s jurisdiction over such offences;
   (b) any act of voluntary participation in the operation of a ship with knowledge of facts making it a ship for armed robbery against ships;
   (c) any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b).

**Article 2**

**General Provisions**

1. The Contracting Parties shall, in accordance with their respective national laws and regulations and subject to their available resources or capabilities, implement this Agreement, including preventing and suppressing piracy and armed robbery against ships, to the fullest extent possible.
2. Nothing in this Agreement shall affect the rights and obligations of any Contracting Party under the international agreements to which that Contracting Party is party, including the UNCLOS, and the relevant rules of international law.

3. Nothing in this Agreement shall affect the immunities of warships and other government ships operated for non-commercial purposes.

4. Nothing in this Agreement, nor any act or activity carried out under this Agreement shall prejudice the position of any Contracting Party with regard to any dispute concerning territorial sovereignty or any issues related to the law of the sea.

5. Nothing in this Agreement entitles a Contracting Party to undertake in the territory of another Contracting Party the exercise of jurisdiction and performance of functions which are exclusively reserved for the authorities of that other Contracting Party by its national law.

6. In applying paragraph 1 of Article 1, each Contracting Party shall give due regard to the relevant provisions of the UNCLOS without prejudice to the rights of the third Parties.

**Article 3**

**General Obligations**

1. Each Contracting Party shall, in accordance with its national laws and regulations and applicable rules of international law, make every effort to take effective measures in respect of the following:
   (a) to prevent and suppress piracy and armed robbery against ships;
   (b) to arrest pirates or persons who have committed armed robbery against ships;
   (c) to seize ships or aircraft used for committing piracy or armed robbery against ships, to seize ships taken by and under the control of pirates or persons who have committed armed robbery against ships, and to seize the property on board such ships; and
   (d) to rescue victim ships and victims of piracy or armed robbery against ships.

2. Nothing in this Article shall prevent each Contracting Party from taking additional measures in respect of subparagraphs (a) to (d) above in its land territory.

**Part II Information Sharing Center**

**Article 4**
Composition

1. An Information Sharing Center, hereinafter referred to as “the Center”, is hereby established to promote close cooperation among the Contracting Parties in preventing and suppressing piracy and armed robbery against ships.

2. The Center shall be located in Singapore

3. The Center shall be composed of the Governing Council and the Secretariat.

4. The Governing Council shall be composed of one representative from each Contracting Party. The Governing Council shall meet at least once every year in Singapore, unless otherwise decided by the Governing Council.

5. The Governing Council shall make policies concerning all the matters of the Center and shall adopt its own rules of procedure, including the method of selecting its Chairperson.

6. The Governing Council shall take its decisions by consensus.

7. The Secretariat shall be headed by the Executive Director who shall be assisted by the staff. The Executive Director shall be chosen by the Governing Council.

8. The Executive Director shall be responsible for the administrative, operational and financial matters of the Center in accordance with the policies as determined by the Governing Council and the provisions of this Agreement, and for such other matters as determined by the Governing Council.

9. The Executive Director shall represent the Center. The Executive Director shall, with the approval of the Governing Council, make rules and regulations of the Secretariat.

Article 5

Headquarters Agreement

1. The Center, as an international organization whose members are the Contracting Parties to this Agreement, shall enjoy such legal capacity, privileges and immunities in the Host State of the Center as are necessary for the fulfillment of its functions.

2. The Executive Director and the staff of the Secretariat shall be accorded, in the Host State, such privileges and immunities as are necessary for the fulfillment of their functions.
3. The Center shall enter into an agreement with the Host State on matters including those specified in paragraphs 1 and 2 of this Article.

**Article 6**

**Financing**

1. The expenses of the Center, as provided for in the budget decided by the Governing Council, shall be provided by the following sources:
   (a) Host State financing and support;
   (b) Voluntary contributions from the Contracting Parties;
   (c) Voluntary contributions from international organizations and other entities, in accordance with relevant criteria adopted by the Governing Council; and
   (d) Any other voluntary contributions as may be agreed upon by the Governing Council.

2. Financial matters of the Center shall be governed by a Financial Regulation to be adopted by the Governing Council.

3. There shall be an annual audit of the accounts of the Center by an independent auditor appointed by the Governing Council. The audit report shall be submitted to the Governing Council and shall be made public, in accordance with the Financial Regulation.

**Article 7**

**Functions**

The functions of the Center shall be:
   (a) to manage and maintain the expeditious flow of information relating to incidents of piracy and armed robbery against ships among the Contracting Parties;
   (b) to collect, collate and analyze the information transmitted by the Contracting Parties concerning piracy and armed robbery against ships, including other relevant information, if any, relating to individuals and transnational organized criminal groups committing acts of piracy and armed robbery against ships;
   (c) to prepare statistics and reports on the basis of the information gathered and analyzed under subparagraph (b), and to disseminate them to the Contracting Parties;
   (d) to provide an appropriate alert, whenever possible, to the Contracting Parties if there is a reasonable ground to believe that a threat of incidents of piracy or armed robbery against ships is imminent;
   (e) to circulate requests referred to in Article 10 and relevant information on the measures taken referred to in Article 11 among the Contracting Parties;
   (f) to prepare non-classified statistics and reports based on information gathered and analyzed...
under subparagraph (b) and to disseminate them to the shipping community and the International Maritime Organization; and

(g) to perform such other functions as may be agreed upon by the Governing Council with a view to preventing and suppressing piracy and armed robbery against ships.

Article 8
Operation

1. The daily operation of the Center shall be undertaken by the Secretariat.

2. In carrying out its functions, the Center shall respect the confidentiality of information provided by any Contracting Party, and shall not release or disseminate such information unless the consent of that Contracting Party is given in advance.

3. The Center shall be operated in an effective and transparent manner, in accordance with the policies made by the Governing Council, and shall avoid duplication of existing activities between the Contracting Parties.

Part III Cooperation through the Information Sharing Center

Article 9
Information Sharing

1. Each Contracting Party shall designate a focal point responsible for its communication with the Center, and shall declare its designation of such focal point at the time of its signature or its deposit of an instrument of notification provided for in Article 18.

2. Each Contracting Party shall, upon the request of the Center, respect the confidentiality of information transmitted from the Center.

3. Each Contracting Party shall ensure the smooth and effective communication between its designated focal point, and other competent national authorities including rescue coordination centers, as well as relevant non-governmental organizations.

4. Each Contracting Party shall make every effort to require its ships, ship owners, or ship operators to promptly notify relevant national authorities including focal points, and the Center when appropriate, of incidents of piracy or armed robbery against ships.

5. Any Contracting Party which has received or obtained information about an imminent threat
of, or an incident of, piracy or armed robbery against ships shall promptly notify relevant information to the Center through its designated focal point.

6. In the event that a Contracting Party receives an alert from the Center as to an imminent threat of piracy or armed robbery against ships pursuant to subparagraph (d) of Article 7, that Contracting Party shall promptly disseminate the alert to ships within the area of such an imminent threat.

**Article 10**

**Request for Cooperation**

1. A Contracting Party may request any other Contracting Party, through the Center or directly, to cooperate in detecting any of the following persons, ships, or aircraft:
   (a) pirates;
   (b) persons who have committed armed robbery against ships;
   (c) ships or aircraft used for committing piracy or armed robbery against ships, and ships taken by and under the control of pirates or persons who have committed armed robbery against ships; or
   (d) victim ships and victims of piracy or armed robbery against ships.

2. A Contracting Party may request any other Contracting Party, through the Center or directly, to take appropriate measures, including arrest or seizure, against any of the persons or ships mentioned in subparagraph (a), (b), or (c) of paragraph 1 of this Article, within the limits permitted by its national laws and regulations and applicable rules of international law.

3. A Contracting Party may also request any other Contracting Party, through the Center or directly, to take effective measures to rescue the victim ships and the victims of piracy or armed robbery against ships.

4. The Contracting Party which has made a direct request for cooperation pursuant to paragraphs 1, 2 and 3 of this Article shall promptly notify the Center of such request.

5. Any request by a Contracting Party for cooperation involving extradition or mutual legal assistance in criminal matters shall be made directly to any other Contracting Party.

**Article 11**

**Cooperation by the Requested Contracting Party**

1. A Contracting Party, which has received a request pursuant to Article 10, shall, subject to
paragraph 1 of Article 2, make every effort to take effective and practical measures for implementing such request.

2. A Contracting Party, which has received a request pursuant to Article 10, may seek additional information from the requesting Contracting Party for the implementation of such request.

3. A Contracting Party, which has taken measures referred to in paragraph 1 of this Article, shall promptly notify the Center of the relevant information on the measures taken.

Part IV Cooperation

Article 12
Extradition
A Contracting Party shall, subject to its national laws and regulations, endeavor to extradite pirates or persons who have committed armed robbery against ships, and who are present in its territory, to the other Contracting Party which has jurisdiction over them, at the request of that Contracting Party.

Article 13
Mutual Legal Assistance
A Contracting Party shall, subject to its national laws and regulations, endeavor to render mutual legal assistance in criminal matters, including the submission of evidence related to piracy and armed robbery against ships, at the request of another Contracting Party.

Article 14
Capacity Building
1. For the purpose of enhancing the capacity of the Contracting Parties to prevent and suppress piracy and armed robbery against ships, each Contracting Party shall endeavor to cooperate to the fullest possible extent with other Contracting Parties which request cooperation or assistance.

2. The Center shall endeavor to cooperate to the fullest possible extent in providing capacity building assistance.

3. Such capacity building cooperation may include technical assistance such as educational and training programs to share experiences and best practices.
Article 15
Cooperative Arrangements
Cooperative arrangements such as joint exercises or other forms of cooperation, as appropriate, may be agreed upon among the Contracting Parties concerned.

Article 16
Protection Measures for Ships
Each Contracting Party shall encourage ships, ship owners, or ship operators, where appropriate, to take protective measures against piracy and armed robbery against ships, taking into account the relevant international standards and practices, in particular, recommendations adopted by the International Maritime Organization.

Part V Final Provisions
Article 17
Settlement of Disputes
Disputes arising out of the interpretation or application of this Agreement, including those relating to liability for any loss or damage caused by the request made under paragraph 2 of Article 10 or any measure taken under paragraph 1 of Article 11, shall be settled amicably by the Contracting Parties concerned through negotiations in accordance with applicable rules of international law.

Article 18
Signature and Entry into Force
1. This Agreement shall be open for signature at the depository referred to in paragraph 2 below by the People's Republic of Bangladesh, Brunei Darussalam, the Kingdom of Cambodia, the People's Republic of China, the Republic of India, the Republic of Indonesia, Japan, the Republic of Korea, the Lao People's Democratic Republic, Malaysia, the Union of Myanmar, the Republic of the Philippines, the Republic of Singapore, the Democratic Socialist Republic of Sri Lanka, the Kingdom of Thailand, the Socialist Republic of Viet Nam.

2. The Government of Singapore is the depository of this Agreement.

3. This Agreement shall enter into force 90 days after the date on which the tenth instrument of notification by a State listed in paragraph 1, indicating the completion of its domestic
requirements, is submitted to the depository. Subsequently it shall enter into force in respect of any other State listed in paragraph 1 above 30 days after its deposit of an instrument of notification to the depository.

4. The depository shall notify all the States listed in paragraph 1 of the entry into force of this Agreement pursuant to paragraph 3 of this Article.

5. After this Agreement has entered into force, it shall be open for accession by any State not listed in paragraph 1. Any State desiring to accede to this Agreement may so notify the depository, which shall promptly circulate the receipt of such notification to all other Contracting Parties. In the absence of a written objection by a Contracting Party within 90 days of the receipt of such notification by the depository, that State may deposit an instrument of accession with the depository, and become a party to this Agreement 60 days after such deposit of instrument of accession.

Article 19
Amendment
1. Any Contracting Party may propose an amendment to this Agreement, any time after the Agreement enters into force. Such amendment shall be adopted with the consent of all Contracting Parties.

2. Any amendment shall enter into force 90 days after the acceptance by all Contracting Parties. The instruments of acceptance shall be deposited with the depository, which shall promptly notify all other Contracting Parties of the deposit of such instruments.

Article 20
Withdrawal
1. Any Contracting Party may withdraw from this Agreement at any time after the date of its entry into force.

2. The withdrawal shall be notified by an instrument of withdrawal to the depository.

3. The withdrawal shall take effect 180 days after the receipt of the instrument of withdrawal by the depository.

4. The depository shall promptly notify all other Contracting Parties of any withdrawal.
Article 21
Authentic Text
This Agreement shall be authentic in the English language.

Article 22
Registration
This Agreement shall be registered by the depository pursuant to Article 102 of the Charter of the United Nations.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this Agreement.