

# Prevention and Suppression of Contemporary Piracy: International and Regional Efforts

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# UNCLOS

- 1982, 1994
- 167 parties
- Maritime Zones

# Legal Framework

- International law has established an obligation on States to cooperate in suppression of piracy and grants States certain rights to seize pirate ships and criminals.
- According to the 1982 UN Convention on the Law of the Sea, all the countries have the obligation to "cooperate to the fullest possible extent in the repression of piracy on the high seas or in any other place outside the jurisdiction of any State", and "every State may seize a pirate ship or aircraft, or a ship or aircraft taken by piracy and under the control of pirates, and arrest the persons and seize the property on board".

# SUA Convention

- Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation which was adopted in 1988 under the auspices of the IMO and came into force in 1992.

# SUA Convention-2

- The 1988 SUA Convention covers the unlawful acts no matter whether they are for political ends or for private ends. It aims to punish any person who commits an offense by unlawfully and intentionally seizing or exercising control over a ship by force or threat thereof; or performing an act of violence against a person on board a ship if that act is likely to endanger the safe navigation of that ship; or destroying a ship or causing damage to a ship or to its cargo which is likely to endanger the

# SUA Convention-3

- Each Contracting Party should take necessary measures to establish its jurisdiction over the above offenses or extradite the offender or the alleged offender to the other Contracting Party who has the corresponding jurisdiction. The SUA Convention applies to the offenses committed in the ship which is navigating or is scheduled to navigate into, through or from the waters beyond the outer limit of the territorial sea of a coastal State or applies when the offender or the alleged offender is found in the territory of a Contracting Party other than the previous case

# 2005 Protocol

- 2005 Protocol to the SUA Convention has two major revisions/additions
- the Protocol expands the coverage of the unlawful acts by adding a new provision to cover “uses against or on a ship or discharging from a ship any explosive, radioactive material or BCN (biological, chemical, nuclear) weapon

# 2005 Protocol -2

- Another major development is the ship boarding regime
- Co-operation and procedures are needed if a State Party desires to board a ship flying the flag of a State Party when the requesting Party has reasonable grounds to suspect that the ship or a person on board the ship is, has been, or is about to be involved in, the commission of an offence under the Convention.



# SOLAS

- The second important development related to the international law of piracy under the auspices of the IMO is the amendments to the 1974 International Convention for the Safety of Life at Sea (SOLAS) taking place in December 2002 when the SOLAS Chapter XI-2 on Special measures to enhance maritime security and the International Ship and Port Facility Security (ISPS) Code were adopted.

# SOLAS-2

- The regulation requires Administrations to set security levels and ensure the provision of security level information to ships entitled to fly their flag. Prior to entering a port, or whilst in a port, within the territory of a Contracting Government, a ship shall comply with the requirements for the security level set by that Contracting Government, if that security level is higher than the security level set by the Administration for that ship

# 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).

# Development in Legal Framework

- The definition on piracy in the LOS Convention only applies to this international crime on the high seas or areas beyond the jurisdiction of any state, thus limiting its application to similar criminal acts in the territorial seas and maritime areas close to the coasts.

# Development in Legal Framework-2

- Having realized that many piratical incidents did occur in the waters of national jurisdiction, the International Maritime Organization (IMO) developed a functional definition for the crackdown on piracy: while retaining the meaning of the LOS Convention definition on piracy, the IMO definition has been added “armed robbery against ships”, which has become a most popular applicable definition for the purpose of anti-piracy operations.
- This definition has now been accepted by the United Nations Security Council as well as incorporated into the 2004 Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP).

# Development in Legal Framework-3

- As a result, there are now in fact two definitions in international law: one is contained in the LOS Convention while the other in the ReCAAP. Though both legally defined, their applicability is different: while the former limits its applicability to the high seas, the latter applies to all sea areas whether national or international.

# ReCAAP

- The Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP) was signed by 16 Asian countries including Bangladesh, Brunei, Cambodia, China, India, Indonesia, Japan, Laos, Malaysia, Myanmar, the Philippines, Sri Lanka, Singapore, South Korea, Thailand and Vietnam on 11 November 2004. The Agreement came into force on 4 September 2006 when it received 10 ratifications.



# Obligations of Contracting Parties

- The Agreement obliges Contracting States (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; and (d) to rescue victim ships and victims of piracy or armed robbery against ships. The Contracting States pledge to implement the Agreement including preventing and suppressing piracy and armed robbery against ships “to the fullest extent possible” “in accordance with their respective national laws and regulations and subject to their available resources or capabilities”.



# Cooperation under ReCAAP

- Contracting States are required to cooperate:
- Information sharing: Each Contracting Party designates a focal point responsible for its communication with the Information Sharing Center (ISC), and should “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.”
- Legal and judicial measures for the prevention and suppression of piracy: a Contracting Party should endeavour to extradite pirates to the other Contracting Party which has jurisdiction over them and to render mutual legal assistance in criminal matters including the submission of evidence related to piracy and armed robbery at the request of another Contracting Party, but all these endeavours are subject to the national laws and regulations of the Contracting Party concerned.
- Capacity building (including technical assistance such as educational and training programs): each Contracting Party should endeavour to cooperate to the fullest possible extent with other Contracting Parties so as to enhance the capacity to prevent and suppress piracy and armed robbery against ships.

# ISC

- The Center, located in Singapore, is composed of the Governing Council (which is the decision-making body composed of one representative from each Contracting Party) and the Secretariat (which is headed by the Executive Director who is 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 the Agreement). It is designed "to promote close cooperation among the Contracting Parties in preventing and suppressing piracy and armed robbery against ships".
- The ISC was officially launched in November 2007 and its daily operations of the ISC are funded by the Host State as well as voluntary contributions from other Contracting Parties or even other sources as agreed by the Governing Council. In addition to Singapore, three Contracting Parties –China, Japan and South Korea also provide operational funds for the ISC.

# Characteristics of the ReCAAP

- First, though the original negotiators of the Agreement are 16 Asian States, the accession to the Agreement is not exclusive; any State can join after its entry into force as provided for in the Agreement
- Second, the ReCAAP is the first specific international treaty concerning the prevention and suppression of piracy. Because of this, it becomes a model of law for other regional legal arrangements.
- Thirdly, the ISC established under the ReCAAP is a governmental international organization, different from other organizations which operate similar functions such as the IMB Piracy Reporting Centre (situated in Kuala Lumpur).
- Finally, it contributes to the legal definition on the piracy and armed robbery against ships.

# Djibouti Code of Conduct

- The CoC, adopted in 2009, is based on the ReCAAP, which operates in the Asian region.
- It recognizes the extent of the problem of piracy and armed robbery against ships in the region and calls on its signatories to co-operate to the fullest possible extent in the repression of piracy and armed robbery against ships

# Djibouti Code of Conduct-2

- sharing and reporting relevant information;
- interdicting ships suspected of engaging in acts of piracy or armed robbery against ships;
- ensuring that persons committing or attempting to commit acts of piracy or armed robbery against ships are successfully apprehended and prosecuted

# Djibouti Code of Conduct-3

- Signatories will agree to arrest, investigate and prosecute persons who have committed piracy or are reasonably suspected of committing piracy; seize suspect ships and the property on board such ships; and rescue ships, persons, and property subject to acts of piracy. These acts would be consistent with international law.

# Djibouti Code of Conduct-4

- The agreement also covers the possibilities of hot pursuit into another country's territorial waters and shared operations, such as nominating officers to embark in the patrol ships or aircraft of another signatory.
- The agreement further envisages the setting up of national focal points for piracy and armed robbery against ships and the sharing of information relating to incidents reported.



# UNSC Resolutions

- Piracy in Western Indian Ocean, especially adjacent to the Somali coast has become an international concern.
- In June 2008 the UNSC passed a resolution on combating acts of piracy and armed robbery off Somalia's coast (Resolution 1816).
- While the Security Council expressed its grave concern about piracy and armed robbery against vessels in the waters off the coast of Somalia, it determined that such piratical incidents exacerbated the situation in Somalia "which continues to constitute a threat to international peace and security in the region". Therefore, the Security Council decided to act under Chapter VII of the Charter of the United Nations.



# UNSC Resolutions-2

- It urges “States whose naval vessels and military aircraft operate on the high seas and airspace off the coast of Somalia to be vigilant to acts of piracy and armed robbery” and “to cooperate with each other, with the IMO and, as appropriate, with the relevant regional organizations in connection with, and share information about, acts of piracy and armed robbery in the territorial waters and on the high seas off the coast of Somalia, and to render assistance to vessels threatened by or under attack by pirates or armed robbers, in accordance with relevant international law”.

# UNSC Resolutions-3

- More significantly, the Security Council decided that “for a period of six months from the date of this resolution, States cooperating with the TFG in the fight against piracy and armed robbery at sea off the coast of Somalia, for which advance notification has been provided by the TFG to the Secretary General, may: (a) enter the territorial waters of Somalia for the purpose of repressing acts of piracy and armed robbery at sea, in a manner consistent with such action permitted on the high seas with respect to piracy under relevant international law; and (b) use, within the territorial waters of Somalia, in a manner consistent with action permitted on the high seas with respect to piracy under relevant international law, all necessary means to repress acts of piracy and armed robbery”.

# UNSC Resolutions-4

- It is the first time that the UN Security Council had placed the issue of sea piracy on its agenda and treated it as a matter threatening international peace and security. According to the UN Charter, UN member States are obliged to implement UNSC resolutions as it is stipulated that UN members agree to accept and carry out the decisions of the Security Council in accordance with the Charter. Furthermore, UN Member States have the duty to contribute to the maintenance of international peace and security by supporting materialistically the actions undertaken by the Security Council, with armed forces, assistance, and facilities, including rights of passage. These provisions in the UN Charter constitute a legal foundation for the UN member States to act in accordance with Resolution 1816.

# UN Members Action

- After the UN Security Council passed several important resolutions concerning the suppression of piracy in Somalia, UN member States individually or collectively sent warships to the Somali waters and the Gulf of Aden in compliance with the UNSC resolutions. The Combined Maritime Forces led by the United States established Combined Task Force 151 (CTF-151) in January 2009 to conduct counter-piracy operations in and around the Gulf of Aden, Arabian Sea, Indian Ocean and the Red Sea.
- The European Union has launched its naval operations against Somali piracy under the European Security and Defence Policy framework called EU NAVFOR (Operation Atalanta).
- Several Asian countries have also sent warships to the Somali waters for the purpose of piracy prevention and suppression.

# Anti-piracy in the South China Sea

- Apart from legal instruments which can provide basis for the establishment of a regional anti-piracy mechanism for the South China Sea, some soft-law documents can also play an important role in this respect.
- In November 2002, ten ASEAN members and China signed the Declaration on the Conduct of Parties in the South China Sea (DOC), which pledges to "reaffirm their commitment to the purposes and principles of the Charter of the United Nations, the 1982 UN Convention on the Law of the Sea, the Treaty of Amity and Cooperation in Southeast Asia, the Five Principles of Peaceful Coexistence, and other universally recognized principles of international law which shall serve as the basic norms governing state-to-state relations"

# Non-Traditional Security Issues in the DOC

- They pledge to (6) “explore or undertake cooperative activities including a. marine environmental protection; b. marine scientific research; c. safety of navigation and communication at sea; d. search and rescue operation; and e. combating transnational crime, including but not limited to trafficking in illicit drugs, piracy and armed robbery at sea, and illegal traffic in arms”, pending a comprehensive and durable settlement of the disputes;



# Anti-Piracy Cooperation under DOC

- Nevertheless, it is to be noted that the DOC clearly states that piracy and armed robbery at sea is one of the areas that the signatories should cooperate to work out a plan of action. It is an imperative task for the signatories to consider how to enhance the effectiveness of the DOC in its implementation.
- The cooperation in the suppression of piracy no doubt can become a yardstick to test the effectiveness of the DOC implementation.

# Malacca Experiences

- The Straits of Malacca and Singapore is a most important route of maritime transportation and links the Indian Ocean to the South China Sea. That means vessels passing through this straits must also pass through the South China Sea. A recent comparative analysis shows that more than 50,000 ships transit the Straits of Malacca each year accounting for 40% of the world's trade while about 21,000 commercial ships transit the Gulf of Aden per year.



# Tripartite cooperation

- Piracy used to be a serious issue threatening safety of navigation in the Straits. The riparian States to the Malacca Straits have contributed significantly to the establishment of an institutional mechanism in the fight against piracy.
- The tripartite cooperation among Indonesia, Malaysia and Singapore for the maritime security in the Malacca Straits began in the early 2000s. The three countries have been conducting a coordinated anti-piracy patrol off their waters in the Malacca and Singapore Straits. In the end of July 2005, a scheme of maritime air surveillance was discussed, aiming to strengthen the crackdown of piracy in this critical international waterway. In August 2005, the above three countries agreed to implement the scheme of air patrol over the Malacca Straits from September 2005 and also agreed to establish a Tripartite Technical Experts Group on Maritime Security.
- There are currently three anti-piracy mechanisms in place: Malacca Strait Sea Patrol (MSSP), 'Eye-in-the-sky' (EiS), and the Intelligence Exchange Group (IEG).

# Cooperative Mechanism for the Straits of Malacca

- In 2007 the Singapore Government together with the IMO convened the Meeting on the Straits of Malacca and Singapore: Enhancing Safety, Security and Environmental Protection (Singapore Meeting) where the Cooperative Mechanism for the Straits of Malacca and Singapore was created. The Mechanism comprises of the Cooperation Forum, the Project Cooperation Committee and the Aids to Navigation Fund. Straits user States, including *inter alia*, Australia, China, Japan, United Kingdom and the United States, expressed their strong support for this initiative.

# Conclusion

- There is no doubt that the legal basis and institutional arrangements both at international and regional levels are already there.
- However, the effectiveness of anti-piracy operations depend on the sufficient exertion of international as well as regional efforts.
- In that respect, the sincerity and willingness of states concerned are essential to realise such effectiveness.