

## Enhancing Regional Cooperation on Piracy and Maritime Crimes

By Associate Professor Robert BECKMAN and Tara DAVENPORT\*

### **A. INTRODUCTION**

Attacks against vessels committed by Somali nationals in the Horn of Africa have dominated headlines for the past two years primarily because of the audacity and purpose of these attacks, namely to kidnap the crew and hijack vessels for ransom<sup>1</sup>. The ramifications of these attacks are significant, not only in terms of the unimaginable anxiety of crew members and their families but also in terms of costs to ship owners, cargo owners, insurers and coastal States in the region<sup>2</sup>.

The purpose of this paper is to examine ways in which States in South East Asia and East Asia can co-operate to address these more serious attacks against vessels involving kidnap of crew and ship-hijacking. While the majority of attacks against vessels in waters in South East Asia<sup>3</sup> are predominantly acts of robbery, of either the ship's cash, valuables, stores, cargo and equipment<sup>4</sup>, there have been incidents, although relatively infrequent, of both kidnap of crew and ship-hijacking. For example, in 2009, there were three incidents of kidnapping of crew, one

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\* Associate Professor Robert Beckman is the Director of the Centre for International Law (CIL) at the National University of Singapore. Tara Davenport is a Research Associate at CIL.

<sup>1</sup> Attacks against vessels by Somali pirates now constitute the majority of attacks world-wide. According to the 2009 Annual Report of the International Maritime Bureau (IMB), out of 406 attacks against vessels worldwide, 217 of them were reportedly committed by suspected Somali pirates.

<sup>2</sup> "Shipping Industry held hostage by high seas piracy," ABC News, 4 October 2008 available at <http://www.abc.net.au/news/stories/2008/10/04/2382153.htm>

<sup>3</sup> South East Asia refers to waters in the Gulf of Thailand, Indonesia, Malaysia, Myanmar, Philippines, South China Sea, Straits of Malacca and Singapore, Thailand and Vietnam based on the classification used by the Regional Cooperation Agreement against Armed Robbery and Piracy Information Sharing Centre (ReCAAP ISC): See ReCAAP ISC 2009 Annual Report at 10 available at [http://www.recaap.org/incident/pdf/reports/2009/ReCAAP%20ISC%20Annual%20Report%20\(2009\).pdf](http://www.recaap.org/incident/pdf/reports/2009/ReCAAP%20ISC%20Annual%20Report%20(2009).pdf)

<sup>4</sup> James Kraska and Brian Wilson, "The Pirates of the Gulf of Aden: The Coalition is the Strategy" 45 *Stanford Journal of International Law* 243 (2009) at 250 (Kraska and Wilson)

in the Straits of Malacca<sup>5</sup> and two off Philippines waters<sup>6</sup>. The kidnappings occurred after the vessels were robbed and it is unclear whether ransom was demanded in these cases.

There was one incident of hijacking in 2009 in the South China Sea<sup>7</sup> and three incidents of ship hijacking in the first quarter of 2010, namely of the tug ASTA north of Tioman, Malaysia, the tug PU 2007 off Kuantan, Malaysia and the tug ATLANTIC 3, east of Bintan, Indonesia<sup>8</sup>. Ship-hijacking in these cases were not committed for ransom but for purposes of re-selling the vessel. As this type of attack requires detailed planning and organization with the aim of large profits, it is widely believed that criminal syndicates based in Indonesia and Malaysia are behind these hijackings<sup>9</sup>. The same criminal syndicate is suspected to be behind the recent hijackings of the ASTA, the PU 2007 and the ATLANTIC 3<sup>10</sup>.

While it is debatable that attacks against vessels in the region will ever reach the scale and seriousness of the attacks in the Horn of Africa, primarily due to different geopolitical contexts<sup>11</sup>, kidnap for ransom and ship hijacking are serious crimes that may involve several jurisdictions and involve significant economic losses to ship owners, cargo owners, insurers and coastal States as well as a risk to the lives of crew. States in the region should learn lessons

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<sup>5</sup> MLC NANCY 5 on 19 February 2009: See ReCAAP ISC 2009 Annual Report, *supra* note 3 at 58.

<sup>6</sup> LIGHT BOAT COLUMBIA 5 on 5 March 2009 and MARINERO on 21 November 2009: See ReCAAP ISC 2009 Annual Report, *supra* note 3 at 58 and 80 respectively.

<sup>7</sup> PROSPAQ T1 on 7 April 2009 off Pulau Anambas, South China Sea: See ReCAAP ISC 2009 Annual Report, *supra* note 3 at 61

<sup>8</sup> ReCAAP ISC Report for May 2010 at 26 – 38 available at [http://www.recaap.org/incident/pdf/reports/2010/May%202010%20Report%20\(O\).pdf](http://www.recaap.org/incident/pdf/reports/2010/May%202010%20Report%20(O).pdf)

<sup>9</sup> Joyce Dela Pena, "Maritime Crime in the Strait of Malacca: Balancing Regional and Extra-Regional Concerns," Vol X, No. 2, *Stanford Journal of International Relations* 1 (Spring 2009) at 3 available at [http://www.humansecuritygateway.com/documents/SJIR\\_MaritimeCrimeStraitOfMalacca.pdf](http://www.humansecuritygateway.com/documents/SJIR_MaritimeCrimeStraitOfMalacca.pdf) (Dela Pena)

<sup>10</sup> ReCAAP ISC Report for May 2010 at 38, *supra* note 8

<sup>11</sup> Dr Stefan Eklof Amirell, "Piracy and its suppression in the Strait of Malacca and the Gulf of Aden: a critical comparison," 23 *Strategic Insights* (April 2010) at 3

from Somalia, namely, the need for an effective legal framework for the apprehension, prosecution and punishment of perpetrators of these attacks<sup>12</sup>.

While the 1982 United Nations Convention on the Law of the Sea (“UNCLOS”) is *prima facie* the applicable legal framework governing kidnapping of crew and hijacking of ships on the basis that these acts can, in certain circumstances, fall under the UNCLOS definition of piracy<sup>13</sup>, this paper aims to demonstrate that the 1988 Convention on the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (“SUA Convention”), the 1979 Convention against the Taking of Hostages (“Hostages Convention”) and the 2000 United Nations Convention against Transnational Organized Crime (“UNTOC”) (collectively, these three conventions will be referred to as “the Conventions”) should be used *in conjunction* with UNCLOS to establish an effective legal framework for the apprehension, prosecution and punishment of perpetrators of acts of kidnap of crew and ship-hijacking in South East Asia. This paper will examine the relevant provisions of UNCLOS, the SUA Convention, the Hostages Convention and UNTOC, their applicability to acts of kidnap of crew and hijacking and then discuss the extent to which these Conventions establish an effective legal framework.

## **B. UNCLOS**

### **1. Piracy under UNCLOS**

UNCLOS sets out the basic legal framework governing acts of piracy. Most of the ASEAN<sup>14</sup> + 3<sup>15</sup> countries have ratified UNCLOS (please refer to the annexed table). It also binds non-parties as it contains norm-creating provisions which are best evidence of customary international law<sup>16</sup>.

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<sup>12</sup>The lack of an effective mechanism for the prosecution of Somali pirates has been widely acknowledged as a serious impediment to anti-piracy efforts in the Horn of Africa. See, for example, UN Security Council Resolution 1918 available at <http://www.un.org/News/Press/docs//2010/sc9913.doc.htm>

<sup>13</sup> This will be explained further in Part B.

<sup>14</sup> With the exception of Thailand and Cambodia who have only signed UNCLOS.

<sup>15</sup> China, Republic of Korea, and Japan

<sup>16</sup> See Dr Douglas Guilfoyle, “Treaty Jurisdiction over Pirates: A Compilation of Legal Texts with Introductory Notes,” prepared for the 3<sup>rd</sup> Meeting of Working Group 2 on Legal Issues of the Contact Group off the Coast of

Article 100 of UNCLOS, provides that: “*all States shall co-operate 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.*”

Under Article 101 of UNCLOS, piracy consists of any of the following acts:

1. *Any illegal acts of violence, detention or any act of depredateion, committed for private ends by the crew or the passengers of a private ship or a private aircraft and directed:
  - a) *On the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;*
  - b) *Against a ship, aircraft, persons or property in a place outside the jurisdiction of any state.**
2. *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;*
3. *Any act of incitement or of intentional facilitation of an act described in Subparagraph 1 or Subparagraph 2 of this article.*

Kidnapping for ransom can be considered “*an illegal act of violence, [or] detention...committed on the high seas...against persons on board such ship*”. Similarly, ship-hijacking can also be considered “*an illegal act of violence, detention, or any act of depredateion...on the high seas, against another ship*”. However, these acts will only fall within the definition of ‘piracy’ in Article 101 if they are committed by one ship against another, they are committed for private ends and they are committed on the high seas or in the exclusive economic zones (EEZ) of States<sup>17</sup>.

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Somalia, Copenhagen, 26 – 27 August 2009 at 4 available at <http://ucl.academia.edu/DouglasGuilfoyle/Papers/116803/Treaty-Jurisdiction-over-Pirates--A-Compilation-of-Legal-Texts-with-Introductory-Notes> (Guilfoyle)

<sup>17</sup> Article 101 of UNCLOS refers to acts on the high seas. Article 58 (2) provides that the provisions on piracy also apply in the EEZ.

## **2. Rights and obligations of States with respect to the suppression of piracy under UNCLOS**

When the above requirements are met, it triggers the rights and obligations of States Parties in the suppression of piracy. First, UNCLOS grants universal jurisdiction to every State over acts of piracy and treats it as an exception to the usual principle of flag state jurisdiction on the high seas<sup>18</sup>. Accordingly, under Article 105 of UNCLOS, a warship of any flag or other ship on government service<sup>19</sup> has the power to seize, on the high seas, a pirate ship<sup>20</sup> or a ship under the control of pirates and arrest the persons and seize the property on board<sup>21</sup>. Further, once seized, *“the courts of the State which carried out the seizure may decide upon the penalties imposed, and may also determine the action to be taken with regards to the ships...or property, subject to third parties acting in good faith<sup>22</sup>”*.

Second, piracy also affords warships and ships on government service the right of visit. Under Article 110, a warship is entitled to board a foreign ship on the high seas if there are reasonable grounds for suspecting, *inter alia*, that the ship is engaged in piracy.

## **3. Armed Robbery Against Ships**

UNCLOS only applies to acts of piracy that have taken place on the high seas and in the EEZs of States. Piracy under UNCLOS can only take place seawards from territorial waters. Attacks against ships in areas under territorial sovereignty such as ports, inland waters, archipelagic waters and territorial seas, are not considered acts of piracy governed by the UNCLOS regime but are defined by the IMO as “armed robbery against ships”:

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<sup>18</sup> Article 92, UNCLOS

<sup>19</sup> Article 107 and Article 111 (5), UNCLOS

<sup>20</sup> Under Article 103 of UNCLOS, a ship is considered a pirate ship if it is intended by the persons in dominant control to be used for the purpose of committing one of the acts referred to in Article 101. The same applies if the ship has been used to commit any such act, so long as it remains under the control of the persons guilty of that act.

<sup>21</sup> Article 105, UNCLOS

<sup>22</sup> Article 105, UNCLOS

*“any illegal act of violence or detention, or any act of depredation, or threat thereof, other than an act of “piracy” committed for private ends and directed against a ship, or against persons or property onboard such ship, within a State’s internal waters, archipelagic waters and territorial sea<sup>23</sup>”.*

These acts, which occur in areas under the territorial sovereignty of coastal States, are governed solely by the national laws of that coastal State. Thus, acts of kidnap for ransom and ship hijacking that occur within territorial waters would be regulated by domestic laws on such offences. Further, only the coastal State can exercise enforcement powers (such as the right to arrest and visit vessels) against vessels suspected of committing these acts in territorial waters.

UNCLOS does provide coastal States with the right to pursue foreign vessels outside of territorial waters if the competent authorities have good reason to believe that the ship has violated the laws and regulations of that State<sup>24</sup>. This right, known as the right of hot 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. 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<sup>25</sup>.

Most attacks in South East Asia are considered “armed robbery against ships” and not piracy under UNCLOS. This is because the attacks take place near the coast either when the ships are in port or at anchor, within straits used for international navigation (such as the Malacca Straits and Singapore Straits) or when they are transiting in the territorial sea<sup>26</sup>. The upper half of the

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<sup>23</sup> International Maritime Organization, *Code of Practice for the Investigation of Crimes of Piracy and Armed Robbery against Ships*, IMO Assembly Resolution A. 1025 (26), adopted 18 December 2009

<sup>24</sup> Article 111, UNCLOS

<sup>25</sup> Article 111 (3), UNCLOS

<sup>26</sup> Robert Beckman, “The 1988 SUA Convention and the 2005 SUA Protocol: Tools to Combat Piracy, Armed Robbery and Maritime Terrorism” 2 *Maritime Affairs* (No. 2) 1 (2006) at 2 (Beckman, 2006)

Straits of Malacca and the South China Sea is the only area in which attacks take place outside of territorial waters<sup>27</sup>, in which case the UNCLOS piracy provisions will apply.

## C. PROBLEMS WITH UNCLOS

### 1. *Limitations in enforcement jurisdiction*

UNCLOS has been described as “a very weak tool for preventing and suppressing attacks on ships in Southeast Asia<sup>28</sup>.” This is because the majority of attacks occur in areas under territorial sovereignty and the UNCLOS provisions on the enforcement powers of States against piracy cannot be used, such as, the right to arrest pirates as provided for in Article 105, and the right to visit vessels under Article 110. These rights only apply to acts of piracy on the high seas or the EEZ. The only State that can exercise these rights is the coastal State in which these attacks occur.

This does not pose as much of a problem as it does in Somalia, where the lack of an effective government and patrolling capacity means that Somali pirates can attack vessels within territorial waters virtually without consequences. However, it is said that States in the region are still hindered by the fact that within their territorial or archipelagic waters there exist “widely dispersed islands of greater or lesser size, some of which are inhabited and some of which are not<sup>29</sup>” where pirates can escape to. Further, these States may not have the necessary resources to patrol a wide geographic area<sup>30</sup>.

A further limitation in UNCLOS in the suppression of piracy in South East Asia is the fact that the right of hot pursuit under Article 111 of UNCLOS has to end when the offending vessel enters another state’s territorial waters. The close proximity of neighbouring territorial waters results

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<sup>27</sup> Robert C. Beckman, “Combating Piracy and Armed Robbery Against Ships in Southeast Asia: The Way Forward,” 33 *Ocean Development and International Law* 317 (2002) at 326 (Beckman, 2002)

<sup>28</sup> *Ibid* at 328

<sup>29</sup> Scott Davidson “Dangerous waters: Combating Maritime Piracy In Asia” 9 *Asian Yearbook of International Law* 3 (2004) at 21

<sup>30</sup> *Ibid*

in pirates using these waters as 'de facto sanctuaries' as pirates can escape into a neighbouring state's territorial sea<sup>31</sup>. While it is of course open to coastal States to consent to another State entering its territorial waters, this is unlikely to happen in the region as States are reluctant to allow neighbouring naval forces in their own territorial waters because of concerns over their territorial and political sovereignty<sup>32</sup>.

Notwithstanding the above limitations posed by UNCLOS, there has been a degree of regional co-operation in suppression of piracy. For example, there is now operational co-operation between Indonesia, Malaysia and Singapore to safeguard the security of the Straits of Malacca<sup>33</sup>. Indeed, the reduction of attacks in the Straits of Malacca and Singapore has been credited to greater law enforcement presence there<sup>34</sup>. The signing of the Regional Cooperation Agreement Against Piracy and Armed Robbery (ReCAAP)<sup>35</sup> and the establishment of the ReCAAP Information Sharing Centre (ISC) in Singapore has also enhanced co-operation in combating piracy and armed robbery in the region mainly through the exchange of information and analysis of incidents of piracy and armed robbery<sup>36</sup>.

## ***2. No obligation to prosecute or extradite under UNCLOS provisions on piracy***

Article 105 of UNCLOS does not place any obligation upon a seizing State to prosecute a suspected pirate and merely provides that the courts of the seizing State *may* decide upon the penalties to be imposed. Neither is there an obligation to extradite to another State which has

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<sup>31</sup> Rosemary Collins and Daud Hassan "Applications and Shortcomings of the Law of the Sea in Combating Piracy: A South East Asian Perspective" 40 *Journal of Maritime Law and Commerce* (No. 1) 89 (January 2009) at 103 (Collins and Hassan).

<sup>32</sup> Eric Barrios, "Casting a wider net: Addressing the Maritime Piracy Problem in Southeast Asia" 28 *Boston College International and Comparative Law Review* 149 (2005) at 160.

<sup>33</sup> This includes coordinated sea patrols between Indonesia, Malaysia and Singapore and the Eyes in the Sky initiative by combined maritime air patrols: See Dela Pena, *supra* note 9 at 3.

<sup>34</sup> The ReCAAP ISC credits a decrease in incidents in the Straits of Malacca and Singapore to a greater law enforcement presence there: See ReCAAP ISC 2009 Annual Report, *supra* note 3 at 10.

<sup>35</sup> ReCAAP was adopted on 11 November 2004 and entered into force on 4 September 2006.

<sup>36</sup> Neither Indonesia nor Malaysia is a party to ReCAAP which arguably undermines its effectiveness.



jurisdiction<sup>37</sup>. Suspected pirates are frequently released as the seizing State often lacks the political will and resources to prosecute.

### **3. *Problems in investigation and evidence collection for acts of piracy and armed robbery against ships***

Once a vessel is arrested for suspected piracy or armed robbery against ships, the arresting officers have to ensure that there is sufficient evidence to convict the perpetrators under the national laws of the State in which the perpetrators are tried (be it the arresting State or another State which has jurisdiction). However, officers on board warships often lack the requisite experience in the securing of evidence at sea. Further, the victims of the crime (the crew, owners of attacked ships) are from a different jurisdiction from the prosecuting state and there may be difficulties in getting them to give evidence in the trial against the perpetrators.

### **4. *Inadequacy of national legislation***

Another major problem is the inadequacy of national legislation to deal with piracy as well as kidnap of crew and ship hijacking. In many States, piracy is often not treated as a separate, independent offence with its own jurisdictional framework but is subsumed within more general categories of crimes such as robbery, kidnapping, abduction, violence against persons etc<sup>38</sup>. For example, although China is a signatory to UNCLOS, it reportedly has no law on piracy and acts of piracy are subject to Chinese law enforcement via its criminal code<sup>39</sup>.

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<sup>37</sup> Guilfoyle, *supra* note 16 at 5

<sup>38</sup> "Piracy: Review of National Legislation" *Report of the Legal Committee on the Work of its ninety-sixth session*, IMO Document LEG 96/13, 14 Oct 2009

<sup>39</sup> However, the lack of a crime of "piracy" under Chinese law has not prevented Chinese authorities from prosecuting alleged pirates. China has "universal jurisdiction" over such acts of piracy under a law which provides that they have jurisdiction over such acts by virtue of acceding to international treaties such as UNCLOS. Further, pirates are usually charged under the domestic penal code for crimes such as murder, robbery etc: See Zou Keyuan, "New Developments in the International Law of Piracy" 8 *Chinese Journal of International Law* (No. 2) 323 (2009) at 342

Moreover, while UNCLOS gives States Parties the right to exercise universal jurisdiction over acts of piracy committed outside of territorial jurisdiction, the piracy legislation of many States does not recognize this right<sup>40</sup>. Instead, national laws still require some nexus between the offence and the prosecuting State, for example, the offence must either be committed by its nationals or against a ship flying its flag for a national court to have jurisdiction over it. If national legislation does not have specific offences covering piracy, kidnap for ransom or ship-hijacking, when such acts take place outside the territorial jurisdiction of any State, the perpetrators may not be prosecuted at all, or they may be prosecuted for less serious offences which occur within the territorial jurisdiction of the States where they are apprehended.

#### **5. UNCLOS piracy provisions do not address the organization of acts of piracy on shore**

While poverty-stricken nationals from impoverished areas carry out the majority of attacks of armed robbery against ships in the region, it is believed that a handful of criminal syndicates based in Indonesia and Malaysia are responsible for the larger scale hijackings<sup>41</sup>.

UNCLOS was not intended to deal with the organization of attacks that occur on shore. Article 101 (c) provides that “any act of inciting or of intentionally facilitating” an act of piracy is also deemed to be piracy. Apart from difficulties of proving that those who have organized attacks on shore are “inciting” or “intentionally facilitating” acts of piracy, UNCLOS enforcement provisions are limited to acts that occur on the high seas or EEZs of coastal States. This means that when perpetrators of acts of kidnap of crew and hijacking are apprehended, they are usually just the foot soldiers. The criminal syndicates actually responsible for organizing these criminal acts remain unpunished, and are consequently free to plan more attacks.

#### **D. THE SUA CONVENTION**

The SUA Convention is generally recognized as supplementing UNCLOS provisions on piracy. The SUA Convention is considered an “international crime” convention in that it is part of a group of international conventions adopted to address transnational crimes<sup>42</sup>.

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<sup>40</sup> “Piracy: Review of National Legislation,” *supra* note 38

<sup>41</sup> Dela Pena, *supra* note 9 at 3

## 1. Offences under the SUA Convention (SUA Offences)

Under Article 3 of the SUA Convention, the relevant offences that cover ship-hijacking are as follows:

- Seizing or exercising control over a ship by force or threat thereof or any other form of intimidation<sup>43</sup>;
- 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<sup>44</sup>;
- Injuring or killing any person, in connection with the commission or the attempted commission of any of the offences set forth above<sup>45</sup>.

Attempting, abetting and threatening of such offences are equally crimes under the Convention<sup>46</sup>. Although the SUA Convention is commonly described as a “counter-terrorism” convention, it does not require any terrorist or political motive, and is applicable to the hijacking of ships for profit.

The majority of attacks of against vessels in South East Asia consist of armed robbery and would not be considered a SUA offence if they do not endanger the safe navigation of a vessel. For example, armed robbery on a ship in berth or at anchor would not be a SUA offence. However, the SUA Convention does cover the more serious crimes of hijacking which would clearly fall under the act of “*seizing or exercising control over a ship by force or threat thereof or any from of intimidation*”<sup>47</sup>.

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<sup>42</sup> These include the Convention for the Suppression of Unlawful Seizure of Aircraft, 1970, the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, 1971, the International Convention on Crimes Against Diplomatically Protected Persons including Diplomatic Agents, 1973 and the Hostages Convention.

<sup>43</sup> Article 3 (1) (a), SUA Convention

<sup>44</sup> Article 3 (1) (b), SUA Convention

<sup>45</sup> Article 3 (1) (g), SUA Convention

<sup>46</sup> Article 3 (2), SUA Convention

<sup>47</sup> Article 3 (1), SUA Convention

## **2. On-shore organization of SUA Offences**

Article 3 (2) (b) provides that a person also commits an offence under the SUA Convention if that person *“abets the commission of any of the offences set forth in paragraph 1 perpetrated by any person or is otherwise an accomplice of a person who commits such an offence”*. This is wider than Article 101(b) of UNCLOS and would cover the act of organizing SUA offences which occur on shore.

## **3. Application**

Unlike UNCLOS provisions on piracy which only apply in the high seas and EEZ, the SUA Convention applies no matter where the acts are committed, whether it is in the territorial sea, archipelagic waters, international straits, exclusive economic zone or the high seas provided that the ship *“is navigating or is scheduled to navigate into, through or from the waters beyond the outer limit of the territorial sea of a single State or the lateral limits of its territorial sea with adjacent States”* (Article 4 (1)). The Convention also applies when the offender or alleged offender is found in the territory of a State party other than the state referred to in Article 4 (1)<sup>48</sup>. While the majority of attacks in South East Asia occur within territorial waters, the ships are usually transiting territorial waters on the way to its final destination and would hence meet this requirement.

## **4. Provisions in the SUA Convention which are common to all international crime conventions**

The SUA Convention shares common provisions with other international crime conventions, which are examined below.

### *Obligation to establish jurisdiction over specific offences*

First, specific acts are defined as criminal offences and State Parties agree to make these acts criminal offences under their domestic law punishable by serious penalties. Accordingly, Article

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<sup>48</sup> Article 4 (2), SUA Convention

6 of SUA obliges State Parties to make the offences in Article 3 a crime under national law when committed:

- (a) Against or on board their flag vessels<sup>49</sup>;
- (b) Within their territory, including their territorial sea<sup>50</sup>;
- (c) By one of their nationals<sup>51</sup>;
- (d) By a person who is present in its territory unless the State extradites that person to another State who has jurisdiction in accordance with the Convention<sup>52</sup>.

This means that States Parties are obliged to adopt implementing legislation giving their courts jurisdiction over persons who commit those offences. While piracy is an offence subject to universal jurisdiction under UNCLOS, the SUA Convention requires some sort of jurisdictional nexus between the offence and the State Party prosecuting them. However, the fact that State Parties must establish jurisdiction over offences committed by other State Parties' nationals or on other State parties' vessels on the basis that the offender is present within their territory and is not extradited to another State party having jurisdiction, is a form of universal jurisdiction. Some have described this as 'quasi-universal' jurisdiction, as it allows for the prosecution of offenders without requiring any nexus to the prosecuting State except the presence of the offender<sup>53</sup>.

States must also ensure that these offences are punishable by appropriate penalties which take into account the grave nature of the offences<sup>54</sup>.

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<sup>49</sup> Article 6 (1) (a), SUA Convention

<sup>50</sup> Article 6 (1) (b), SUA Convention

<sup>51</sup> Article 6 (1) (c), SUA Convention

<sup>52</sup> Article 6 (4), SUA Convention

<sup>53</sup> Guilfoyle, *supra* note 16 at 15

<sup>54</sup> Article 5, SUA Convention

### Obligations over alleged offenders once they are within the territory of a State Party

The SUA Convention does not contain any direct enforcement powers against alleged offenders in contrast to the rights of seizure and visit under UNCLOS. However, if persons who are alleged to have committed an offence under the SUA Convention are found in the territory of a State Party, that State Party is required to take the alleged offenders into custody<sup>55</sup>. If that State Party does not extradite the alleged offender to another State Party that has jurisdiction, it is required to “submit the case without delay to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State<sup>56</sup>”. This is referred to as the obligation to “extradite or prosecute”. This is in contrast to the discretionary right to prosecute provided for in UNCLOS<sup>57</sup>.

### Mechanisms to facilitate extradition

Extradition is also facilitated under the SUA Convention in that:

- a) the offences are deemed to be extraditable offences under any extradition treaty in force between any of the State Parties<sup>58</sup>;
- b) State Parties shall include these offences among the extraditable offences in any future extradition treaty<sup>59</sup>;
- c) State parties that do not make extradition conditional upon the presence of a treaty shall consider the offences set out in the Convention as extraditable between themselves<sup>60</sup>, while those which make extradition conditional upon the existence of a treaty may at their option consider the Conventions as a basis for extradition<sup>61</sup>.

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<sup>55</sup> A State Party is only required to take the alleged offender into custody, if satisfied that this is warranted by the circumstances: See Article 7 (1), SUA Convention

<sup>56</sup> Article 10 (1), SUA Convention

<sup>57</sup> Article 105, UNCLOS

<sup>58</sup> Article 11 (1), SUA Convention

<sup>59</sup> *Ibid*

<sup>60</sup> Article 11 (2) and (3), SUA Convention

<sup>61</sup> Article 11 (4), SUA Convention

## Co-operation

States Parties are obligated to co-operate in the prevention of SUA offences<sup>62</sup> and to afford one another the greatest measure of co-operation in connection with criminal proceedings to prosecute the offenders<sup>63</sup>.

### **5. SUA Convention provisions on delivery of offenders by master to another State Party**

Under Article 8 (1) of the SUA Convention, the master of a ship of a State Party (“the flag State”) may deliver to the authorities of any other State Party (“the receiving Party”) any person who he has reasonable grounds to believe has committed one of the offences set forth in Article 3, provided that the master whenever practicable and if possible gives notice of delivery of the suspect before entering the territorial sea of the receiving State<sup>64</sup> and the flag State furnishes the receiving State with any relevant evidence<sup>65</sup>. A receiving State is under a primary obligation to accept delivery of a suspect and can only refuse to accept delivery “*where it has grounds to consider that the Convention is not applicable to the acts giving rise to the delivery*” in which case it must give a statement of the reasons for the refusal<sup>66</sup>. Once a delivered suspect is received within its territory, the receiving State must exercise its option to either extradite or prosecute.

## **E. THE HOSTAGES CONVENTION**

Like the SUA Convention, the Hostages Convention is an international crimes convention. However, unlike the SUA Convention, it does not specifically deal with maritime offences.

### **1. Offences under the Hostages Convention**

Article 1 of the Hostages Convention states that:

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<sup>62</sup> Article 13, SUA Convention

<sup>63</sup> Article 12, SUA Convention

<sup>64</sup> Article 8 (2), SUA Convention

<sup>65</sup> Article 8 (4), SUA Convention

<sup>66</sup> Article 8 (3), Hostages Convention

*“Any person who seizes or detains and threatens to kill, to injure or to continue to detain another person (“the hostage”) in order to compel a third party, namely a State, an international governmental organization, a natural or juridical person, or group of persons, to do or abstain from doing any act as an explicit or implicit condition for the release of the hostage commits the offence of taking of hostages (“hostage-taking”) within the meaning of this Convention”.*

There is no requirement for any terrorist or political motive. Offences established under national law must be punishable by appropriate penalties which take into account the grave nature of those offences<sup>67</sup>

The kidnapping of crew for ransom, whether done pursuant to a ship-hijacking or not, clearly falls within the definition of hostage-taking in Article 1.

## **2. On-shore organization of offences under the Hostages Convention**

The Hostages Convention also covers any person who *“participates as an accomplice of anyone who commits or attempts to commit an act of hostage taking<sup>68</sup>”* and hence would cover those responsible for the on-shore organization of the acts of kidnap of crew for ransom as well as persons who negotiate or launder ransom money on behalf of the perpetrators.

## **3. Application**

The Hostages Convention contains no express territorial limitations in that it would apply to hostage-taking occurring anywhere, including on vessels, provided it meets the jurisdictional requirements discussed below. However, Article 13 does provide that the Convention has no application *“where the offence is committed within a single State, the hostage and the alleged offender are nationals of that State and the alleged offender is found in the territory of that State.”*

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<sup>67</sup> Article 2, Hostages Convention

<sup>68</sup> Article 1 (2) (b), Hostages Convention



#### **4. Provisions in the Hostages Convention which are common to all international crime conventions**

As with the SUA Convention, the Hostages Convention contains provisions common to all international crime conventions, which will be dealt with below.

##### Obliqation to establish jurisdiction over specific offences

Under Article 5 (1) of the Hostages Convention, State Parties shall establish jurisdiction over the offence of hostage-taking if it is committed:

- a) *In its territory or on board a ship or aircraft registered in that State;*
- b) *By any of its nationals, or if that State considers it appropriate, by those stateless persons who have their habitual residence in its territory;*
- c) *In order to compel that State to do or abstain from doing any act;*
- d) *With respect to a hostage who is a national of that State if that State considers it appropriate.*

State Parties are also obliged to establish jurisdiction over the offender if the offender is in its territory and it does not extradite him to any of the States who have jurisdiction<sup>69</sup>.

##### Obligations over alleged offenders once they are within the territory of a State Party

The Hostages Convention contains similar obligations to the SUA Convention in that once the alleged offender is present within the territory of a State Party, that State Party has the obligation to take the offender into custody<sup>70</sup> and either to extradite him to a State Party which has jurisdiction or prosecute<sup>71</sup>. However, unlike the SUA Convention, the Hostages Convention sets out specific reasons for which extradition may be refused, for example, if a government has substantial grounds for believing that the request has been made by another government *“for the purpose of prosecuting or punishing a person on account of his race, religion,*

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<sup>69</sup> Article 5 (2), Hostages Convention

<sup>70</sup> Article 6 (1), Hostages Convention

<sup>71</sup> Article 8 (1), Hostages Convention

*nationality, ethnic origin or political opinion*” or where their position may be prejudiced for such reasons<sup>72</sup>.

#### Mechanisms to facilitate extradition

The Hostages Convention contains similar provisions as the SUA Convention to facilitate extradition<sup>73</sup>, including allowing State Parties to consider the Convention as a basis for extradition in the absence of an extradition treaty.

#### Co-operation

The Hostages Convention also contains similar provisions on co-operation in the prevention of offences<sup>74</sup> and the criminal prosecution of offences<sup>75</sup> as the SUA Convention.

### **F. UNTOC**

The purpose of UNTOC is to combat “international or transnational crime<sup>76</sup>”. Although like the Hostages Convention, UNTOC was not drafted with maritime offences in mind, its provisions can still be used to combat kidnap of crew or ship-hijacking. As mentioned above, it is believed that attacks against vessels involving kidnap of crew and ship-hijacking in South East Asia are being committed by criminal syndicates based in Indonesia and Malaysia<sup>77</sup>. Further, it has been alleged that the same crime syndicates are also engaging in other illicit crimes such as drug and contraband smuggling and money laundering<sup>78</sup>. The primary advantages of UNTOC is that it can be used to criminalize the onshore preparation and organization of attacks against vessels at

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<sup>72</sup> Article 9, Hostages Convention

<sup>73</sup> Article 10, Hostages Convention

<sup>74</sup> Article 4, Hostages Convention

<sup>75</sup> Article 11, Hostages Convention

<sup>76</sup> Gerhard Kemp, “The United Nations Convention Against Transnational Organized Crime: A milestone in international criminal law,” 14 *South African Journal of Criminal Justice* 152 (2001) at 152

<sup>77</sup> Dela Pena, *supra* note 9 at 3

<sup>78</sup> Dr Guy Wilson Roberts “Piracy in Indonesia, a declining threat?” 23 *Strategic Insight* 13 (April 2010) at 14

sea, and that it criminalizes other activities associated with such attacks such as money laundering.

### **1. Offences under UNTOC**

The offences under UNTOC which are relevant for purposes of this paper are as follows:

- (a) “Criminalization of participation in an organized criminal group<sup>79</sup>”;
- (b) “Criminalization of the laundering of the proceeds of the crime”<sup>80</sup>,
- (c) “Serious crime<sup>81</sup>” which is defined as “conduct constituting an offence punishable by a maximum deprivation of liberty of four years<sup>82</sup>”.

Under Article 5 (1) (a), “participation in an organized criminal group<sup>83</sup>” is defined as:

- (i) *Agreeing with one or more other persons to commit a serious crime for a purpose relating directly or indirectly to the obtaining of a financial or other material benefit and, where required by domestic law, involving an act undertaken by one of the participants in furtherance of the agreement or involving an organized criminal group;*
- (ii) *Conduct by a person who, with knowledge of either the aim and general criminal activity of an organized criminal group or its intention to commit the crimes in question, takes an active part in:*
  - (a) Criminal activities of the organized criminal group;*
  - (b) Other activities of the organized criminal group in the knowledge that his or her participation will contribute to the achievement of the above-described criminal aim;*
  - (c) Organizing, directing, aiding, abetting, facilitating or counselling the commission of serious crime involving an organized criminal group.*

Under Article 6 (1), the “act of laundering of proceeds of crime<sup>84</sup>” is defined as:

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<sup>79</sup> Article 3 (1) (a) and Article 5, UNTOC

<sup>80</sup> Article 3 (1) (a) and Article 6, UNTOC

<sup>81</sup> Article 3 (1) (b), UNTOC

<sup>82</sup> Article 2 (b), UNTOC

<sup>83</sup> Article 5 (1) (a), UNTOC

<sup>84</sup> Article 6 (1), UNTOC

(a) (i) *The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action;*

(ii) *The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;*

(b) *Subject to the basic concepts of its legal system:*

(i) *The acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime;*

(ii) *Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.*

UNTOC also requires that State Parties make the commission of the above offences liable to sanctions that take into account the gravity of that offence<sup>85</sup>.

## **2. Application**

In order for UNTOC to apply, the criminal acts must be an offence under UNTOC (discussed above) and must fulfill two other requirements, namely, they must be committed by an “organized criminal group” and be “transnational in nature”<sup>86</sup>.

An “organized criminal group” is defined under Article 2 (a) as:

*“a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or material benefit”.*

An offence is “transnational in nature” under Article 3 (2) if:

- a) *it is committed in more than one State;*
- b) *it is committed in one state but a substantial part of its preparation, planning, direction or control takes place in another State;*

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<sup>85</sup> Article 11 (1), UNTOC

<sup>86</sup> Article 3 (1), UNTOC

- c) *it is committed in one State but involves an organized criminal group that engages in criminal activities in more than one State; or*
- d) *it is committed in one State but has substantial effects in another State.*

Based on the above, UNTOC can apply to the perpetrators who are responsible for the organization and preparation of attacks in one jurisdiction where the attacks occur in another country's territorial waters. This is because it would either be an offence of "*participation in an organized criminal group*" or "*a serious crime*". It would also meet the requirement of being committed by an "*organized criminal group*". It would also be "*transnational in nature*" as "*it is committed in one State but a substantial part of its preparation, planning, direction or control takes place in another State*" pursuant to Article 3 (2) (b) or "*it is committed in one State but involves an organized criminal group that engages in activities in more than one State*" pursuant to Article 3 (2) (c). Arguably, it is also transnational because "*it has substantial effects in another State*" pursuant to Article 3 (2) (d)<sup>87</sup>, namely the flag State of the vessel and the State where the crew and owner of the vessel are from.

In addition, UNTOC will apply to those who participate in other acts associated with these attacks under the offence of the "*act of laundering the proceeds of crime.*" For example, ransom money has to be transferred and thus, those who receive ransom money on behalf of the criminal syndicates would be committing "*an act of laundering the proceeds of crime*" under Article 6 (1) (a) (i) of UNTOC. The buyers of ships which have been hijacked, who because of the nature of ship sale and purchase<sup>88</sup>, would have to know that the ship is stolen, could also be charged with an "*act of laundering the proceeds of crime*" under Article 6 (1) (b) (i) of UNTOC. Those who facilitate the re-sale of a hijacked vessel, for example, those involved in the repainting of names on vessels and the forgery of vessel certificates could also be charged with an "*act of laundering the proceeds of crime*" under Article 6 (1) (a) (ii) of UNTOC.

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<sup>87</sup> An Interpretative Note to UNTOC states that the term "substantial effects" is intended to cover situations where an offence has had a substantial consequential adverse effect on another State Party: See David Mclean, *Transnational Organized Crime: A commentary on the UN Convention and its Protocols* (Oxford University Press: 2007) at 56

<sup>88</sup> In a legitimate ship sale and purchase, the buyer would usually carry out due diligence checks such as inspection of all the vessel's certificates and searches with the flag state.

Of course, the offence of “*act of laundering proceeds of crime*” would also have to meet the requirements of being committed by an “*organized criminal group*” and of being “*transnational in nature*”. Arguably, the receipt of ransom money and the arrangement of a sale and purchase of a hijacked vessel would require more than three people and would meet the requirement of being committed by an “*organized criminal group*”. These acts would also be “*transnational in nature*” if it is “*committed in one state but a substantial part of its preparation, planning, direction or control takes place in another State*<sup>89</sup>” or it is “*committed in one State but involves an organized criminal group that engages in criminal activities in more than one State*<sup>90</sup>”.

### **3. Jurisdiction over UNTOC offences**

UNTOC requires state parties to establish jurisdiction over UNTOC offences if:

- a) they are committed in the territory of the State Party<sup>91</sup>; or
- b) on board a vessel that is flying the flag of that State Party or an aircraft that is registered under the laws of that State Party at the time the offence is committed<sup>92</sup>.

The State Party also *may* establish jurisdiction when:

- a) The offence is committed against a national of that State Party<sup>93</sup>;
- b) The offence is committed by a national of that State Party or a stateless person who has his or her habitual residence in its territory<sup>94</sup>;
- c) The offence is the offence of participation in an organized criminal group and one of the offences is committed outside the territory of the State Party, with a view to the commission of a serious crime within its territory<sup>95</sup>;

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<sup>89</sup> Article 3 (2) (b), UNTOC

<sup>90</sup> Article 3 (2) (c), UNTOC

<sup>91</sup> Article 15 (1) (a), UNTOC

<sup>92</sup> Article 15 (1) (b), UNTOC

<sup>93</sup> Article 15 (2) (a), UNTOC

<sup>94</sup> Article 15 (2) (b), UNTOC

<sup>95</sup> Article 15 (2) (c) (i), UNTOC

- d) When the alleged offender is present in the territory and it does not extradite him or her<sup>96</sup>.”

Like both the SUA Convention and the Hostages Convention, jurisdiction under UNTOC is based on both a nexus to the offence and a form of “universal jurisdiction” based on the presence of the offender in the territory of a State Party.

#### **4. Obligations over alleged offenders once they are within the territory of a State Party**

UNTOC also contains a similar obligation as to that found in the SUA Convention and Hostages Convention, in that a State Party in which an alleged offender is found is obliged to either extradite or prosecute such alleged offenders pursuant to Article 16 (10). However, in contrast to SUA and the Hostages Convention, “(a) State Party in whose territory an alleged offender is found, if it does not extradite such person in respect of an offence to which this article applies solely on the ground that he or she is one of its nationals, shall, at the request of the State Party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution”. Accordingly, it appears as if a request from another State is a prerequisite to a duty to submit a case for prosecution<sup>97</sup>.

Like the Hostages Convention, UNTOC also sets out specific reasons for which extradition may be refused<sup>98</sup>.

#### **5. Mechanisms to facilitate extradition under UNTOC**

UNTOC contains similar provisions on extradition contained in both the SUA Convention and the Hostages Convention which facilitate extradition<sup>99</sup>.

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<sup>96</sup> Article 15 (4), UNTOC

<sup>97</sup> Guilfoyle, *supra* note 16 at 35

<sup>98</sup> Article 16 (14), UNTOC

<sup>99</sup> Article 16, UNTOC

## **6. Cooperation and Mutual Legal Assistance under UNTOC**

In contrast to the more general obligation of ‘co-operation’ in legal proceedings under the SUA Convention and Hostages Convention, UNTOC contains comprehensive provisions on mutual legal assistance. Under Article 18 (1), State Parties are required to “*afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by UNTOC*”, including, *inter alia*, taking evidence or statements from persons<sup>100</sup>, effecting service of judicial documents<sup>101</sup> and executing searches and seizures<sup>102</sup>.

A State can request for mutual legal assistance if it has “*reasonable grounds to suspect*” that the relevant offence “*is transnational in nature, including that victims, witnesses, proceeds, instrumentalities or evidence of such offences are located in the requested State Party and that the offence involves an organized criminal group*”<sup>103</sup>.

The provisions on mutual legal assistance in UNTOC have been described as a “mini-MLA treaty” in that it sets out a “complete mutual legal assistance regime that parties can apply between themselves in the absence of other agreements<sup>104</sup>”. Accordingly, it would considerably enhance regional co-operation in the prosecution and punishment of perpetrators of attacks of kidnap for ransom or ship hijacking in the region.

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<sup>100</sup> Article 18 (3) (a), UNTOC

<sup>101</sup> Article 18 (3) (b), UNTOC

<sup>102</sup> Article 18 (3) (c), UNTOC

<sup>103</sup> Article 18 (1), UNTOC

<sup>104</sup> Guilfoyle, *supra* note 16 at 36



## G. CONCLUSIONS

### ***1. UNCLOS, the SUA Convention, the Hostages Convention and UNTOC establish an effective legal framework for the arrest, prosecution and punishment of perpetrators of acts of kidnap for ransom and ship hijacking***

The use of UNCLOS, the SUA Convention, the Hostages Convention and UNTOC represent a comprehensive approach towards combating attacks against vessels, particularly the more serious attacks of kidnap for ransom and hijacking. While UNCLOS will always provide the basic framework, the other Conventions can supplement UNCLOS and address some though not all of its deficiencies.

For instance, the SUA Convention, the Hostages Convention and UNTOC do not provide for the rights of seizure, visit or hot pursuit granted under UNCLOS. That said, unsurprisingly, there appear to be no international treaties that allow these rights in territorial waters<sup>105</sup>. UN Security Council resolutions on Somalia have allowed naval States co-operating with the Transitional Federal Government of Somalia (TFG) to enter the territorial waters of Somalia with advance notification to the TFG<sup>106</sup>. However, this was on an exceptional basis dependent on the consent of the TFG and does not establish customary international law<sup>107</sup>. Thus, the only feasible solution to the problem of apprehension of perpetrators in territorial waters is increased co-operation between States through mechanisms such as expedited approval procedures for entry into territorial waters and coordinated or joint patrols.

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<sup>105</sup> Rob McLaughlin, "United Nations Mandated Naval Interdiction Operations in the territorial sea," 2 *International Comparative and Law Quarterly* 51 (2002) 249 at 277

<sup>106</sup> See, for example, UN Security Council Resolution 1816 available at <http://www.un.org/News/Press/docs/2008/sc9344.doc.htm>

<sup>107</sup> Due to the concern of countries such as Indonesia who feared that the provisions in the relevant Security Council Resolutions permitted an exceptional incursion into the territorial sovereignty of a state, both Resolution 1816 and its follow-up, Resolution 1851, contain language which expressly states that the authorization to enter into territorial waters applied only to Somalia and did not establish customary international law: Eugene Kontorovich, "International Legal Responses to Piracy off the Coast of Somalia," 13 *ASIL Insight*, Issue 2, February 6, 2009

Despite the absence of direct enforcement provisions in the SUA Convention, Hostages Convention and UNTOC, these Conventions enhance international cooperation between States Parties by devising and adopting effective measures to ensure the prevention, arrest, prosecution and punishment of persons who commit carefully defined offences which all States have a common interest in suppressing. If all the States in a region are Parties to one of the Conventions, a person who commits an offence under that Convention will have no place of refuge. The Conventions do this by obliging State Parties to take into custody alleged offenders which are present in their territory and either extraditing them to another State Party with jurisdiction over the alleged offender or prosecuting the alleged offenders for offences which have serious penalties. The Conventions also provide several mechanisms for facilitating the extradition of alleged offenders to other State Parties and provide for co-operation in criminal proceedings and in the case of UNTOC, have extensive provisions on mutual legal assistance.

The Conventions also address the onshore organization and planning of attacks against vessels. UNTOC in particular criminalizes acts of organization and planning as well as the associated offence of money-laundering which could cover those who deal with the ransom money, those who facilitate the resale of the vessel and those who purchase the vessel.

It should be borne in mind that none of the Conventions change existing rules on sovereignty over acts within territorial waters or the principles governing jurisdiction on the high seas and in territorial waters. They only address offences which are serious in nature such as the kidnap of crew and hijacking of ships and which have a transnational element. Also, none of the other Conventions make any exception to the principle that a ship on the high seas cannot be boarded without the consent of the flag State, or the principle that the coastal State has the exclusive right to board ships in its territorial sea that are suspected of having committed serious offences.

## ***2. The effectiveness of UNCLOS, the SUA Convention, the Hostages Convention and UNTOC as a legal framework depends on their ratification and proper implementation***

The effectiveness of all the Conventions in establishing a legal framework adequate to deal with kidnap for ransom and ship hijacking depends on the ratification and proper implementation of

these Conventions. UNCLOS and UNTOC are the most widely ratified by States in the region, followed by the Hostages Convention and last, the SUA Convention (see annexed table). States in the region who have not already done so, should ratify these Conventions. Once ratified, States should take steps to implement the provisions of these Conventions in their national legislation. Without sufficient national legislation, perpetrators of these attacks will either go unpunished or will face a punishment not commensurate with their crime.

With regards to implementing national legislation, the first step that States should take is to review their national laws on piracy to ensure that first, piracy as defined in UNCLOS is a criminal offence under their national laws and second, that their courts have jurisdiction to try and punish persons for acts of piracy on the high seas or in the EEZ of another State.

States should also examine the best way to implement national legislation for the SUA Convention, the Hostages Convention and UNTOC by examining implementing legislation of other States<sup>108</sup>. The United Nations Office on Drugs and Crime has also prepared a legislative guide to assist States seeking to ratify or implement UNTOC<sup>109</sup> and this should be examined to determine its suitability.

### ***3. States in the region should adopt the Code of Practice for the Investigation of Crimes of Piracy and Armed Robbery Against Ships***

UNCLOS, SUA Convention, Hostages Convention and UNTOC all do not deal with the problem of evidence collection at sea, described in Part B above. To fill this gap, States in the region should adopt the IMO Code of Practice for the Investigation of Crimes of Piracy and Armed Robbery Against Ships<sup>110</sup>. The Code of Practice provides guidelines for the training of investigators in *inter alia* the arrest of offenders, securing of evidence and gathering and assessing related information from all available sources. It also provides pointers on steps to protect the crime

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<sup>108</sup> See, for example, Singapore's implementation of the SUA Convention through the Maritime Offences Act (Chapter 170B) available at <http://statutes.agc.gov.sg/>.

<sup>109</sup> See UNODC website at <http://www.unodc.org/unodc/en/treaties/CTOC/legislative-guide.html>

<sup>110</sup> International Maritime Organization, *Code of Practice for the Investigation of Crimes of Piracy and Armed Robbery against Ships*, IMO Assembly Resolution A. 1025 (26), adopted 18 December 2009

scene and secure evidence. Accordingly, States should ensure that personnel on their warships and patrol vessels follow the Code of Practice. This, in conjunction with cooperation from the shipping industry in ensuring that their crew members are available and willing to testify, should go a long way in ensuring that perpetrators of attacks against vessels are prosecuted and punished.