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CIL RESEARCH PROJECT ON INTERNATIONAL MARITIME CRIMES

SINGAPORE'S COUNTRY REPORT

By Tara Davenport

This Country Report was prepared in response to a Questionnaire drafted for the CIL Research Project on International Maritime Crimes

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Singapore's Country Report

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I. INTRODUCTION

This Report was prepared in response to a Questionnaire prepared by the Centre for International Law (CIL) at the National University of Singapore (NUS) as part of its Research Project on International Maritime Crimes.[1] The purpose of this Report is to examine Singapore's ratification and implementation of global conventions that can be used to combat international maritime crimes such as piracy, ship hijacking, hostage-taking of crew and maritime terrorism (Maritime Crimes).

Part II will give a brief overview of Singapore's system of governance to give context to Singapore's treaty ratification and implementation procedures.

Part III will briefly describe Singapore's treaty ratification and implementation procedures. Part IV will examine Singapore's implementation of the piracy provisions in the 1982 United Nations Convention on the Law of the Sea (UNCLOS).

Part V to Part VII will examine Singapore's implementation of three "counter-terrorism" conventions, namely the 1979 International Convention against the Taking of Hostages (the Hostage-Taking Convention), the 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (the SUA Convention) and the 1999 International Convention for the Suppression of the Financing of Terrorism (TFC).

Part VIII will examine Singapore's implementation of the 2000 United Nations Convention against Transnational Organized Crime (UNTOC).

Part IX will examine the provisions on extradition and mutual legal assistance under the aforementioned conventions.

Part X concludes that overall, Singapore has implemented its obligations under these conventions and as a result, has established a robust legal framework to deal with Maritime Crimes.

[1] The Questionnaire is available at the CIL Website <http://cil.nus.edu.sg/wp/wp-content/uploads/2010/10/CIL-Questionnaire-For-Country-Reports.pdf>

II. BRIEF OVERVIEW OF SINGAPORE'S SYSTEM OF GOVERNANCE

Singapore, a former British colony, has a system of governance and a legal system largely inherited from the United Kingdom, although since independence in 1965, "there has been a gradual – and increasing – movement towards developing an autochthonous legal system."[2]

Singapore has a written constitution[3] which is the supreme law of the land.[4] Singapore's Constitution is "based on the doctrine of separation of powers (as modified to accommodate the Westminster model of parliamentary government)."[5] Accordingly, as per the Constitution, Singapore's government is arranged into the Executive, the Legislature and the Judiciary with each being established under their own separate constitutional chapters.[6]

1. The Executive

The Executive consists of the President, the Cabinet and the Attorney-General. The Constitution vests executive authority in the President, who is considered Head of State and is elected by the people.[7] This executive authority may be exercised by the President or by the Cabinet or any other Minister authorized by the Cabinet.[8]

Under the Constitution, the Cabinet has the general direction and control of the Government and shall be collectively responsible to Parliament.[9] The Cabinet is responsible for all government policies and the day-to-day administration of the affairs of state.[10] The Cabinet comprises the Prime Minister and the ministers in charge of the ministries of (1) Community Development, Youth and Sports, (2) Defence, (3) Education, (4) Environment and Water Resources, (5) Finance, (6) Foreign Affairs, (7) Health, (8) Home Affairs, (9) Information, Communications and the Arts, (10) Law, (11) Manpower, (12) National Development, (13) Trade and Industry, and (14) Transport.[11]

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[2] Eugene CHAN and Gary TAN, "The Singapore Legal System," Laws of Singapore, Singapore Academy of Law available at <http://www.singaporelaw.sg/content/LegalSyst.html>

[3] Constitution of the Republic of Singapore (1999 Revised Edition), Singapore Statutes Online available at < http://statutes.agc.gov.sg/>

[4] Article 4, Constitution of the Republic of Singapore (1999 Revised Edition), *ibid.*

[5] *Cheong Sok Leong v. Public Prosecutor* [1988] 2 MLJ 481 at 487F.

[6] THIO Li-ann, "The Constitutional Framework of Powers" in Kevin TAN, ed., *The Singapore Legal System*, 2nd ed. (Singapore, Singapore University Press: 1999) at 77. However, it should be noted that Singapore does not adopt the traditional strict separation of powers between the legislature and executive in that "(t)he Cabinet is effectively "fused" to Parliament since cabinet members are often the leaders of the political party which has the lion's share of seats in Parliament. Policy-making initiative stems from the Cabinet down through Parliament." See Thio, at 78.

[7] See Article 17, Constitution of the Republic of Singapore (1999 Revised Edition), available at < http://statutes.agc.gov.sg/>

[8] See Article 23, Constitution of the Republic of Singapore (1999 Revised Edition), *ibid.*

[9] See Article 24 (2), Constitution of the Republic of Singapore (1999 Revised Edition), *ibid.*

[10] See Singapore Government Homepage available at <http://app.sgdi.gov.sg/listing.asp?agency_subtype=dept&agency_id=0000000179>

[11] See Singapore Government Homepage available at <http://app.sgdi.gov.sg/listing.asp?agency_subtype=dept&agency_id=0000000179>

The Prime Minister is appointed by the President and must be, in the President's opinion, someone who "is likely to command the confidence of the majority of the Members of Parliament." The President shall also appoint other Ministers from among Members of Parliament acting in accordance with the advice of the Prime Minister.[12] In practice, the Prime Minister is "usually the leader of the dominant political party, holding the majority of seats in Parliament, supporting his position as the legislative and policy leader of Singapore" and "the Prime Minister selects his Cabinet members and assigns them their portfolios."[13]

In addition to the individual Ministries, Singapore also has "Statutory boards" which "are semi-independent agencies that specialize in carrying out the specific plans and policies of the Ministry."[14] They are established by an Act of Parliament, report to their parent Ministry and usually "have greater autonomy and flexibility in their operations."[15] Singapore presently has 64 statutory boards.[16]

The Attorney-General is the principal legal advisor to the Government.[17] Under the Constitution, the duty of the Attorney-General is to advise the Government upon such legal matters and to perform such other duties of a legal character as may from time to time be referred to him by the Government.[18] The Attorney-General's Chambers "assists the Judiciary in the fair and impartial administration of justice in Singapore in carrying out its prosecutorial functions" and advises the Government "in all aspects of public administration law, criminal law, international law, legislation and law reform."[19] It presently has 9 divisions dealing with a wide variety of matters.[20]

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[12] Article 25, Constitution of the Republic of Singapore (1999) Revised Edition, Singapore Statutes Online, available at < http://statutes.agc.gov.sg/>

[13] THIO Li-ann, "The Constitutional Framework of Powers" in Kevin TAN, ed., *The Singapore Legal System*, 2nd ed. (Singapore, Singapore University Press: 1999) at 84.

[14] Ministry of Trade Website available at <http://app.mti.gov.sg/default.asp?id=100>

[15] Barbara Leitch LEPOER, ed., *Singapore: A Country Study*, Washington, GPO for the Library of Congress, 1989 available at < http://countrystudies.us/singapore/>

[16] Singapore Government Website available at <http://app.sgdi.gov.sg/index.asp?cat=2>

[17] Article 35, Constitution of the Republic of Singapore (1999 Revised Edition), available at <http://statutes.agc.gov.sg/>

[18] Article 35, Constitution of the Republic of Singapore (1999 Revised Edition), available at <http://statutes.agc.gov.sg/>

[19] See Attorney-General's Chambers Website available at <http://www.agc.gov.sg/index.html>

[20] The 9 divisions are the Civil Division, Criminal Justice Division, State Prosecution Division, Economic Crimes and Governance Division, International Affairs Division, Legislation and Law Reform Division, Corporate Services Division, Information Division and the Internal Audit Unit: See Attorney-General's Chambers Website available at <http://www.agc.gov.sg/index.html>

2. The Legislature

Under the Constitution, the legislative power of Singapore is vested in the Legislature which consists of the President and Parliament.[21] The Parliament of Singapore is a unicameral body that is made up of only one chamber and consists of the elected representatives of the people.[22] It is modeled after the Westminster system of parliamentary democracy where Members of Parliament are voted in at regular General Elections.

The leader of the political party that secures the majority of seats in Parliament will be asked by the President to become the Prime Minister. The "life" of each Parliament is 5 years from the date of its first sitting after a General Election. General elections must be held within 3 months of the dissolution of Parliament.[23] Parliament generally has three functions, namely law-making, controlling the state's finances and taking up a critical/inquisitorial role to check on the actions of the governing party and the Ministries.[24]

3. The Judiciary

Consistent with the doctrine of separation of powers, judicial power in Singapore is vested in the Supreme Court and in other such subordinate courts as established by law.[25] The duty of the courts is to "superintend the administration of justice in Singapore.[26]"

III. RATIFICATION AND IMPLEMENTATION OF GLOBAL CONVENTIONS IN SINGAPORE

1. Treaty Ratification

Singapore's Constitution does not have any provisions on who has the authority to negotiate, conclude and/or ratify international conventions.[27] Neither does it have any legislation (primary or subsidiary), executive or administrative orders or any other document, official or otherwise, setting out the practices and procedures to be followed in treaty ratification and implementation.

[21] Article 38, Constitution of the Republic of Singapore (1999 Revised Edition), available at <http://statutes.agc.gov.sg/>
[22] Kevin TAN Yew Lee, "Parliament and the Making of Law in Singapore" in Kevin TAN, ed., *The Singapore Legal System*, 2nd ed. (Singapore, Singapore University Press: 1999)
[23] Parliament Homepage available at < http://www.parliament.gov.sg/home/main.htm >
[24] Parliament Homepage available at <http://www.parliament.gov.sg/AboutUs/Function.htm >
[25] Article 93, Constitution of the Republic of Singapore (1999 Revised Edition), Singapore Statutes Online, available at <http://statutes.agc.gov.sg/>
[26] See Supreme Court Homepage <http://app.supremecourt.gov.sg/default.aspx?pgID=38>
[27] LIM Chin Leng, "Singapore and International Law," Singapore Laws, Singapore Academy of Law, available at <http://www.singaporelaw.sg/content/IntLaw.html>

i. Government Agencies Responsible for International Conventions

Following the British constitutional tradition, in Singapore, the Executive is responsible for treaty-making with foreign nations.[28]

The Government agency sent to represent Singapore at the negotiation of international conventions will depend on the subject-matter of the convention. Similarly, the Government agency responsible for deciding which international treaty to sign, ratify and/or accede to, will depend on the subject-matter of the international convention. For example, the Maritime Port Authority of Singapore (MPA), as the statutory board responsible for Singapore's maritime interests,[29] will represent Singapore at all meetings of the International Maritime Organization (IMO), including those convened for the negotiation of international legal conventions on shipping or marine environment matters. It will also be responsible for implementing and administering such IMO Conventions.

The International Affairs Division (IAD) of the Attorney-General Chambers of Singapore (AGC) provides legal advice on all aspects of international law to the Government of Singapore.[30] It also represents Singapore at bilateral or multilateral negotiations, particularly in trade related matters and transnational crimes and provides legal advice to the Government agencies participating in such negotiations.[31]

Most of Singapore's Government agencies have legal directorates or legal services departments and some have specific departments responsible for international agreements.[32] However, these directorates or departments are unlikely to have lawyers which give specific advice on international law and in such cases, the Government agency seeks advice from the IAD.

The Ministry of Foreign Affairs (MFA) does not have a separate Legal Division. It will also seek advice on international law matters from IAD. According to then Minister of Law, Professor S. Jayakumar, in a statement made in Parliament in 2008, the Government was developing international law expertise within the government, an example of which was the attachment of IAD officers to MFA.[33] However, the attachment scheme is reportedly no longer in operation.

In some cases, particularly when an international convention cuts across the responsibilities of several ministries, an Inter-Ministerial Committee is established consisting of the relevant Ministry as well as the AGC to oversee the

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[28] *Ibid.*
[29] See MPA Website available at <http://www.mpa.gov.sg/sites/global_navigation/about_mpa/about_mpa.page>
[30] Attorney-General's Chambers Homepage available at <http://www.agc.gov.sg/international/index.html>
[31] *Ibid.*
[32] For example, the Ministry of the Environment and Water Resources (MEWR) has an International Agreements Department within its International Policy Division: See Singapore Government Website available at <http://app.sgdi.gov.sg/listing.asp?agency_subtype=dept&agency_id=0000014545>
[33] Statement of Minister of Law, Minister of Law in response to a question from Professor Thio Li-Ann, Parliament No. 11, Session No. 1, Volume No. 84, Sitting No. 6, 27 February 2008

ratification/accession of international conventions. An example is the Inter-Ministerial Task Force on Anti-Terrorism set up under the authority of the Attorney-General and the Minister for Foreign Affairs after the terrorist attacks on September 11 2001. The Task Force consists of senior officials from various ministries, the Attorney-General's Chambers, the Monetary Authority of Singapore and the Commercial Affairs Department of the Police to "update existing law so that it implements international legal instruments and to improve coordination between the various national government authorities in the fight against terrorism."[34]

Similarly, for the Convention on Elimination of All Forms of Discrimination against Women, an Inter-Ministerial Committee, chaired by the Ministry of Community Development and Sports, was established to oversee implementation of Singapore's obligations under CEDAW.[35]

ii. Role of Parliament in Treaty Ratification

Unlike some other national constitutions,[36] Singapore's Constitution does not have any provision which requires the involvement or consent of Parliament before an international convention is ratified. However, Parliament does have some involvement in treaty-making.

First, there is nothing in the Constitution that states that Parliament cannot debate questions of international law, including such treaties which the executive wishes to negotiate and ratify.[37]

Second, Singapore is a common law jurisdiction. National legislation needs to be enacted before an international convention can have the force of law in Singapore. Article 38 of the Constitution provides that Parliament has the power to make laws in Singapore. The power of the Legislature to make laws shall be exercised by Bills passed by Parliament and assented to by the President.[38] Accordingly, for international conventions which expressly require implementation by way of domestic statute, "Parliament could still refuse, at least in legal principle, to endorse the decision of the executive branch to enter

[34] Report to the Counter-Terrorism Committee on Singapore's Implementation of United Nations Security Council Resolution 1373 (2001), Interpol Website available on National Terrorism Laws available at <http://www.interpol.int/public/bioterrorism/nationallaws/singapore.pdf>

[35] Comments of Minister of Law, Professor Jayakumar, to a question posed by Mr Simon Tay during Parliamentary Debates, Parliament No. 9, Session No. 2, Volume No. 73, Sitting No. 8, Sitting Date: 13 March 2001

[36] Many written constitutions stipulate that parliamentary approval of treaties is required before ratification of at least some categories of treaties, for example, France, Germany, Ireland: See Arabella THORP, "Parliamentary Scrutiny of Treaties" House of Commons Library Website, SN/IA/4693, 25 September 2009

[37] LIM Chin Leng, "Singapore and International Law," available at the Singapore Academy of Law Website available at <http://www.singaporelaw.sg/content/IntLaw.html>

[38] Article 58 (1), the Constitution of Singapore (1999 Revised Edition), Singapore Statutes Online available at <<http://statutes.agc.gov.sg/>

into the treaty in question by refusing to pass such implementing legislation."[39] It should be noted, however, that not all international conventions require implementation through national legislation. For those conventions which do not require implementing legislation, Parliament has no involvement.

iii. Treaty Ratification/Accession Process

There is no publicly available resource which outlines Singapore's treaty ratification/accession process. However, as mentioned above, the Executive is responsible for treaty-making with foreign nations.[40] The Executive reportedly systematically reviews various international conventions to determine whether they should be ratified or acceded to.[41] It is not clear how frequently such a review is done nor who it is done by, although in cases where an Inter-Ministerial Committee is formed to deal with a particular subject-matter, this Task Force would usually do the review.

Singapore only accedes to or ratifies an international convention "after a very careful examination of the situation" because, as stated by then Minister of Law, Professor Jayakumar:

> [W]hen we adhere to an international treaty, we want to be sure that we will be able to implement the provisions faithfully, or to put it the other way, we do not want to be accused, after we have become a state party, that we are in breach of the provisions.[42]

Before a decision is made on accession/ratification, all relevant agencies are consulted to see whether Singapore can implement the international convention[43] and after a "careful examination of [Singapore's] policies, laws and legal procedures."[44] Singapore will accede to an international convention only when it is in its interest to do so and when it is fully satisfied that it can give effect to the provisions of the international convention.[45]

To fulfill the latter requirement, Singapore will usually ensure that it has existing legislation[46] or new legislation[47] in place before depositing its instrument of ratification

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[39] LIM Chin Leng, "Singapore and International Law," Singapore Academy of Law Website available at <http://www.singaporelaw.sg/content/IntLaw.html>

[40] *Ibid*

[41] Comments of Minister of Law, Professor Jayakumar, to a question posed by Mr Simon Tay during Parliamentary Debates, Parliament No. 9, Session No. 2, Volume No. 73, Sitting No. 8, Sitting Date: 13 March 2001

[42] *Ibid.*

[43] *Ibid.*

[44] Comments of Minister of Law, Professor S Jayakumar to a question posed by Mr Simon Tay on Accession to Human Rights Treaties in Written Answers to Question for Oral Answer Not Answered by 1:30 pm, Parliament No. 9, Session No. 1, Volume No. 69, Sitting N0. 3, Sitting Date: 30 June 1998

[45] *Ibid.*

[46] Comments of Minister of Law, Professor Jayakumar, to a question posed by Mr Simon Tay during Parliamentary Debates, Parliament No. 9, Session No. 2, Volume No. 73, Sitting No. 8, Sitting Date: 13 March 2001 where he said "So if there is an obligation to enact legislation, we will do so. But if there is no obligation to enact, and if it is a discretionary position, then we will examine whether our other body of laws, our legal framework, enables us to comply with the international convention without enacting specific legislation."

or accession to an international convention. For international conventions which require implementation through new legislation, it is common for the draft implementing legislation to have gone through its third reading by Parliament before Singapore deposits its instrument of accession/ratification. The new legislation will commonly come into force when the applicable convention comes into force for Singapore.

2. Treaty Implementation in Singapore

i. Government Agencies

As mentioned above, before ratifying or acceding to an international convention, Singapore will ensure that it either has existing legislation which complies with its obligations under the convention or it will enact new legislation.

If an international convention does not oblige States Parties to enact new legislation, Singapore will examine whether other body of laws and/or its legal framework enables it to comply with the international convention without enacting specific legislation.[48] Usually, the AGC will be responsible for determining whether the international convention in question imposes an obligation to enact specific legislation.[49]

For international conventions which fall under the purview of several ministries and do require implementation through enacting new legislation, as mentioned above, an Inter-Ministerial Committee will be formed. It will work with the AGC in the implementation of the international convention. If the international convention relates to the responsibility of only one Ministry, then that Ministry will work with the AGC in the implementation of the international convention.

ii. Treaty Implementation Process

If the international convention requires Singapore to enact new legislation or amendments to existing legislation, it will be subject to the usual law-making process in Singapore, which is set out below.

Approval from Cabinet

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[47] For example, the International Convention against the Taking of Hostages was acceded to by Singapore on 22 October 2010. Singapore Parliament passed the Hostage Taking Bill on 16 August 2010 and it was assented to by the President on 31 August 2010, and came into operation on 21 November 2010. Similarly, for the 1988 Convention on the Suppression of Acts against the Safety of Maritime Navigation, Singapore deposited its instrument of accession on 3 February 2004, the Bill was first read on 16 August 2003, and came into operation on 3 May 2004.

[48] See Comments of Minister of Law, Professor Jayakumar, to a question posed by Mr Simon Tay during Parliamentary Debates, Parliament No. 9, Session No. 2, Volume No. 73, Sitting No. 8, Sitting Date: 13 March 2001

[49] For example, in response to a question from Simon Tay on why Singapore had ratified the Genocide Convention, Professor Jayakumar stated that he was guided by the legal experts and all legal experts in the Attorney-General's Chambers that there was no mandatory obligation to enact specific delegated legislation for the Genocide Convention but Singapore was still looking at drafts of legislation.

First, the Ministry or Statutory Board responsible for the international convention (Lead Agency) will have to seek in-principle approval from the Cabinet to draft the implementing legislation.[50]

Preparation of a Draft Bill

Second, after the Lead Agency has obtained in-principle approval from the Cabinet on the drafting of the proposed legislation, the Permanent Secretary of the Lead Agency will either prepare a draft of the Bill or a detailed statement of its proposed contents and refer it to the AGC.[51]

The Legislative and Law Reform Division (LLRD) of the AGC handles the vetting and drafting of all Government Bills in Singapore.[52] The LLRD ensures that all Bills are consistent with the Singapore Constitution and with other Acts of Parliament, and any parent legislation.[53] The LLRD and the representatives from the Lead Agency will usually have discussions to enable the LLRD "to better understand the policy concerned so as to facilitate the drafting."[54]

In addition, in some cases, the Lead Agency will consult with experts and relevant stakeholders when preparing the draft legislation. The procedure, formality and degree of transparency when engaging in such consultations will vary according to the "level of public interest or concern that is likely to be generated by the proposed legislation, the sectors of the economy that are likely to be affected by the proposed legislation and the importance of the proposed legislation to Singapore's economic development."[55]

If the proposed legislation only affects a narrow sector of Singapore industry or society, then the Lead Agency will consult that sector on an informal or private basis. For example, the MPA often has informal consultations with the shipping industry as represented by the Singapore Shipping Association and other shipping organizations when it is deciding on ratifying or implementing new maritime conventions.[56]

The Lead Agency may also have "public consultations" on issues which potentially have a wider impact on the Singapore public. Recent examples include the Public Consultation undertaken by the Ministry of Manpower (MOM) on proposed enhancements to the Workplace Safety and Health Act[57] and undertaken by the Ministry of Trade and Industry

[50] See AGC Website available at <http://www.agc.gov.sg/llrd/legislative_process.htm>
[51] Kevin TAN, *An Introduction to Singapore's Constitution,* Revised Edition (Singapore, Talisman Publishing Pte Ltd, 2011) at 47.
[52] See AGC Website available at < http://www.agc.gov.sg/llrd/legislative_process.htm>
[53] Robert BECKMAN, "The Role of Scientists, Experts and Stakeholders in the Law-Making Process in Singapore," March 2005, CIL Website available at <http://cil.nus.edu.sg/wp/wp-content/uploads/2010/10/Beckman-Role-of-Scientists-Experts-and-Stakeholders-in-Law-Making-Process-in-Singapore.pdf>
[54] *Ibid.*
[55] *Ibid.*
[56] *Ibid.*
[57] See MOM Website available at <http://www.mom.gov.sg/newsroom/Pages/PressReleasesDetail.aspx?listid=345>

on proposed amendments to consumer protection legislation.[58] From 2006, public consultation exercises have been done online through the Singapore Government's REACH Website (Reaching Everyone For Active Citizenry @ Home).[59]

The Bill will also usually have an Explanatory Statement setting out the provisions as well as a Comparative Table which shows which foreign legislation was used to draft the provisions. Singapore often examines other legislation which implements the same convention, usually from common law jurisdictions such as Australia, New Zealand and the UK.

Approval from Ministry of Law

Third, once the Bill has been drafted (either by the Lead Agency or the LLRD) and vetted by the LLRD, a copy of the Memorandum to the Cabinet is sent to the Permanent Secretary for the Ministry of Law for approval before submission to the Cabinet.[60]

Introduction and First Reading of Bills in Parliament

As mentioned above, the Legislature in Singapore is made up of the President and Parliament of Singapore. A Bill becomes law only when it is passed by Parliament and assented to by the President.

Bills go through the following stages in Parliament:

1. Introduction and First Reading;
2. Second Reading;
3. Committee Stage;
4. Third Reading.

Private Members of Parliament or the Government may introduce a Bill in Parliament.[61] Implementing legislation of international conventions are usually Government Bills. The Minister of the Lead Agency introduces the Bill setting out implementing legislation or amendments to existing legislation.

For Government Bills, two clear days of notice must be given to the Clerk of Parliament, together with a copy of the Bill. Bills that either directly or indirectly provide for tax collection, state expenditure involving the Consolidated Fund or matters relating to the financial obligations of the Government, may not be introduced or moved unless it is recommended by the President and signed by a Minister.[62]

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[58] See REACH Website available at < http://app.reach.gov.sg/olcp/asp/ocp/ocp01d1.asp?id=4583>
[59] See REACH Website available at < http://app.reach.gov.sg/olcp/asp/ocp/ocp01a.asp>
[60] See AGC Website available at <http://www.agc.gov.sg/llrd/legislative_process.htm>
[61] Bills can also be introduced by Private Members but Notice of Introduction must be given at least 4 days before the introduction of the Bill. See AGC Website, *ibid.*
[62] Kevin TAN, *An Introduction to Singapore's Constitution,* Revised Edition (Singapore, Talisman Publishing Pte Ltd, 2011) at 48.

On the First Reading of the Bill, the Minister introducing the Bill will read the long title of the Bill and then present the Bill to the Clerk at the Table. The Clerk will then read aloud the short title of the Bill. The Bill will then have been introduced into Parliament without questions put. A date will be fixed for the Second Reading of the Bill.[63]

The Second Reading

With the exception of urgent Bills, the Second Reading of a Bill can only occur when a clear 7 days have passed after it has been printed and circulated to Members of Parliament and has appeared in the Gazette.[64] If an amendment is made to the Bill after the First Reading, two clear days notice of the amendment signed by a Cabinet Minister must be given to the Clerk.[65]

During the Second Reading, the Minister moving the Bill usually delivers a Speech setting out the objectives and key provisions of the Bill. Members will then debate the Bill.[66]

At the end of the debate, a motion is put "That the Bill be now read a Second Time."[67] A vote is taken on whether the Bill should pass onto its Second Reading.[68] Once the Bill passes its Second Reading, it moves onto the Committee Stage.[69]

The Committee Stage

After a Bill has been read a second time, it shall stand committed to a Committee of the whole Parliament unless Parliament on a motion commits it to a Select Committee because it believes the Bill requires special consideration.[70]

A Committee of the whole Parliament comprises all the Members of Parliament. Usually, the Committee of the whole Parliament "will deliberate bills that are uncomplicated, are of a regulatory measure or are minor amendments."[71] If it is committed to a Committee of the whole Parliament, Parliament deliberates the Bill in great detail, going through each clause.

Select Committees are small committees appointed by Parliament for a specific purpose, usually to examine a particular piece of legislation.[72] Select Committees are appointed for

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[63] *Ibid.*
[64] AGC Website available at <http://www.agc.gov.sg/llrd/legislative_process.htm>
[65] Kevin TAN, *An Introduction to Singapore's Constitution,* Revised Edition (Singapore, Talisman Publishing Pte Ltd, 2011) at 48.
[66] *Ibid.*
[67] *Ibid.*
[68] *Ibid.*
[69] *Ibid.*
[70] AGC Website available at <http://www.agc.gov.sg/llrd/legislative_process.htm>
[71] Kevin TAN, *An Introduction to Singapore's Constitution,* Revised Edition (Singapore, Talisman Publishing Pte Ltd, 2011) at 45.
[72] *Ibid.*

this purpose only if the Bill is "complex, controversial or has wide-ranging impact." Select Committees "have the power to send for persons, papers, and records in the fulfilling of their function and are accountable to the whole House by way of a report in which they express their findings."[73] The public is invited to make written representations to the Select Committee on the Bill and may be invited to give evidence before the Select Committee on the matter.[74]

Examples of such Bills which were referred to a Select Committee include the Building Maintenance and Management Bill (Bill No. 6/2004), the Administration of Muslim Law (Amendment) Bill (Bill no. 18/1998), the Advance Medical Directive Bill (Bill no. 40/1995), Maintenance of Religious Harmony Bill (Bill no. 14/1990), Human Organ Transplant Bill [Bill no. 26/1986). Bills implementing international conventions are not usually referred to Select Committees unless they require special consideration.[75]

The Committee of the whole Parliament and Select Committees have the power to make amendments to the Bill. After the Bill has been considered by the Committee (be it the Committee of the whole Parliament or the Select Committee), a report must be made to Parliament, who will either adopt the findings in the report in full, in part or reject them outright.[76]

In cases where the Bill is referred to the Committee of the whole Parliament, the findings in the Report will be inevitably adopted in their entirety. The findings of the Select Committee may not be adopted in their entirety and will depend on whether the Government is prepared to accept these recommendations or not.[77]

The Bill, with any amendments, will be read the third time.

Third Reading

In the Third Reading of the Bill, amendments may again be proposed but these will usually be of a minor character and the Bill is not debated vigorously as in the Second Reading.[78] At the end of the Third Reading, the Bill is put to a vote and once accepted, will have been passed by Parliament. However, further steps are needed before the Bill becomes law.

[73] *Ibid.*
[74] AGC Website available at <http://www.agc.gov.sg/llrd/legislative_process.htm>
[75] The only Bill which implemented international convention(s) was the Patents Bill (Bill no. 4/94/A) See Report of the Select Committee on the Patents Bill (Bill no. 4/94/A) presented on 22 August 1994
[76] Kevin TAN, *An Introduction to Singapore's Constitution,* Revised Edition (Singapore, Talisman Publishing Pte Ltd, 2011) at 49.
[77] *Ibid.*
[78] *Ibid.*

The Presidential Council for Minority Rights

Under the Constitution, all Bills passed by Parliament (except for money Bills, urgent Bills and Bills affecting defence, security, public safety, peace or good order in Singapore),[79] must be forwarded to the Presidential Council for Minority Rights[80] to ensure that they do not discriminate against any racial or religious community.[81] In particular, the function of the Council is to "draw attention to any Bill or to any subsidiary legislation if that Bill or subsidiary legislation is, in the opinion of the Council, a differentiating measure." A differentiating measure means "any measure which is or likely in its practical application to be disadvantageous to persons of any racial or religious community and not equally disadvantageous to persons of other such communities, either directly by prejudicing persons of that community or indirectly by giving advantage to persons of another community."[82]

The Council comprises a Chairman who is appointed for 3 years, not more than 10 members who are appointed for life and not more than 10 members appointed for 3 years. All its members are appointed by the President on the advice of the Cabinet[83].

After the Council has scrutinized a Bill, it is presented to the President for his assent. It only becomes law when it has been assented to by the President.

An Act comes into force on the day of its publication in the Gazette and on the day it denotes as its commencement date.

3. Extraterritoriality under Singapore law

The Conventions that are dealt with in this Report all require State Parties to exercise, in some form or another, extraterritorial criminal jurisdiction. It is therefore important to examine how Singapore approaches extraterritoriality.

All the courts in Singapore are "created by legislation, their authority and powers are derived from statute and the scope and extent of the jurisdiction (in all the senses) must be defined with reference to these statutes."[84]

[79] Article 78 (7), Constitution of the Republic of Singapore (1999 Revised Edition), Singapore Statutes Online available at <http://statutes.agc.gov.sg/>

[80] The Presidential Council for Minority Rights was established in 1969 following the recommendations of the Wee Chong Jin Constitutional Commission: See Kevin TAN, *An Introduction to Singapore's Constitution*, Revised Edition (Singapore, Talisman Publishing Pte Ltd, 2011) at 50.

[81] Article 69 and 76 of the Constitution of the Republic of Singapore (1999 Revised Edition), Singapore Statutes Online available at <http://statutes.agc.gov.sg/>

[82] Article 68, Constitution of the Republic of Singapore (1999 Revised Edition), Singapore Statutes Online available at <http://statutes.agc.gov.sg/>

[83] Kevin TAN, "Law-Making by Parliament" in Kevin TAN, ed., *The Singapore Legal System,* 2nd ed. (Singapore, Singapore University Press: 1999) at 143.

[84] YEO Tiong Min, "Jurisdiction of the Singapore Courts," in Kevin TAN, ed., *The Singapore Legal System,* 2nd ed. (Singapore, Singapore University Press: 1999) at 255.

Accordingly, the Supreme Court of Judicature Act (Cap 322) (SCJA)[85] which establishes the Supreme Court, consisting of the High Court and the Court of Appeal, [86] sets out the criminal jurisdiction of both the High Court and the Court of Appeal.[87] The original criminal jurisdiction of the High Court is established under Section 15 (1) of the SCJA.

The High Court has jurisdiction to try all offences committed:

a) Within Singapore;
b) On board any ship or aircraft registered in Singapore;
c) By any person who is a citizen of Singapore on the high seas or on any aircraft;
d) By any person on the high seas where the offence is piracy by the law of nations;
e) By any person within or outside of Singapore where the offence is punishable under and by virtue of the provisions of the Hijacking of Aircraft and Protection of Aircraft and International Airports Act (Cap. 124) or the Maritime Offences Act (Cap. 170B); and
f) In any place or by any person if it is provided in any written law that the offence is triable in Singapore.

Section 15 (1) (f) was added to the SCJA by the Supreme Court of Judicature (Amendment) Act 1993 which came into force on 1 July 1993. It was prompted by the Malaysian decision of *Rajappan v. PP*[88] which drew a distinction between the triability of an offence and the jurisdiction to try an offence and ruled that both must be satisfied before the court can try the offence.[89] This view was followed in the Singapore High Court case of *PP v. Pong Tek Yin.*[90]

Section 15 (1) (f) was specifically inserted to give the High Court jurisdiction over offences committed outside of Singapore if it is provided in any written law that the offence is triable in Singapore.[91] At the time of the enactment of the amendment, there was no written law providing that offences committed outside of Singapore would be triable in Singapore. During the Parliamentary Debates of amendments to the SCJA, an amendment was suggested to ensure that the High Court would have jurisdiction over offences outside of Singapore without the need for a written law by providing that the

[85] See Section 3 of the Supreme Court of Judicature Act, (Cap 322), Singapore Statutes Online available at <http://statutes.agc.gov.sg/>
[86] See Section 3 of the Supreme Court of Judicature Act, (Cap 322), Singapore Statutes Online available at <http://statutes.agc.gov.sg/>
[87] See Section 3 of the Supreme Court of Judicature Act, (Cap 322), Singapore Statutes Online available at <http://statutes.agc.gov.sg/>
[88] [1986] 1 CLJ 175
[89] Yeo Tiong Min, "Jurisdiction of the Singapore Courts," in Kevin TAN, ed., *The Singapore Legal System*, 2nd ed. (Singapore, Singapore University Press: 1999) at 262.
[90] [1990] 3 MLJ 219
[91] Statement of Minister of Law, Professor Jayakumar in the Second Reading of the Supreme Court of Judicature (Amendment) Bill, Parliament No. 8, Session No. 1, Volume No. 61, Sitting No. 1, 12 April 1993

court had jurisdiction if "effects of the offence" were felt in Singapore.[92] This amendment was rejected as being too wide.[93]

Under Section 15 (1) of the SCJA, the High Court is therefore able to exercise extraterritorial jurisdiction in the circumstances described in (b) to (e) or if there is a written law providing for extraterritoriality pursuant to (f). Examples of written laws which do provide for extraterritoriality include the Terrorism (Suppression of Financing) Act and the Hostage-Taking Act 2010. This will be discussed under Part V and VI below.

However, a recent decision by the high court suggests that even legislation which does not have express words establishing extraterritorial jurisdiction may still be interpreted as having extraterritorial jurisdiction. In *Huang Danmin v. Traditional Chinese Medicine Practitioners Board,* it was held:

> …the question of whether a statute should be interpreted as having any degree of extra-territorial effect depends on the extent to which its purpose would be served by such an interpretation and whether this interpretation would result in problems relating to enforcement and international comity.[94]

IV. UNCLOS

UNCLOS was adopted on 10 December 1982 and entered into force on 16 November 1994. Singapore ratified UNCLOS on 17 November 1994.

i. National Legislation

The Ministry of Transport[95] and its Statutory Board, the MPA are generally responsible for maritime safety and security. Piracy would therefore fall under its remit.

There is no national legislation in Singapore implementing the piracy provisions contained in Articles 100 to 110 of UNCLOS.

However, there are two provisions in the Singapore Penal Code (Cap 224) which deals with acts of piracy. First, Section 130B of the Singapore Penal Code, entitled "Piracy by law of nations" deals with the offence of piracy as follows:

> (1) A person commits piracy who does any act that, by the law of nations is piracy.

[92] Statement of Associate Professor Walter Woon, in the Second Reading of the Supreme Court of Judicature (Amendment) Bill, Parliament No. 8, Session No. 1, Volume No. 61, Sitting No. 1, 12 April 1993

[93] Statement of Minister of Law, Professor Jayakumar in the Second Reading of the Supreme Court of Judicature (Amendment) Bill, Parliament No. 8, Session No. 1, Volume No. 61, Sitting No. 1, 12 April 1993

[94] Tay Yong Kwang J in *Huang Danmin v. Traditional Chinese Medicine Practitioners Board* [2010] SGHC 152 at para 31

[95] See Ministry of Transport Website available at <http://app.mot.gov.sg/Sea_Transport/Maritime_Safety_and_Security.aspx>

> (2) Whoever commits piracy shall be punished with imprisonment for life and with caning not less than 12 strokes, but if while committing or attempting to commit piracy, he murders or attempts to murder another person or does any act that is likely to endanger the life of another person, he be shall be punished with death.

Second, Section 130 C of the Penal Code makes "Piratical Acts" an offence. It provides:

> Whoever, while in or out of Singapore –
>
> (a) steals a Singapore ship;
> (b) steals or without lawful authority throws overboard, damages or destroys anything that is part of the cargo, supplies or fittings in a Singapore ship;
> (c) does or attempts to do a mutinous act on a Singapore ship; or
> (d) counsels or procures a person to do anything mentioned in paragraph (a), (b) or (c),
>
> shall be punished with imprisonment for a term no exceeding 15 years and shall be liable to caning.

Prior to 1993, the Penal Code had no provisions on piracy. The Singapore Penal Code was modeled on the Indian Penal Code (1863) which also had no provisions on piracy. Before this, piracy was dealt with by the UK Admiralty Offences (Colonial) Act 1849 together with the Courts (Colonial) Jurisdiction Act 1874,[96] neither of which contained provisions on the offence of piracy.

The UK Admiralty Offences (Colonial) Act 1849 only provided that all persons charged in any colony with offences committed on the sea, including piracy, may be dealt with in the same manner as if the offences had been committed on waters within the local jurisdiction of the courts of the colony.[97] The Courts (Colonial) Jurisdiction Act 1874 essentially gave colonial courts the power to try and pass sentences for offences committed on the high seas or elsewhere out of the territorial limits of the colony and of the local jurisdiction of the court as if the crime had been committed within the limits of the colony.[98] Accordingly, the Application of English Law Act which sought to remove uncertainty as to the extent of the applicability of English law to Singapore,[99] inserted Sections 130B and Section 130C in a new Chapter VIA in the Penal Code (Cap 224) to deal with piracy.[100]

Singapore appears to have followed New Zealand legislation on piracy, at least to a certain extent. The New Zealand Crimes Act 1961 also establishes two offences in

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[96] Explanatory Statement in Application of English Law Bill, Bill No. 26, Government Gazette Bills Supplement, 31 August 1993

[97] See Section 1 of the UK Admiralty Offences (Colonial) Act 1849 available at <http://www.legislation.gov.uk/ukpga/Vict/12-13/96>

[98] See Section 3 of the Courts (Colonial) Jurisdiction Act 1874 available at <http://www.legislation.act.gov.au/a/db_1780/20030118-3677/pdf/db_1780.pdf>

[99] Explanatory Statement in Application of English Law Bill, Bill No. 26, Government Gazette Bills Supplement, 31 August 1993

[100] See Clause 7 read with the Second Schedule of the Application of English Law Act, Singapore Statutes Online available at <http://statutes.agc.gov.sg/>

respect of piracy, first, "piracy by the law of nations" and "piratical acts,"[101] although the latter appears to be more extensive than the Singapore offence.

Neither "piracy by the law of nations" or "piratical acts" under the Singapore Penal Code implements the definition of piracy in Article 101 of UNCLOS.

Arguably, however, "piracy by the law of nations" is in effect, any act that amounts to piracy under international law, which is codified in Article 101 of UNCLOS.[102] This issue is presently under review before a Federal Court in the US where the Legal Advisor of the US State Department, Harold Koh, submitted a Declaration to the Court arguing that the definition in Article 101 constitutes "piracy under the law of nations."[103] To date, Singapore courts have not considered what is meant by "piracy by the law of nations" and there have been no prosecution of offences under Section 130B of the Penal Code.[104]

The IMO has criticized national legislation which simply makes reference to piracy as defined by the law of nations rather than defining all the elements of the offence of piracy as part of their criminal law. It has said that "[t]his generic approach may present obstacles for adequate prosecution and punishment in countries where criminal law requires as a condition for enforcement that all elements of any offence are described in detail in the legislation."[105]

ii. Enforcement Jurisdiction

Article 105 of UNCLOS gives every State the right to seize a pirate ship or a ship taken by piracy and under the control of pirates and arrest the persons on board on the high seas, regardless of the nationality of the ship, victims or perpetrators.

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[101] See UN Division for Oceans Affairs and Law of the Sea Piracy Legislation Database available at <http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/NZN_crimes_act_1961.pdf>

[102] This is the argument of New Zealand: See UN Division for Oceans Affairs and Law of the Sea National Piracy Legislation Database available at <http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/NZN_crimes_act_1961.pdf.>

[103] Declaration of Legal Advisor Harold Hongju Ku, 3 September 2010, US vs. Mohamed Modin Hasan et al, US District Court for the Eastern District of Virginia available at <http://www.oceanlaw.org/downloads/articles/Harold_Koh_Declaration-Piracy2010.pdf>

[104] However, there are old Straits Settlements Cases for the common law offence of piracy *jure gentium* where it was held that "piracy by the law of nations" was found to be "taking a ship on the high seas, or within the jurisdiction of the Lord High Admiral, from the possession or control of those who are lawfully entitled to it, and carrying away the ship itself or any of its goods, tackle, apparel or furniture, under circumstances which would have amounted to robbery, if the act had been done within the body of an English country": See *Regina v. Nya Abu and Ors* [1886] KY 18. The Singapore Court also recently considered that "piracy" as a marine peril under a marine insurance policy had not acquired a technical meaning and did not have to take place on the high seas: See *Bayswater Carriers Pte Ltd v. QBE Insurance (International) Pte Ltd* [2006] 1 SLR 69

[105] Secretariat of the Legal Committee of the IMO, "Report of the Legal Committee on the Work of its Ninety-Sixth Session," LEG 96/3, 20 August 2009, Paragraph 7.2, CIL Website, available at <http://cil.nus.edu.sg/wp/wp-content/uploads/2010/10/IMO-Legal-Committee-Note-and-Report-on-Review-of-National-Legislation-on-Piracy.pdf>

Under the Singapore Criminal Procedure Code (Cap 68), police officers are given the power to arrest for "piracy under the law of nations" and "piratical attacks" without a warrant.[106] The Police Coast Guard, which is the marine police of Singapore, would be able to exercise this power. However, this power would only be able to be exercised within Singapore's territorial waters and not outside Singapore's territorial waters.[107]

In 2007, amendments were made to the Singapore Armed Forces Act (Cap 295 of the 2000 Revised Edition) (SAF Act) to give legal powers to the Singapore Armed Forces, including the Royal Singapore Navy, to intercept, stop, search and detain, seize and apply force against hostile vessels and persons in international waters. The amendments were made because existing legislation did not define these powers adequately[108] and there was no domestic legislation that regulated SAF operations in international waters.[109] There was therefore

> [a] need for a proper legal framework to ensure everything in the conduct of security operations is properly specified, and to lay out clearly what servicemen can and cannot do. The proposed amendments to the SAF Act will provide the necessary framework for regulating the SAF when conducting security operations in support of civilian authorities. It will provide a clear legal basis for exercising the necessary powers.[110]

Section 201B (1) of the SAF Act provides that the Minister of Defence may authorize the SAF to be deployed in such manner as is reasonable and necessary for all or any of the following air or sea operations[111]:

(a) to combat piracy or piratical acts;
(b) to detect and prevent any aerial or maritime threat to the defence or security of Singapore;
(c) to detect and prevent the unlawful carriage by air or sea of any weapon, explosive or other dangerous device or substance;
(d) to rescue any hijacked aircraft, vessel or other fixed or floating facility;
(e) to carry out such other air or sea operation as the Minister, after consulting the Committee, may, by notification in the *Gazette*, may provide.

The Minister shall have regard to Singapore's international obligations when giving authorization for the above operations.[112]

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[106] See First Schedule, Singapore Criminal Procedure Code (Cap 68), Singapore Statutes Online, available at <http://statutes.agc.gov.sg/>

[107] The Police Coast Guard's function is to is to "ensure coastal security and maintain law and order with Singapore Territorial Waters in peacetime and during emergencies: See Police Force Website available at <http://www.spf.gov.sg/abtspf/pcg.htm>

[108] Under the previous SAF Act, only military policeman had powers of search and arrest and these are limited to places under possession, control or occupancy of the SAF or situations where SAF operations are obstructed: See Statement of Minister of Defence, Mr Teo Chee Hean in the Second Reading of the Singapore Armed Forces (Amendment) Bill, Parliament No. 11, Session No. 1, Volume No. 83, Sitting No. 5, Sitting Date, 21 May 2007.

[109] Statement of Minister of Defence, Mr Teo Chee Hean, *ibid.*

[110] Statement of Minister of Defence, Mr Teo Chee Hean, *ibid.*

[111] This is to be contrasted to land operations whereby the Minister of Defence must consult a committee appointed by the Prime Minister before he can issue an order for the SAF to assist civilian authorities for land operations: See Section 201C of the SAF Act, Singapore Statutes Online available at <http://statutes.agc.gov.sg/>

Section 201B (4) provides that any servicemen deployed for duty for sea operations may do the following in relation to any vessel or fixed or floating facility:

> (a) intercept the vessel and require it to leave, or not to enter, Singapore territorial waters or such part of Singapore territorial waters as may be specified by him;
> (b) pursue, stop and board the vessel;
> (c) where necessary and after firing a warning signal, fire at or into the vessel to disable it or compel it to be brought to for boarding;
> (d) capture or recapture the vessel or facility;
> (e) where he is on the vessel or facility —
> (i) prevent, or put an end to, acts of violence;
> (ii) protect persons from acts of violence;
> (iii) free any hostage from the vessel or facility;
> (iv) evacuate persons to a place of safety;
> (v) require any person to give information concerning himself, the vessel or facility or anything thereon;
> (vi) detain any person whom the serviceman believes on reasonable grounds to have committed an offence or to have a design to commit an offence, to be handed over to a police officer as soon as practicable;
> (vii) search the vessel or facility, and any person or anything on it, including its cargo;
> (viii) seize any dangerous thing or other thing related to the operation concerned or evidence of any offence found in such a search;
> (f) detain the vessel and bring it, or direct the person in charge of the vessel to bring it —
> (i) to a port or to any other place in Singapore; or
> (ii) out of Singapore;
> (g) take measures (including the use of force) reasonable and necessary in the circumstances to exercise any of the powers in paragraphs (*a*) to (*f*).

Section 201B (5) provides that the powers exercised above shall extend to vessels outside Singapore in accordance with Singapore's international obligations. Strictly speaking, under international law, the right to board[113] and arrest[114] a vessel only exists under strict circumstances, one of them being piracy on the high seas. The right to exercise the powers envisaged in Section 201B (4) in the circumstances set out in (b) to (e) of Section 201B (1) (described above) may be contrary to international law, although there are some safeguards in that a serviceman may only exercise its power under Section 201B (4) on the Minister's authorization or on the authority of a superior.

iii. Prescriptive Jurisdiction

Article 105 of UNCLOS also gives the court of the seizing State the discretion to decide upon the penalties to be imposed.

Under Singapore law, Section 15 (1) (c) of the SCJA gives the High Court jurisdiction to try an offence "*by any person on the high seas where the offence is piracy by the law of nations.*" As mentioned above, the "offence" of "piracy by the law of nations" is found in Section 130B of the Penal Code.

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[112] Section 201B (2), SAF Act, *ibid.*
[113] Article 110, UNCLOS
[114] Article 105, UNCLOS

These provisions give the Singapore High Court universal jurisdiction over an offence of piracy on the high seas regardless of the nationality of the ship attacked by pirates, the victims or the perpetrators. There is no requirement for a jurisdictional nexus between the offence of piracy and Singapore.

V. HOSTAGE TAKING CONVENTION

The Hostage-Taking Convention was adopted in New York on 17 December 1979 and entered into force on 3 June 1983. It presently has 168 Parties. Singapore acceded to the Hostage-Taking Convention on 22 October 2010. Singapore made the following Declaration on accession:

> Pursuant to Article 16, paragraph 2, of the Convention, the Republic of Singapore declares that it does not consider itself bound by the provisions of Article 16, paragraph 1 of the Convention.
>
> The Republic of Singapore understands Article 8(1) of the Convention to include the right of competent authorities to decide not to submit any particular case for prosecution before the judicial authorities if the alleged offender is dealt with under national security and preventive detention laws.[115]

Article 16 (1) is the dispute settlement procedure under the Hostage Taking Convention. Article 8 contains the obligation to either extradite or prosecute an alleged offender that is found in that State Party's territory. Singapore would obviously not be able to meet that obligation under its preventive detention laws which allow Singapore to arrest and detain individuals without trial in certain defined circumstances.[116]

i. National Legislation

The Ministry of Home Affairs is the lead agency responsible for this Convention and corresponding implementing legislation.

The Hostage-Taking Act 2010 came into effect on 21 November 2010 in order to give effect to the Hostage-Taking Convention. At the Second Reading of the Hostage-Taking Bill, the Minister for Home Affairs, Wong Kan Seng stated that:

> Acceding to the Convention and implementing the new Hostage-Taking Act will strengthen existing counter-terrorism cooperation between Singapore and like-minded countries. It ensures that the perpetrators of hostage-taking offences will have no safe haven, and complements domestic legal instruments already in place to deal with terrorists. Through these international and domestic instruments, we reiterate our commitment to combat terrorism and our unequivocal condemnation of their methods of violence.[117]

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[115] See UN Treaty Collection, available at <http://treaties.un.org/pages/Treaties.aspx?id=21&subid=A&lang=en>

[116] See the Internal Security Act of Singapore (Cap 143), Singapore Statutes Online, available at <http://statutes.agc.gov.sg/>

[117] Second Reading of the Hostage-Taking Bill, Parliament No. 11, Session 2, Volume No. 87, Sitting No. 6, Sitting Date 16 August 210

ii. Offences under the Hostage-Taking Act

Under Section 3 of the Hostage-Taking Act, the offence of hostage-taking is defined as:

> **3.** —(1) Whoever —
>
> (a) seizes or detains any person; and
>
> (b) threatens to cause death or hurt to such person or to continue to detain such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt or may continue to be detained, or causes death or hurt to such person,
>
> in order to compel —
>
> (i) the Government, the government of another State or an international intergovernmental organisation to do or abstain from doing any act shall be guilty of an offence, and shall be punished with death or imprisonment for life, and shall, if he is not sentenced to death, also be liable to fine or to caning; or
>
> (ii) any other person to do or abstain from doing any act shall be guilty of an offence, and shall be punished with imprisonment for a term which may extend to 15 years, and shall also be liable to fine or to caning.

Section 3 implements Article 1 and 2 of the Hostage-Taking Convention. The only element in Article 1 of the Convention missing from Section 3 of the Act is the requirement that the perpetrators of acts of hostage-taking do such acts in order to compel the Government, the government of another State or an intergovernmental organization to do or abstain from doing any act "*as an explicit or implicit condition for the release of the hostage."* Arguably, the omission of such a requirement is advantageous as it avoids the problem of having to prove that the act of hostage-taking was an explicit or implicit condition for the release of the hostage.

Under the Hostage-Taking Act, the abetment of, or conspiracy or attempt to commit the act of hostage-taking is also an offence as it is under the Hostage-Taking Convention.[118]

The Hostage Taking Act also creates additional offences not found in the Hostage Taking Convention such as the withholding of information related to a hostage-taking offence.[119]

The penalties set out in Section 3 meet the requirement in Article 2 of the Convention that the penalties take into account the grave nature of the offences. There was some debate that the penalty for hostage taking against "any person" was firstly too low and secondly, should not be differentiated from the penalty imposed for hostage-taking acts against governments. The Minister for Home Affairs explained that:

> [we] have been very careful in calibrating the penalties for hostage-taking offences *vis-a-vis* the other penalties that we have under our other laws. The proposed penalties are consistent with those for other serious offences under existing legislation. To provide some points of reference, the penalty of 15 years imprisonment of acts of hostage-taking to compel any other person mirrors

[118] See Section 2 of the Hostage Taking Act and Article 1 (2) of the Hostage-Taking Convention
[119] Section 5, Hostage Taking Act 2010

> that in the current section 364(a) of the Penal Code.
>
> While we recognise that the threats made to other persons can be serious, we must ensure that the harshest penalties are reserved for cases where such penalties are justified. In the case of acts against governments, we need to send a very strong signal, a deterrent signal, that hostage-taking cannot be used as a means to unduly influence or manipulate a government – any government for that matter. Nonetheless, we will review this in the future and we will see whether the penalties for acts against other persons are sufficient or not. If not, we will see how they can be further enhanced.

iii. Prescriptive Jurisdiction over offences

Section 15 (1) (f) of the Supreme Court of Judicature Act provides that the High Court has jurisdiction to try all offences "in any place or by any person if it is provided in any written law that the offence is triable in Singapore."

Section 4 of the Hostage-Taking Act provides that "Every person, who outside Singapore, commits an act that, if committed in Singapore would constitute a hostage-taking office, is deemed to commit the act in Singapore and may be proceeded against, charged, tried and punished accordingly." Section 4 is to be read with Section 15 (1) (f) and is the "written law" which provides for extraterritorial jurisdiction over hostage-taking offences.[120]

The jurisdiction provisions in the Hostage-Taking Act appear to be wider than Article 5 of the Hostage Taking Convention. Article 5 obliges States Parties to establish jurisdiction over hostage-taking offences which are 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 persons who have their habitual residence in its territory
c. In order to compel that State to do or abstain from doing any act; or
d. With respect to a hostage who is a national of that State, if that State considers it appropriate; or
e. Where the alleged offender is present in its territory and it does not extradite him to any States which have jurisdiction under (a) to (d).

Section 4 of the Hostage-Taking Act would cover acts in (a) to (d). With regards to the jurisdiction based on "presence of offender," there is no express provision establishing jurisdiction based on "presence of offender" under the Hostage Taking-Act. However, based on the statement of Minister of Home Affairs, Wong Kan Send in the Second Reading of the Hostage-Taking Bill, Section 4 envisages that if an alleged offender is found in Singapore, Singapore has an obligation to investigate and arrest the alleged offender and determine whether to submit the case for prosecution or to extradite him to a requesting state which has a claim to jurisdiction.[121]

[120] See Comments of Minister for Home Affairs, Wong Kan Seng in the Second Reading of the Hostage-Taking Bill, Parliament No. 11, Session No. 2, Volume No. 87, Sitting No. 6, 16 August 2010
[121] See Comments of Minister for Home Affairs, Wong Kan Seng in the Second Reading of the Hostage-Taking Bill, Parliament No. 11, Session No. 2, Volume No. 87, Sitting No. 6, 16 August 2010

In order to ensure that any power to exercise extraterritorial jurisdiction is exercised judiciously, Section 9 of the Hostage-Taking Act provides that no prosecution shall be instituted except by or with the consent of the Public Prosecutor.

iv. Other Provisions

Sections 6, 7 and 8 provide the Public Prosecutor with the powers to make orders to prevent the payment of ransom money and to investigate or prosecute offences under the Act.

The Singapore Government discourages ransom money payments and Section 6 empowers the Public Prosecutor to order the freezing of a bank account if he is satisfied that money for paying a ransom is likely to be paid out of it. Section 7 empowers the Public Prosecutor to authorize a police officer to inspect any book, account or other document kept by a bank if he considers that any evidence of the commission of an offence under the Act is likely to be found in the document. Under Section 8, the Public Prosecutor is empowered to obtain information for the purpose of any investigation or proceedings from an offence under the Act.

v. Enforcement jurisdiction

Section 12 of the Hostage-Taking Act, gives a police officer the power to arrest without warrant any person whom he reasonably believes has committed an offence under the Act.

vi. Applicability to Maritime Crimes

There is nothing in the Hostage Taking Act of 2010 which would prevent it from applying to the kidnapping of crew members of a vessel for ransom. Indeed, the statement of the Minister of Home Affairs during the Parliamentary Debate of the Hostage Taking Bill recognized that hostage-taking could take place on board ships.[122]

VI. 1988 SUA

1988 SUA was adopted on 10 March 1988 and entered into force on 1 March 1992.[123] Singapore acceded to SUA on 3 February 2004.

The Ministry of Transport and the Maritime Port Authority, as the agencies responsible for maritime security and safety, are primarily responsible for this Convention.

i. National Legislation

[122] See Comments of Minister for Home Affairs, Wong Kan Seng in the Second Reading of the Hostage-Taking Bill, Parliament No. 11, Session No. 2, Volume No. 87, Sitting No. 6, 16 August 2010

[123] See IMO Website, available at <http://www.imo.org/OurWork/Security/Instruments/Pages/SecurityInstruments.aspx>

SUA implemented its obligations under SUA through the Maritime Offences Act (Cap 170B) (MOA) which entered into force on 3 May 2004.

Offences under the MOA are materially the same as offences under SUA. Singapore appears to have relied on the Aviation and Maritime Security Act 1990 of the United Kingdom.[124]

The following are offences under the MOA:

(a) Hijacking of ships that is any person who unlawfully,[125] by the use of force or threats of any kind, seizes a ship or exercises control of a ship;[126]
(b) Destroying or damaging a ship that is any person who unlawfully and intentionally destroys a ship, damages a ship or its cargo so as to endanger the safe navigation of the ship or commits an act of violence[127] on board the ship which is likely to endanger the safe navigation of the ship;[128]
(c) Any person who unlawfully and intentionally places, or causes to be placed on a ship, any device or substance which is likely to destroy the ship or damage it or its cargo or endanger its safe navigation;[129]
(d) Any person who intentionally or unlawfully damages or seriously interferes with the operation of any property used for providing maritime navigation facilities;[130]
(e) Any person who gives false information which endangers the safe navigation of a ship;[131]
(f) Any person who threatens to destroy or damage a ship or seriously interferes with the operation of any property used for providing maritime navigation facilities and which threats are likely to endanger the safe navigation of a ship.[132]

The application of the MOA is wider than that of Article 4 of SUA. Article 4 provides that the Convention applies if the ship is navigating or is scheduled to navigate into, through or from waters beyond the outer limit of the territorial sea of a single State, or the

[124] See Explanatory Statement to Maritime Offences Bill, Bill No. 23/2003
[125] Unlawfully is defined as (a) in relation to the commission of an act in Singapore, means so as (apart from this Act) to constitute an offence under any written law in force in Singapore and (b) in relation to the commission of an act outside Singapore, means so that the commission of the act would (apart from this Act) have been an offence under any written law in force in Singapore if it had been committed in Singapore: See Section 2.
[126] Section 3 (1), Maritime Offences Act which corresponds to Article 3 (1) (a) of SUA.
[127] Section 2 defines an "act of violence" as any act done in Singapore which constitutes the offence of murder, attempted murder, culpable homicide not amounting to murder, voluntarily causing grievous hurt, voluntarily causing hurt by dangerous weapons or means, or which constitutes an offence under (i) section 4 of the Arms Offences Act (Cap. 14); (ii) section 3 or 4 of the Corrosive and Explosive Substances and Offensive Weapons Act (Cap. 65); (iii) section 3 or 4 of the Explosive Substances Act (Cap. 100); or (iv) section 3 of the Kidnapping Act (Cap. 151); and (b) any act done outside Singapore which, if done in Singapore, would constitute an offence referred to above.
[128] Section 4 (1), Maritime Offences Act which corresponds to Sections 3 (1) (b) and 3 (1) (c) of SUA.
[129] Section 4 (2), Maritime Offences Act which corresponds to Section 3 (1) (d) of SUA.
[130] Section 5, Maritime Offences Act which corresponds to Section 3 (1) (e) of SUA.
[131] Section 5, Maritime Offences Act which corresponds to Section 3 (1) (f) of SUA.
[132] Section 6, Maritime Offences Act which corresponds to Section 3 (2) (c) of SUA.

lateral limits of its territorial sea with adjacent States or if the alleged offender is found in your territory.

The offences under the MOA apply whether the offences are committed in Singapore or elsewhere, whatever the nationality or citizenship of the person committing the act and whatever State the ship is registered.[133]

The MOA is also slightly different from SUA in that warships are excluded from SUA whereas the MOA applies to warships if the person seizing or exercising control of the warship is a citizen of Singapore, the act is committed in Singapore or the ship is used in the naval, customs of law enforcement service of Singapore.[134]

ii. Prescriptive Jurisdiction

Section 15 (1) (e) of the SCJA provides that the High Court shall have jurisdiction to try all offences committed by any person within or outside Singapore where the offence is punishable under and by virtue of the MOA. As with the Hostage-Taking Act, this is wide enough to cover all the jurisdictional bases provided for in Article 6 of SUA.

To ensure that this power is exercised judicially, no prosecution shall be instituted under the MOA without the written consent of the Public Prosecutor.[135]

iii. Enforcement Jurisdiction over offences

As mentioned above, Section 201B (1) (d) of the SAF Act provides that the Minister of Defence may authorize the SAF to be deployed in such manner as is reasonable and necessary to rescue any hijacked aircraft, vessel or other fixed or floating facility.

The Minister shall have regard to Singapore's international obligations when giving authorization for the above operations.[136] As mentioned above, under international law, States have rights to intercept, board and seize vessels under restricted circumstances such as piracy and it questionable whether any such power exercised under Section 201B (d) of the SAF Act would be consistent with international law.

iv. Master's Power of Delivery

Section 8 of the MOA implements Article 8 of SUA on the Master's power to deliver a person he suspects of committing a relevant maritime offence to an appropriate officer in Singapore or to an appropriate officer of any Convention country.[137]

[133] See Section 3 (1) 4 (4), 5 (5), 6 (3)
[134] See, for example, Section 3 (2), Maritime Offences Act
[135] Section 10, Maritime Offences Act
[136] Section 201B (2), SAF Act (Cap 295)
[137] It is based on Section 15 of the United Kingdom Aviation and Maritime Security Act 1990.

VII. International Convention for the Suppression of Financing of Terrorism 1999 (TFC)

The TFC was adopted on 9 December 1999 and came into force on 10 April 2002. It presently has 173 Parties.[138] Singapore signed the TFC on 18 December 2001 and it ratified the TFC on 30 December 2002.[139]

Singapore made the following Declaration and Reservations when it ratified the TFC:

> Declarations
> (1) The Republic of Singapore understands that Article 21 of the Convention clarifies that nothing in the Convention precludes the application of the law of armed conflict with regard to legitimate military objectives.
> Reservations
> (2) With respect to Article 2, paragraph 2 (a) of the Convention, the Republic of Singapore declares that the treaty shall be deemed not to include the treaties listed in the annex of this Convention which the Republic of Singapore is not a party to.
> (3) The Republic of Singapore declares, in pursuance of Article 24, paragraph 2 of the Convention that it will not be bound by the provisions of Article 24, paragraph 1 of the Convention."[140]

Article 24 (1) of the TFC sets out the dispute settlement procedure under the TFC to which Singapore is not bound pursuant to the above Declaration and Reservation.

Singapore also made the Declaration required by Article 7 (3) of the TFC that it had established jurisdiction over the offences set forth in Article 2 of the TFC in all the cases provided in Article 7 (2) of the Convention.

i. National Legislation

The Terrorism (Suppression of Financing) Act (Cap 325) (TSFA) implements the TFC under Singapore law. It was enacted on 29 January 2003. The Ministry of Home Affairs is the lead agency responsible for the TSFA.

ii. Offences under the TSFA

Interestingly, the TFC contains what has been described as a "mini-definition" of terrorism,[141] unlike the other counter-terrorism conventions which preceded the TFC.

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[138] UN Treaty Collection Website available at <http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-11&chapter=18&lang=en>

[139] UN Treaty Collection Website available at <http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-11&chapter=18&lang=en>

[140] UN Treaty Collection Website available at <http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-11&chapter=18&lang=en>

[141] See the Commonwealth Implementation Kits for the International Counter-Terrorism Conventions by the Criminal Law Section, Legal and Constitutional Affairs Division, Commonwealth Secretariat available

Under Article 2 (1) of the TFC, if a person by any means, directly or indirectly, unlawfully and wilfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out:

(a) An act which constitutes an offence within the scope of and as defined in one of the treaties listed in the annex;[142] or

(b) Any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act.

The TSFA contains various terrorism financing offences:

1. First, under Section 3, it is an offence to directly or indirectly, willfully and without lawful excuse to provide or collect property with the intention that the property be used or knowing or having reasonable grounds to believe that the property will be used in order to commit any terrorist act.

2. Second, under Section 4, it is an offence to directly or indirectly collect property, provide or invite a person to provide or make available property or financial or other related services, intending they will be used or having reasonable grounds to believe that they will be used for the purpose of facilitating or carrying any terrorist act or for benefiting any person who is facilitating or carrying out such an activity, terrorist or terrorist entity.

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at <http://www.thecommonwealth.org/shared_asp_files/uploadedfiles/%7B8AE4DB15-88A5-46F2-8037-357DFF7D3EC1%7D_Implementation%20Kits%20for%20Counter-Terrorism.pdf>

[142] The Annex consists of the following conventions:

1. Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague on 16 December 1970.
2. Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 23 September 1971.
3. Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on 14 December 1973.
4. International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on 17 December 1979.
5. Convention on the Physical Protection of Nuclear Material, adopted at Vienna on 3 March 1980.
6. Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 24 February 1988.
7. Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988.
8. Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, done at Rome on 10 March 1988.
9. International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15 December 1997.

3. Third, under Section 5, it is an offence to use property for the purpose of facilitating or carrying out any terrorist act.

4. Fourth, under Section 6, it is an offence to deal directly or indirectly in any property that is owned or controlled on behalf of any terrorist or terrorist entity, to enter into or facilitate directly or indirectly, any financial transaction related to a dealing in property, provide any financial services or any other related services in respect of any property.

A "terrorist act" is defined as:

terrorist act" means the use or threat of action —

(a) where the action —

(i) involves serious violence against a person;

(ii) involves serious damage to property;

(iii) endangers a person's life;

(iv) creates a serious risk to the health or the safety of the public or a section of the public;

(v) involves the use of firearms or explosives;

(vi) involves releasing into the environment or any part thereof, or distributing or otherwise exposing the public or any part thereof to —

(A) any dangerous, hazardous, radioactive or harmful substance;
(B) any toxic chemical; or
(C) any microbial or other biological agent, or toxin;

(vii) disrupts, or seriously interferes with, any public computer system or the provision of any service directly related to communications infrastructure, banking and financial services, public utilities, public transportation or public key infrastructure;

(viii) disrupts, or seriously interferes with, the provision of essential emergency services such as the police, civil defence and medical services; or

(ix) involves prejudice to public security or national defence; and

(b) where the use or threat is intended or reasonably regarded as intending to —

(i) influence or compel the Government, any other government, or any international organisation to do or refrain from doing any act; or

(ii) intimidate the public or a section of the public,

and includes any action specified in the Schedule.

The Schedule lists the implementing legislation for the counter-terrorism conventions to which Singapore is a party,[143] and includes the MOA and the Hostage-Taking Act.

A "terrorist" is any person who commits, attempts to commit any terrorist act or participates in or facilitates the commission of any terrorist act.[144]

"Property" is defined as "assets of every kind, whether tangible or intangible, movable or immovable, however acquired" and "legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in such assets including, but not limited to bank credits, travelers cheques, bank cheques, money orders, shares, securities, bonds, drafts and letters of credit."[145]

The TSFA appears to adopt the scheme in the TFC by covering acts which have a "terrorist intention" i.e. that are done to intimidate a population or to compel a government or an international organization to do or abstain from doing any act[146] *as well as* make acts committed under other counter-terrorism conventions a "terrorist act."

iii. Application to the financing of Maritime Crimes

As mentioned above, the Schedule to the TSFA makes offences under the Hostage Taking Act and the MOA "a terrorist act," the financing of which is an offence under the TSFA. Accordingly, it would be possible to use the TSFA against the financing of ship hijacking, the taking of crewmembers as hostage and of course, maritime terrorism.

iv. Jurisdiction

The TSFA adopts the same scheme as the Hostage Taking Act. It provides for extraterritorial jurisdiction by stating that every person who outside Singapore commits an act or omission if committed in Singapore would constitute an offence, an abetment of an offence or attempt to commit an offence under Sections 3, 4 or 5, that person may be tried and punished accordingly in Singapore.[147] This, read with Section 15 (1) (f) of the SCJA give the Singapore courts jurisdiction to try offences under the TSFA.

VIII. *United Nations Convention against Transnational Organised Crime 2000 (UNTOC)*

UNTOC was adopted on 15 November 2000 and entered into force on 29 September 2003. Singapore signed UNTOC on 13 December 2000 and ratified it on 28 August

[143] These are the Hijacking of Aircraft and Protection of Aircraft and International Airports (Cap 124), the Maritime Offences (Cap 170B), the Terrorism (Suppression of Bombings) Act 2007 (Cap 324A), the Internationally Protected Persons Act 2008 (No. 8 of 2008) and the Hostage-Taking Act 2010 (Act 19 of 2010).
[144] Section 2, Terrorism (Suppression of Financing) Act (TSFA)
[145] *Ibid.*
[146] See definition of "terrorist act" in Section 2 of the TSFA and Article 2 (1) (b) of the TFC
[147] Section 34, TSFA

2007.[148] Singapore made a reservation that it does not consider itself bound by the dispute settlement provision in Article 35 (2) of UNTOC.[149]

i. National Legislation

Unlike the other Conventions discussed above, UNTOC was not implemented by passing a new statute because most of the offences under UNTOC were covered by existing legislation. Where existing legislation did not cover UNTOC offences, it was amended to do so.

There are four offences under UNTOC, namely, criminalization of participation in an organized criminal group,[150] criminalization of the laundering of proceeds of crime,[151] criminalization of corruption[152] and obstruction of justice.[153]

For purposes of combating maritime crime, only two of the above offences are relevant. These are participation in an organized criminal group and criminalization of the laundering of proceeds of crime.

ii. Money-laundering offences

Article 6 of UNTOC provides for the criminalization of the laundering of proceeds of crime and obliges each State Party to apply money-laundering offences to the widest range of predicate offences including the predicate offences set out in UNTOC such as participation in an organized criminal group, criminalization of the laundering of proceeds of crimes, criminalization of corruption, and obstruction of justice.

With regards to criminalization of the laundering of proceeds of crime, Singapore's legislation is in the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Cap 65A) (CDSA). The CDSA was passed on 6 July 1999 to expand the scope of money-laundering offences to include non-drug related offences.[154]

I will deal first with the predicate offences to money-laundering offences under the CDSA and then the actual money-laundering offences. Under the CDSA, the laundering

[148] One of the reasons behind the ratification of UNTOC may have been the remarks made by the IMF in its Financial System Stability Assessment in 2004 that while Singapore has in place "a sound and comprehensive legal, institutional, policy and supervisory framework for anti-money laundering and counter-financing of terrorism," that it did not include all the predicate offences as provided for in UNTOC and Singapore should move towards its ratification quickly: See TAN Sin Liang, "An Overview of the Anti-Money Laundering and Anti-Terrorist Financing Laws in Singapore," Law Gazette, February 2005 (5)
[149] See UN Treaty Collection available at http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12&chapter=18&lang=en#EndDec
[150] Article 5, UNTOC
[151] Article 6, UNTOC
[152] Article 8, UNTOC
[153] Article 23, UNTOC
[154] TAN Sin Liang, "An Overview of the Anti-Money Laundering and Anti-Terrorist Financing Laws in Singapore," Law Gazette, February 2005 (5)

of proceeds of all "Drug Trafficking Offences"[155] and "Criminal Conduct"[156] constitutes an offence under the CDSA. Criminal Conduct is:

> (a) doing or being concerned in, whether in Singapore or elsewhere, any act constituting —
>
> (i) a serious offence (other than an offence under section 44 or 47); or
> (ii) a foreign serious offence;
>
> (b) entering into or being otherwise concerned in, whether in Singapore or elsewhere, an arrangement whereby —
>
> (i) the retention or control by or on behalf of another person of that other person's benefits from an act referred to in paragraph (*a*) is facilitated; or
> (ii) the benefits from an act referred to in paragraph (*a*) by another person are used to secure funds that are placed at that other person's disposal, directly or indirectly, or are used for that other person's benefit to acquire property by way of investment or otherwise;
>
> (c) the acquisition, possession, use, concealing or disguising by a person of any property which is, or in part, directly or indirectly, represents, his benefits from an act referred to in paragraph (*a*); or
>
> (d) the conversion or transfer, by a person, of any property referred to in paragraph (*c*) or the removal of such property from the jurisdiction.

A "serious offence"[157] includes any of the offences specified in the Second Schedule to the CDSA. A "foreign serious offence" means:

> an offence (other than a foreign drug trafficking offence) against the laws of, or of a part of, a foreign country stated in a certificate purporting to be issued by or on behalf of the government of that country and the act or omission constituting the offence or the equivalent act or omission would, if it had occurred in Singapore, have constituted a serious offence.[158]

The Second Schedule provides that offences of piracy under the law of nations and piratical acts under the Penal Code, offences under the MOA, offences under the Hostage-Taking Act and offences under the TSFA are all "serious offences." Accordingly, money laundering of proceeds from piracy offences, offences under the MOA, the Hostage-Taking Act, and the TSFA would be offences under the CDSA.

The Second Schedule of the CDSA also includes as one of its predicate offences the activities of an organized criminal group. Offences consisting of "abetment of a serious crime, where the serious crime is transnational in nature and involves an organized criminal group" and "criminal conspiracy to commit a serious crime, where the serious crime is transnational in nature and involves an organized criminal group" are predicate offences in the CDSA. The Second Schedule also provides that the expressions "serious crime", "organized criminal group" and "transnational" have the meanings given to those expressions under UNTOC.

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[155] See Section 2 (1), CDSA
[156] Section 2 (1), CDSA
[157] Section 2 (1), CDSA
[158] Section 2 (1), CDSA

With regards to money-laundering offences, there are essentially four types of money-laundering offences under the CDSA for Drug Offences and Criminal Conduct.[159]

1. The first type is when a person conceals or disguises any property which represents his benefits from Criminal Conduct or converts or transfers that property or removes it from Singapore.[160]

2. The second type is when a person who, knowing or having reasonable grounds to believe that any property directly or indirectly represents another person's benefits from Criminal Conduct, acquires that property or has possession of or uses such property.[161]

3. The third type is committed when any person knowingly or having reasonable grounds to believe that any property is or represents another person's benefits from criminal conduct, conceals or disguises the property or removes it from the jurisdiction.[162]

4. The fourth type of money-laundering offence is committed when a person enters into an arrangement knowing or having reasonable grounds to believe that by the arrangement (a) the retention or control by or on behalf of another (the other person) of that other person's benefits of Criminal Conduct is facilitated or (b) that other person's benefits from Criminal Conduct are used to secure funds that are placed at that other person's disposal directly or indirectly or are used for that other person's benefit to acquire property by way of investment or otherwise and knowing that the other person carries on/has carried on Criminal Conduct.[163]

Jurisdiction over money-laundering offences

UNTOC obliges states to establish jurisdiction when the offence is committed in the territory of the State Party or when it is committed on board a vessel or aircraft that is registered under the laws of that State Party.[164] It also gives States Parties *the discretion* to establish jurisdiction for offences that are committed outside its territory in certain circumstances,[165] including when the alleged offender is found present in its territory.[166] In this way, it differs from the counter-terrorism conventions which

[159] TAN Sin Liang, "An Overview of the Anti-Money Laundering and Anti-Terrorist Financing Laws in Singapore," Law Gazette, February 2005 (5)
[160] Sections and 47 (1), CDSA
[161] Sections 47 (3), CDSA
[162] Section 47 (2), CDSA
[163] Section 44 (1), CDSA
[164] Article 6 (1) (a), UNTOC
[165] Article 15 (2), UNTOC
[166] Article 15 (4), UNTOC

oblige States Parties to establish extraterritorial jurisdiction when the alleged offender is found in its territory.

Courts would have extraterritorial jurisdiction under the CDSA. It applies to any property where it is situated in Singapore or elsewhere. It also applies to money-laundering of "foreign serious offences" if it is stated in a certificate issued on behalf of the government of a foreign country that the offence is against the laws of that foreign country and an equivalent act or omission would, if it had occurred in Singapore, have constituted a serious offence.[167]

Application to the money laundering of proceeds from Maritime Crimes

The CDSA would apply to the money laundering of proceeds from Maritime Crimes as piracy, offences under the MOA and offences under the Hostage-taking Act are predicate offences under the CDSA.

iii. Participation in an Organized Criminal Group

Article 5 of UNTOC provides for criminalization of participation in an organized criminal group and sets out certain requirements. While Singapore has included "participation in an organized criminal group", as per UNTOC as a predicate offence to money laundering, it has not made "participation in an organized criminal group" as defined in UNTOC an offence under its criminal laws.

That said, the Penal Code does have provisions which arguably set out equivalent offences, namely the offence of "abetment" set out in Chapter V of the Penal Code and "criminal conspiracy" in Chapter VA.

Under Section 107 of the Penal Code, a person abets the doing of a thing who:

> (a) instigates any person to do that thing;
>
> (b) engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or
>
> (c) intentionally aids, by any act or illegal omission, the doing of that thing.

Abetment in Singapore of an offence outside Singapore is also an offence, if that offence would constitute an offence in Singapore.[168] Similarly, abetment outside Singapore of an offence in Singapore is an offence under the Penal Code[169]

"Criminal Conspiracy" is defined as:

> **120A.** —(1) When 2 or more persons agree to do, or cause to be done —

[167] Section 2, CDSA
[168] Section 108A, Penal Code
[169] Section 108B, Penal Code

(a) an illegal act; or
(b) an act, which is not illegal, by illegal means,

such an agreement is designated a criminal conspiracy:

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

(2) A person may be a party to a criminal conspiracy notwithstanding the existence of facts of which he is unaware which make the commission of the illegal act, or the act, which is not illegal, by illegal means, impossible.

Jurisdiction over offences

Singapore courts would have jurisdiction over acts of "abetment" that are committed outside of Singapore if the consequential offence occurred in Singapore. It would also have jurisdiction over abetment committed in Singapore even if the consequential offence occurred outside of Singapore. These provisions read with Section 15 (1) (f) of the SCJA give the courts jurisdiction over such offences.

With regards to "criminal conspiracy," to do an illegal act or an act by illegal means, Singapore courts do not appear to have jurisdiction over it if the criminal conspiracy occurred in Singapore although the illegal act occurred outside Singapore and vice versa. However, this would technically not be a breach of Singapore's obligations under UNTOC as UNTOC does not require States Parties to have extraterritorial jurisdiction over offences and it only gives the right to states to exercise such jurisdiction.

IX. EXTRADITION AND MUTUAL LEGAL ASSISTANCE

1. Extradition

UNCLOS has no extradition provisions. The three counter-terrorism conventions and UNTOC, however, adopt similar extradition provisions as set out below:

a. The offences are deemed to be extraditable offences under any extradition treaty in force between any of the States Parties;
b. States Parties that do not make extradition conditional upon the presence of a treaty shall consider the offences set out in the applicable convention as extraditable between themselves;
c. States Parties which do make extradition conditional upon the existence of a treaty, may, at their option, consider the option as a basis for extradition.

In Singapore, extradition is governed by the Extradition Act (Cap 103).

i. <u>Overview of Extradition Act</u>

The Extradition Act provides for extradition to and from foreign States,[170] extradition to and from declared Commonwealth countries,[171] as well extradition to and from Malaysia.[172]

Extradition between Singapore and Foreign States

Extradition to foreign States can only take place when there is an extradition treaty in place.

Section 3 provides that before 1st August 1968, all extradition treaties signed between the UK and foreign States will be applicable between those foreign States and Singapore. However, in a statement by the then Minister for Law Professor Jayakumar in the Second Reading of 1998 amendment to the Extradition Act, he made clear that it was not automatic that all those extradition arrangements will apply in each and every case and Singapore will have to carefully consider whether all those treaty obligations are binding on Singapore.[173] It is clear that Singapore considers the extradition agreements made between the UK and the US in 1935[174] and the UK and the Federal Republic of Germany in 1960[175] as applicable between US and Singapore and Germany and Singapore respectively.[176]

After 1st August 1968, Singapore is free to conclude its own extradition treaties with foreign States.[177] After a Treaty is concluded, a Minister may, by notification in the Gazette direct that Part II of the Extradition Act, which sets out the conditions on which extradition to a foreign State can occur, will apply to the particular foreign State.

Requests from Singapore to a foreign State for extradition of a person within the jurisdiction of that foreign State can only be made for an "extraditable crime" i.e. a crime which is described in the First Schedule.

Extradition to and from Declared Commonwealth Countries

Extradition requests can be made to and from Commonwealth countries without an extradition treaty subject to Part IV of the Act.[178] Extradition will only occur for

[170] Part II and Part III, Extradition Act
[171] Part IV, Extradition Act
[172] Part V, Extradition Act
[173] Statement of Minister for Law, Professor Jayakumar, in the Second Reading of the Extradition (Amendment) Bill, Parliament No. 9, Session No. 1, Volume No. 68, Sitting No. 15, 20 April 1998
[174] United States of America (Extradition) Order in Council, 6 June 1935
[175] The Federal Republic of Germany (Extradition) Order in Council, *No. S237/1960*, 3 August 1960,
[176] See Statement made by Senior Minister of State for Law, Associate Professor Ho Peng Kee in the Second Reading of the Statutes (Miscellaneous Amendment s) (No. 2) Bill, Parliament No. 11, Session No. 1, Volume No. 85, Sitting No. 5, 17 November 2008
[177] Section 4 and 5, Extradition Act
[178] This is because at a Commonwealth Law Ministers Conference held in May 1966, in London, it was agreed that a common scheme should apply to all Commonwealth countries and is to be included in the legislation of each country: See Statement of Minister for Law, E.W. Barker at the Second Reading of the Extradition Bill, Parliament No. 2, Session No.1, Volume No. 27, Sitting No. 8, Sitting Date, 22 May 1968

"extraditable crimes" which are crimes set out in the First Schedule. There are presently 40 Declared Commonwealth countries. [179]

Conditions

Double criminality is a requirement for incoming extradition requests. The act or omission underlying the extradition request must constitute an offence against the law of Singapore as described in the First Schedule of the Extradition Act.[180]

Certain evidentiary requirements also have to be met before Singapore accedes to an extradition request. For example, there must be evidence as would justify the trial of the person sought if the act or omission underlying the request had taken place in Singapore.

Singapore will also not surrender a fugitive if the offence is an offence of a political character.[181]

Singapore also adopts the speciality rule, i.e. the state which requested the extradition must not take proceedings against the suspect other than those for the offence for which he or she was extradited. For incoming extradition requests, Singapore will accept speciality assurances that are provided either in the law of a requesting state or in a relevant treaty or if they are provided by an appropriate authority of the requesting state.[182] For requests made by Singapore, Singapore grants speciality protection to persons extradited to Singapore.[183]

ii. Extradition for Piracy Offences

Extradition requests to Singapore from foreign countries to extradite alleged pirates can only take place if there is an extradition agreement in place and if "piracy" is included in the list of crimes for which extradition is possible. However, it is usual for "piracy" to be included in such extradition agreements. For example, in the Extradition Agreement between Singapore and Hong Kong, Special Administrative Region of the People's Republic of China, "piracy" was included as one of the offences for which extradition requests could be made.[184]

Extradition requests made by Singapore to foreign countries can also take place because "piracy" is included in the First Schedule[185].

[179] See Extradition (Commonwealth Countries) Declaration, *G.N. Nos. S 425/2007; S475/2007,* 15 August 2007
[180] S 2, Extradition Act
[181] S 7 (1), Extradition Act
[182] See, for example, Section 7 (2), Extradition Act.
[183] S 17, Extradition Act.
[184] See Extradition (Hong Kong Special Administrative Region of the People's Republic of China) Notification of 11 June 1998
[185] See Paragraph 27 of Part I of the First Schedule of the Extradition Act

Extradition to and from Commonwealth countries for piracy can also occur as "piracy" is an "extraditable crime" included in the First Schedule.

iii. Extradition for Offences under the Hostage Taking Act

Section 14 of the Hostage Taking Act provides that:

a. All hostage-taking offences will be extraditable offences under the Extradition Act and will be deemed to be included in the First Schedule. Accordingly, extradition for hostage-taking offences will be facilitated to and from Commonwealth countries which are parties to the Hostage-Taking Convention (where an extradition treaty is not necessary).

b. Where there is no extradition treaty in force between Singapore and a Convention Country, a notification may be made under Section 4 of the Extradition Act, as if there were an extradition treaty between Singapore and that Convention Country. In that event, the Extradition Act will apply to that country as if the only extradition crimes within the meaning of that Act were offences of the Convention Country that correspond to hostage-taking offences. No notification has been made to date.

c. When there is an extradition treaty in force between Singapore and a Convention Country but the treaty does not provide for the extradition of persons accused of or convicted of an offence of that country that corresponds to a hostage-taking offence, a notification may be made under Section 4 of the Extradition Act. The Extradition (International Convention against the Taking of Hostages) Notification 2010 states that hostage-taking shall be an extraditable offence for the extradition treaties in force between Singapore and three Convention countries.[186]

These provisions meet the requirements in Article 10 of the Hostage Taking Convention.

iv. Extradition for offences under the Maritime Offences Act

Section 11 of the Maritime Offences Act also implements the extradition provisions in Article 11 of SUA to a certain extent:

(a) The relevant maritime offences are deemed to be included in the list of extradition crimes described in the First Schedule to the Extradition Act;[187]

(b) Where there is no extradition treaty in force between Singapore and a Convention country, a notification in the Gazette under Section 4 of the Extradition Act may

[186] These are Hong Kong (Special Administrative Region of PRC, US and the Federal Republic of Germany: See Extradition (International Convention against the Taking of Hostages) Notification 2010, 21 November 2010

[187] Section 11 (1) of the Maritime Offences Act corresponding to Article 11 (1) of SUA

be made applying that Act as if there were an extradition treaty between Singapore and that country. In this event, the Extradition Act shall have effect as if the only extradition crimes within the meaning of that Act were relevant maritime offences. There has been to date, no notification.[188]

Interestingly, the Maritime Offences Act, unlike the Hostage Taking Act, has no provision which deems offences under the Maritime Offences Act "extraditable" offences in existing extradition treaties, although this required by Article 11 (1) of the SUA Convention.

v. Extradition for offences under the Terrorism (Suppression of Bombings Act)

Section 33 of the TSFA provides that:

a. All terrorism financing offences will be extraditable offences under the Extradition Act and will be deemed to be included in the First Schedule of the Extradition Act. Accordingly, extradition for terrorism financing will be facilitated to and from Commonwealth countries which are parties to the TFC (where an extradition treaty is not necessary).

b. Where there is no extradition treaty in force between Singapore and a Convention Country, a notification may be made under Section 4 of the Extradition Act, as if there were an extradition treaty between Singapore and that Convention Country. In that event, the Extradition Act will apply to that country as if the only extradition crimes within the meaning of that Act were offences of the Convention Country that correspond to hostage-taking offences. No notification has been made.

c. When there is an extradition treaty in force between Singapore and a Convention Country but the treaty does not provide for the extradition of persons accused of or convicted of an offence of that country that corresponds to a terrorism financing offence, a notification may be made under Section 4 of the Extradition Act. The Extradition (International Convention For the Suppression of the Financing of Terrorism) Notification 2008 states that terrorism financing shall be an extraditable offence for the extradition treaties in force between Singapore and three Convention countries.[189]

vi. Extradition for offences under UNTOC

Offences of "money-laundering" under UNTOC as implemented in the CDSA are "extraditable crimes" under the Extradition Act. This is because under the First Schedule

[188] Section 11 (2) and (3) of the Maritime Offences Act corresponding to Article 11 (2) of SUA.
[189] These are Hong Kong (Special Administrative Region of PRC, US and the Federal Republic of Germany: See Extradition (International Convention For the Suppression of the Financing of Terrorism) Notification 2008, 19 December 2008

of the Extradition Act, "an offence against the law relating to benefits derived from corruption, drug trafficking and other serious crimes" is listed as an "extraditable crime."

Offences of participation in an organized criminal group under UNTOC, as arguably implemented by the offences of abetment and criminal conspiracy in the Penal Code, are extraditable crimes under the Extradition Act. This is because, under the First Schedule, the following is considered as "extraditable crimes:"

> **1.** Abetment of a serious crime, where the serious crime is transnational in nature and involves an organised criminal group.
>
> **2.** Criminal conspiracy to commit a serious crime, where the serious crime is transnational in nature and involves an organised criminal group.
>
> *Note:*
>
> The expressions "serious crime", "organised criminal group" and "transnational" have the meanings given to those expressions in the United Nations Convention against Transnational Organised Crime, done at New York on 15th November 2000.

Hence, money-laundering, abetment and criminal conspiracy would be an extraditable crime between Singapore and other Commonwealth countries. Singapore can also make extradition requests to foreign States for extradition of those who committed the above offences.

However, there is no obligation to include money-laundering, abetment and criminal conspiracy in existing extradition treaties nor is there is any provision which allows UNTOC to be the legal basis for extradition in the absence of an extradition treaty, as required by Article 16 (3) and 16 (4) of UNTOC.

2. Mutual Legal Assistance

UNCLOS does not have any mutual legal assistance provisions. Most of the counter-terrorism conventions have provisions on mutual legal assistance and UNTOC has very extensive provisions on mutual legal assistance and UNTOC has been described as a "mini-MLA treaty."

Singapore enacted the Mutual Assistance in Criminal Matters Act (Cap 190A) (MACMA) in 2000.[190] It signaled "Singapore's commitment to be part of the wider international network of cooperation in combating crime on a global scale."[191] The

[190] Singapore relied on the Hong Kong Mutual Legal Assistance in Criminal Matters (Confiscation of Benefits) Act, New Zealand Assistance in Criminal Matters Act, Australia Mutual Assistance in Criminal Matters Act 1987 and the UK criminal Justice (International Co-operation Act) 1990 for some of the provisions of the MACM: See Comparative Table of the Mutual Assistance in Criminal Matters Bill, Bill No. 3/2000

[191] Statement of Minister of Law, Professor Jayakumar in the Second Reading of the Mutual Assistance in Criminal Matters Bill, Parliament No. 9, Session No. 2, Volume No. 71, Sitting No. 9, Sitting Date, 22 February 2000.

MACMA consolidated the existing mutual assistance provisions and provided for more forms of assistance not available under previous laws.[192]

i. Overview of the MACMA

The Act has four parts. Part II deals with requests for assistance made by Singapore to foreign countries. Part III deals with the requests for assistance to Singapore by foreign countries. Parts I and IV deal with general issues which are common to both requests by Singapore to foreign countries and foreign countries to Singapore.

Requests by Singapore to a Foreign Country

Singapore can request for a number of different forms of assistance from a foreign country. The request must be made by the Attorney-General. Such assistance includes the obtaining of evidence from a foreign country i.e. asking a foreign country to take evidence in that country such as the testimony of witnesses, seizing physical evidence, photographs, documents etc[193], the arrangement for the voluntary attendance of persons in Singapore as a witness in legal proceedings or in criminal investigations,[194] the enforcement of a confiscation order[195] and assistance in the location of persons.[196]

Whether a foreign country will accede to such requests will depend on the law of the foreign country.[197] There is no restriction on which country Singapore may request assistance from.

Requests to Singapore made by a Foreign Country

With regards to requests made to Singapore for assistance by a foreign country, the MACMA distinguishes between non-coercive and coercive measures.[198] Assistance which does not involve coercive measures may be provided to any country.[199] This includes the taking of evidence for criminal proceedings,[200] the transiting through Singapore of a person who is in custody in a foreign country and is to give evidence in a criminal matter in another country,[201] assistance in locating persons who are believed to

[192] *Ibid.*
[193] Section 8, MACMA
[194] Section 9, MACMA
[195] Section 13, MACMA
[196] Section 14, MACMA
[197] Statement of Minister of Law, Professor Jayakumar in the Second Reading of the Mutual Assistance in Criminal Matters Bill, Parliament No. 9, Session No. 2, Volume No. 71, Sitting No. 9, Sitting Date, 22 February 2000.
[198] Statement of Minister of Law, Professor Jayakumar in the Second Reading of the Mutual Assistance in Criminal Matters Bill, Parliament No. 9, Session No. 2, Volume No. 71, Sitting No. 9, Sitting Date, 22 February 2000.
[199] Section 16 (1) (a), MACMA
[200] Section 21 91), MACMA
[201] Section 27 (1), MACMA

be in Singapore,[202] assistance in the service of process subject to the Singapore Rules of Court.[203]

Assistance which involves coercive measures may only be given to a "prescribed foreign country which is a country which has a mutual legal assistance treaty with Singapore.[204] Such coercive measures include production orders for criminal matters,[205] requests for assistance in arranging the attendance of person in a foreign country,[206] enforcement of confiscation orders,[207] assistance in search and seizure.[208]

Assistance with coercive measures can also be given to foreign countries in the absence of a mutual legal assistance treaty if the appropriate authority of that country has given an undertaking to the Attorney-General that that country will comply with a future request by Singapore for similar assistance in a criminal matter involving an offence that corresponds to the foreign offence for which the assistance is sought.[209] That country will be deemed to be a "prescribed foreign country." There are presently 12 "prescribed foreign countries" to which Singapore will provide assistance for coercive measures[210] although some of them are only for certain offences.[211]

Offences

The offences for which mutual legal assistance can be provided are set out in the First and Second Schedules to the CDSA

Refusal of Assistance

The Attorney-General must refuse requests for assistance in certain circumstances such as the failure to comply with applicable mutual legal assistance treaties, if the offence would not constitute an offence under the ordinary criminal law of Singapore, if the offence is not of sufficient gravity, the request is of insufficient importance to the investigation, it is contrary to public interest to provide assistance.[212] The Attorney-General has the discretion to refuse assistance in other circumstances such as if the provision of assistance would prejudice the safety of any person or impose an excessive burden on the resources of Singapore.[213]

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[202] Division 7, MACMA
[203] Division 8, MACMA
[204] Section 16 (1) (b), Section 17 (1), MACMA
[205] Section 22, MACMA
[206] Division 3, MACMA
[207] Division 5, MACMA
[208] Division 6, MACMA
[209] Section 16 (2), MACMA
[210] They are Myanmar, Lao PDR, Philippines, Cambodia, Indonesia, Brunei, India, Hong Kong, Malaysia, Viet Nam, USA, UK.
[211] For example, the US is only a "prescribed foreign country" for purposes of an offence under the drug law of the US and for terrorist financing offences. Similarly, the UK is a "prescribed foreign country" for terrorist financing offences.
[212] Section 20 (1), MACMA
[213] Section 20 (2), MACMA

ii. Mutual Legal Assistance for offences of Piracy

Singapore can provide mutual legal assistance for piracy and piratical acts under the Penal Code[214] which is included in the Second Schedule to the CDSA.

iii. Mutual Legal Assistance for offences under the Hostage Taking Act

Section 13 of the Hostage Taking Act provides that in the provision of mutual legal assistance to a foreign country for a criminal matter involving an offence corresponding to a hostage-taking offence, that the relevant offence shall be deemed not to be an offence of a political character.

Offences under the Hostage-Taking Act[215] are included in the Second Schedule of the CDSA and Singapore can give mutual legal assistance to other countries.

iv. Mutual Legal Assistance for offences under the Maritime Offences Act

There are no mutual legal assistance provisions in the MOA although offences under the MOA are included in the Second Schedule of the CDSA. Mutual legal assistance will therefore be able to be provided for offences under the MOA.

v. Mutual Legal Assistance for offences under the Terrorism (Suppression of Financing) Act

Unlike both the Hostage-Taking Act and the MOA, the provision on mutual legal assistance in the TSFA is wider.

> **32.** —(1) Where there is no treaty, memorandum of understanding or other agreement in force between Singapore and a country which is a party to the Convention relating to the provision of assistance concerning any terrorism financing offence, an order under section 17 of the Mutual Assistance in Criminal Matters Act (Cap. 190A) may be made —
>
> (a) declaring that country as a prescribed foreign country; and
>
> (b) applying that Act as if there were a treaty, memorandum of understanding or other agreement under which that country has agreed to provide assistance in criminal matters to Singapore.
>
> (2) Where the Mutual Assistance in Criminal Matters Act is applied under subsection (1), the Mutual Assistance in Criminal Matters Act shall, subject to subsection (3), have effect as if the only foreign serious offences within the meaning of that Act were terrorism financing offences.
>
> (3) Subsection (2) is without prejudice to any other order made under section 17 of the Mutual Assistance in Criminal Matters Act (Cap. 190A).

[214] Paragraph 13 and 14 of the Second Schedule, Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) act (Cap 65 A).
[215] Paragraph 366, of the Second Schedule, Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) act (Cap 65 A).

(4) For the purposes of the Mutual Assistance in Criminal Matters Act, a terrorism financing offence —

(a) wherever committed, shall be deemed to be a foreign serious offence; and

(b) shall not be deemed to be an offence of a political character.

Offences under the TSFA are included in the Second Schedule of the CDSA.

vi. Mutual Legal Assistance for offences under UNTOC

Singapore can also provide mutual legal assistance for the offences of abetment and criminal conspiracy as they are included in the Second Schedule of the CDSA, as well as offences of money-laundering.

X. CONCLUSION

It is evident that when Singapore ratifies an international convention, it faithfully and diligently implements its obligations under that convention in a way that maximizes the effect and benefits of the convention. This is particularly true of the counter-terrorism conventions. Because of this, Singapore has an arsenal of legal measures it can take against perpetrators of Maritime Crimes, although their actual use by prosecuting authorities remains to be seen. The one possible problem is its antiquated definition of piracy "as under the law of nations." However, as explained above, this will ultimately depend on the interpretation that a Singapore court gives to "piracy under the law of nations" and a Singapore court may find that it means piracy as defined under UNCLOS.