

**CIL Academic Exchange with North China Sea Branch of
State Oceanic Administration of China**

Cooperation on the Management and Safety of Straits

Monday 27 February 2012, NUS Faculty of Law

Piracy and Armed Robbery Against Ships in Southeast Asia

Robert Beckman

Director, Centre for International Law (CIL)

National University of Singapore

CIL

Centre for International Law

www.cil.nus.edu.sg



NUS

National University
of Singapore

Overview of paper & presentation

1. Overview of Piracy in Southeast Asia
2. Piracy in Southeast Asia, 2002-2007
3. Piracy in Southeast Asia, 2008-2011
4. National Legislation on Piracy
5. UN Terrorist Conventions and Piracy & ARAS
6. Conclusions

Part 1

Overview of Piracy in SE Asia

Overview of Piracy in SE Asia

- **Most attacks are on ships in port, at anchor or steaming in territorial sea**
- **Is not “piracy” under UNCLOS but “armed robbery against ships”**
- **Only coastal State has enforcement jurisdiction**
- **Very few attacks on steaming ships transiting Straits of Malacca and Singapore in traffic separation scheme**

Modus Operandi of Pirates

- Most attacks are “housebreaking at sea”
- Attackers carry long knives but no heavy weapons
- Objective is money in ship’s safe and valuables such as laptops, cell phones and watches
- No kidnapping of crew for ransom
- Pirates are in organized syndicates but goals are limited
- Pirates are unemployed or under-employed fisherman or former seafarers

Armed Robbery Against Ships

- **Armed robbery against ships (ARAS) is governed by laws of coastal State**
- **Only coastal State can patrol in its territorial sea and archipelagic waters**
- **Coastal States like Indonesia give combating ARAS a lower priority than problems such as smuggling and IUU fishing**

Applicable International Law

- **Most attacks not Piracy because not committed seaward of outer limit of the Territorial Sea**
- **Most attacks not SUA offences because no taking command of ship, no taking of hostages, and no violence against persons on bridge (which would endanger safety of navigation)**
- **Pirates move on and off within a few minutes, and persons on bridge may not even be aware**

Piracy in broader context

- The best way to fight piracy in SE Asia is by good police work on land
- States such as Indonesia need incentives to give pirate attacks a higher priority given its limited capacity to patrol its waters
- Indonesia argues that piracy must be addressed in the broader context of maritime security
- States such as Indonesia and Malaysia will never allow foreign warships to patrol their waters

Attacks governed by IL

- **Some attacks take place in EEZ so would be piracy under international law**
- **Some attacks involve hijacking of ships so would be offence under 1988 SUA**
- **Some attacks involve threat or use of force against crew which endangers safety of navigation so would be offence under 1988 SUA**

Part 2

Piracy in SE Asia

from 2003-2007

Piracy in SE Asia, 2003-4

- **Piracy became a major concern in 2003-2004 because of a sudden increase in incidents following the Asian financial crisis in 1997 and end of Suharto Government in Indonesia**
- **Of particular concern were incidents in and near the Straits of Malacca and Singapore (hereafter Straits) because it is a vitally important sea lane connecting the Indian Ocean and the South China Sea.**
- **There was also concern of possible link to terrorism**

Piracy in SE Asia, 2003-4

- **93 attacks in Indonesia in 2004, the highest in the world and more than ¼ of total**
- **37 attacks in the Malacca Strait in 2004, the second highest in the world**
- **Most attacks in Malacca Strait were serious, with vessels being fired upon and crew kidnapped for ransom**
- **Lloyds War Committee declared Malacca Strait a “war risk zone” in June 2005**

Piracy in SE Asia, 2003-4

- **Some serious attacks including taking of crew members hostage for ransom**
- **Such incidents were related to the separatist movement in the Aceh province of Indonesia**
- **Some incidents also involved use of guns and rifles instead of long knives**

Impetus for Cooperation

- Declaration of “War Risk Zone” by Lloyds
- Decision by IMO Secretary-General to call meeting in Jakarta in early 2005 to discuss safety, security & environment in the Straits of Malacca and Singapore
- Fear that if attacks increased the major powers may insist on sending ships to patrol the Straits

Littoral States Response

- **1st Meeting of Foreign Ministers since 1970s to discuss the Straits held in Batam Indonesia before IMO Meeting**
- **Littoral States issued 2005 Batam Statement setting out principles for cooperation:**
 - 1. Must recognize sovereignty of littoral States**
 - 2. Must be consistent with 1982 UNCLOS**

Littoral States Cooperation

- **Enhanced system of trilateral Malacca Straits Sea Patrols**
- **Defense Chiefs of the three States agreeing to written Malacca Straits Patrols Standard Operating Procedures (SOP), which included rules on “hot pursuit” into territorial waters**
- **“Eyes in the Sky” air patrols**
- **More exchange of information at operational level**

National Measures by Littorals

- Singapore took a series of measures to enhance security in its waters
- Malaysia passed new legislation establishing a coast guard called the Malaysian Maritime Enforcement Agency
- Indonesia took steps on land and at sea to combat piracy in the Straits, which was supported by patrol vessels from US and Japan

Regional Initiative - ReCAAP

- **Japan pushed for the adoption of the 2004 Regional Cooperation Agreement on Combating Piracy and Armed Robbery Against Ships in Asia (ReCAAP)**
- **ReCAAP establishes an Information Sharing Centre (SC) in Singapore which is intended to assist member governments in analyzing and sharing information on piracy and armed robbery against ships**
- **Focal points set up in each member State**

Impact of ReCAAP and ISC

- **The impact on ReCAAP and the ISC is not clear**
- **ReCAAP does enable States to share information which they would be reluctant to share with non-government bodies**
- **Impact of ReCAAP has been questioned because two key States – Indonesia and Malaysia – have not become parties**
- **Indonesia and Malaysia claim to cooperate with ReCAAP even though they are not members**

Problems with ReCAAP

- Indonesia is not happy with ReCAAP because it internationalizes a problem which it views as armed robbery against ships and hence primarily a matter of national concern
- It is also not happy that ReCAAP deals only with cooperation on piracy and armed robbery against ships and does not address other issues of maritime security and maritime crimes which in its view are a higher priority

Decline in Piracy by 2008

1. **Indonesia: from 93 in 2004 to 28 in 2008**
2. **Malacca Strait: from 37 in 2004 to 2 in 2008**
3. **Only 3 Hijacking incidents and one Hostage-taking incident in 2008**

Other possible reasons

- **2002 Amendments to 1974 SOLAS Convention increased security on ships and in ports**
- **Tsunami in December 2004 may have killed many pirates, especially in Aceh Province of Indonesia**
- **Indonesia started peace talks with rebels from Aceh province and reached a peace agreement in 2005**
- **US renewed military aid and assistance to Indonesia in November 2005 and has provided patrol boats and radar stations to Indonesia**

Part 3

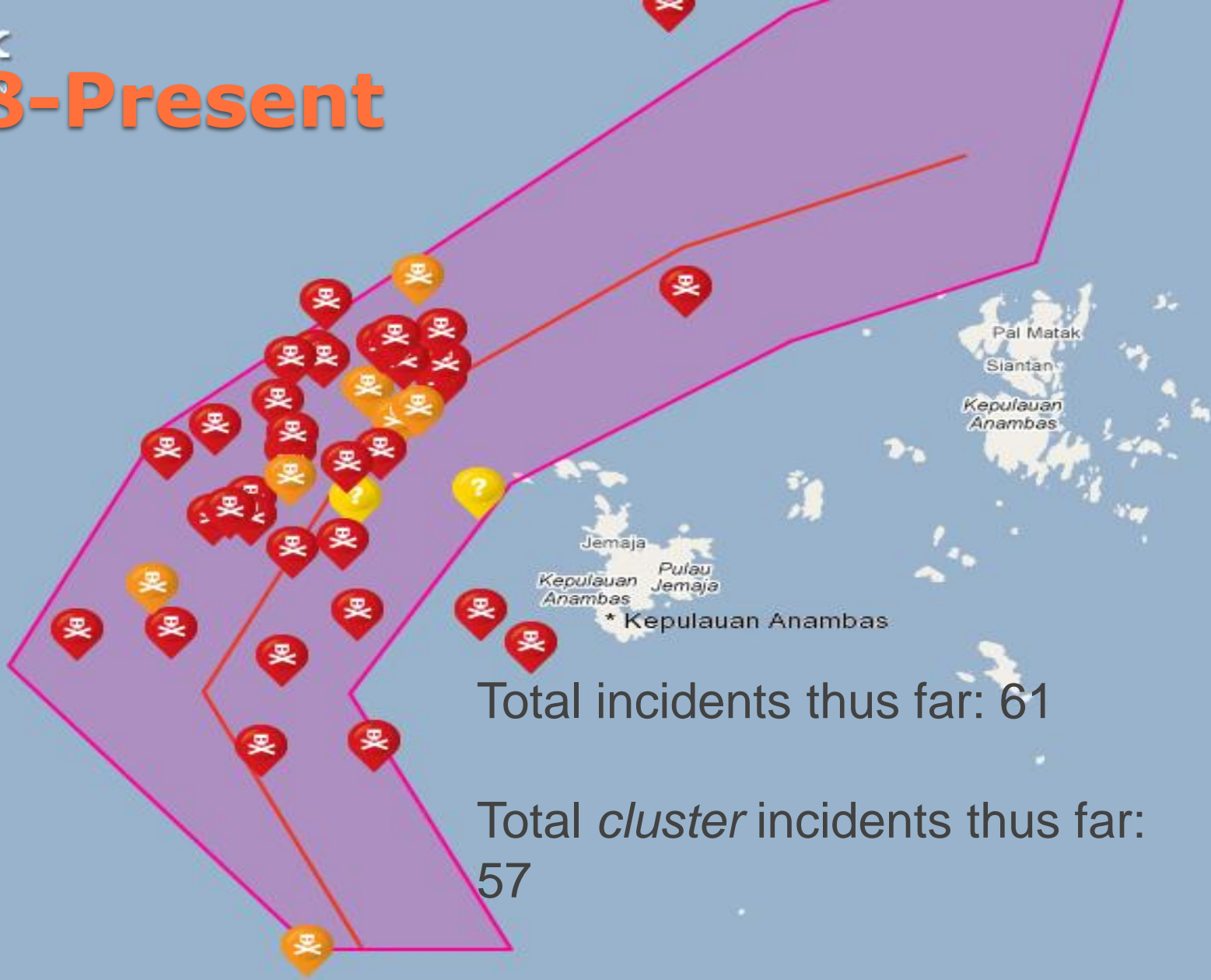
Piracy in SE Asia

from 2008-2010

Piracy is again on the rise

- **In the past three years there has been an increase in the number of “piracy” incidents in the Singapore Strait, the South China Sea and off the Philippines.**
- **Although there were no incidents of crew members being taken hostage for ransom, there have been several incidents of transnational criminal syndicates hijacking tug boats.**

2008-Present

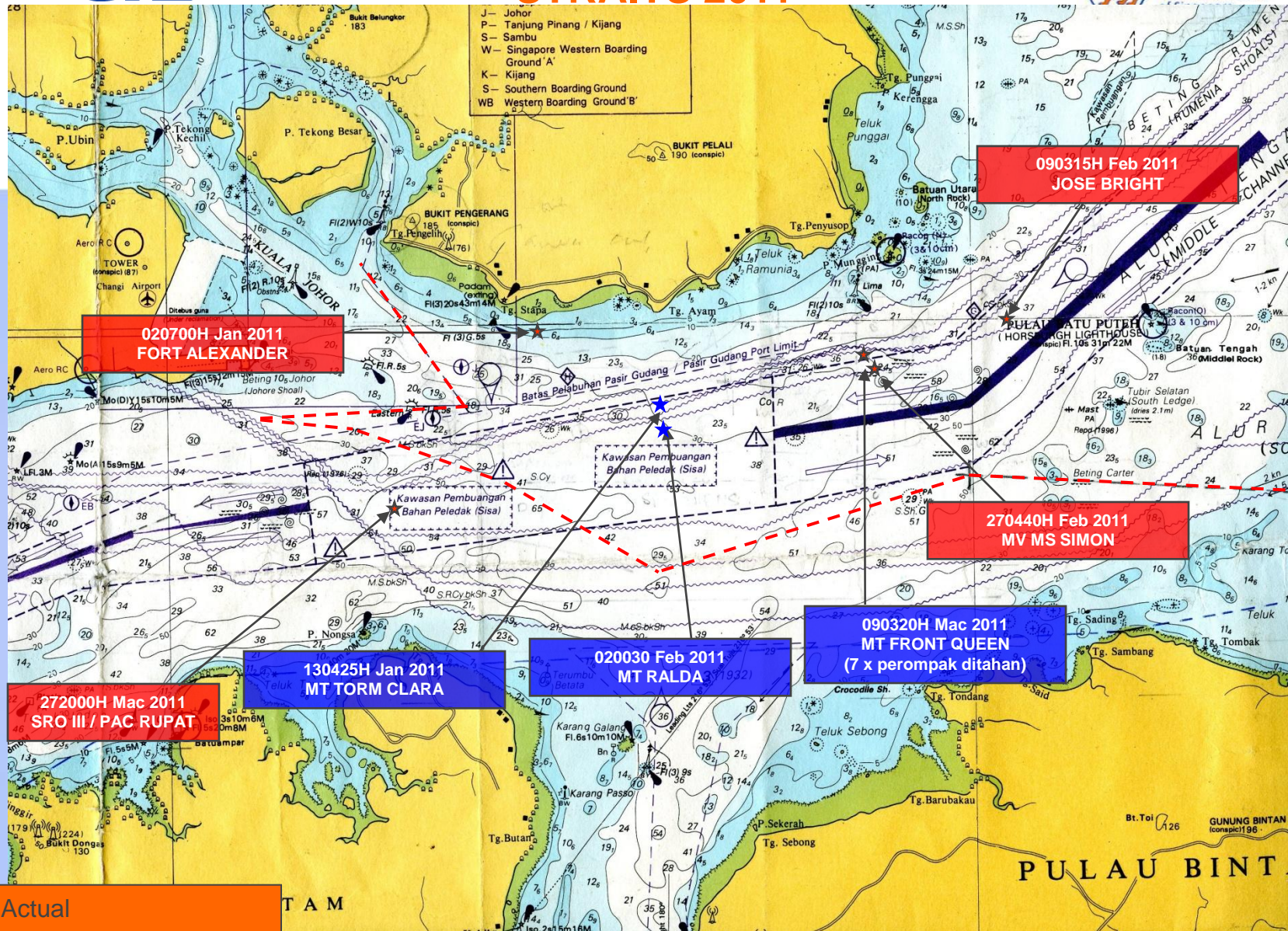


Total incidents thus far: 61

Total *cluster* incidents thus far:
57

Total acts of piracy outside of
Indonesian territorial waters: 29





★ Actual
 ★ Attempted

Increase in attacks in 2010

- **There were 120 incidents of piracy and armed robberies at sea reported in Southeast Asia in 2010**
- **87 attacks were successful, including seven hijackings of tugs and fishing vessels**
- **From 2008 to 2010 there have been 57 reported incidents involving cluster piracy within the Anambas/Natuna/Tembalan corridor in the Indonesian archipelago.**

Cluster Piracy

- **Cluster piracy (and armed robbery at sea) entails a group of offenders moving within a specific maritime area and systematically attacking a number of vessels within a certain time period.**
- **Cluster piracy has been evident in the South China Sea and in the Singapore Strait, especially near the Anambas**
- **Some of the attacks are outside of the territorial sea so they would be piracy under UNCLOS**

Role of syndicates

- **Since 2008, a sophisticated campaign of piracy and armed robbery at sea has been waged off the Anambas Islands of Indonesia in the South China Sea**
- **The attacks are orchestrated by experienced syndicates running business enterprises that in many ways operate independently of global economic conditions**
- **The syndicates also engage in other illegal activities including various forms of smuggling**

Types of Attacks

- The cluster piracy attacks occur in particular places in certain months because of weather conditions
- The cluster piracy attacks involve syndicates but are limited to money in the safe and valuables like lap tops, cell phones and cameras
- The pirates board quickly and move to the captain's cabin, threatening crew members they temporarily take captive

Piracy or SUA offences?

- The attacks may be “piracy” when they take place outside Indonesia’s territorial sea
- The attacks may not be SUA offences because the pirates do take control of the ship and any violence or threat of violence may not endanger the safety of navigation - the crew on the bridge may not even know of the presence of the pirates on the ship

Jurisdiction over Cluster Piracy

- The cluster piracy off Anambas is outside the area patrolled by the Indonesian Navy
- Under UNCLOS piracy rules any warship could arrest the pirates outside the territorial sea of Indonesia
- However, Malaysian legislation does not give the Malaysian Maritime Enforcement Agency (MMEA) authority to arrest ships outside Malaysia's EEZ

Hijacking of Tugs

- Between 2008 and 1 May 2011, there were six tugboat hijackings and two attempts in Southeast Asia.
- Tugboats were boarded by a well-organized group of hijackers who immediately assumed control of the vessel and detained the crew
- Crew were not mistreated and were later released in life boats in the South China Sea
- Tugs were re-painted and re-named and taken to third countries for sale to pre-arranged buyers

Hijacking of Tugs

- Hijacking of tugs is done by organized transnational criminal syndicates
- Hijacking of tugs is 1988 SUA offence and may be “piracy” under UNCLOS if outside territorial sea
- The persons who finance the hijacking of tugs are committing an offence under the 1999 Terrorist Financing Convention because they have provided funds for the purpose of committing a SUA offence.

Comparison with Somali Piracy

- “Pirates” in SE Asia are less likely to carry heavy weapons or mistreat crew members
- It is unlikely that the Somali business model of piracy will come to SE Asia because the States in the region have more control of their waters and their coastal communities
- Although international criminal syndicates are engaged in some attacks on ships in SE Asia they do not have the organization required for major ship hijackings for ransom

Part 4

National Legislation on Piracy

UNCLOS Implementation & Piracy

- **Singapore is the only State in Southeast Asia that has national legislation:**
 - 1. Giving its courts jurisdiction over piracy under the law of nations**
 - 2. Making piracy under the law of nations an offence punishable with severe penalties**
 - 3. Giving its Navy the power to arrest ships outside the territorial sea of any State**

Domestic Piracy Legislation

- **Piracy is not an offence in the national laws of several countries in SE Asia**
- **Some States with Piracy laws do not make piracy a universal crime**
- **Many States do not have laws giving national courts jurisdiction over attacks on foreign ship by foreign nationals outside the territorial sea**
- **Many States do not have legislation giving their Navy or Coast Guard the authority to arrest pirates outside the territorial sea of any State**

Part 5

UN Terrorist Conventions and Piracy & Armed Robbery Against Ships

UN Terrorist Conventions

- The 1988 SUA, 1979 Hostage Taking Convention & 1999 Terrorist Financing Convention could be an effective tool to combat more serious attacks on ships in SE Asia such as ship hijacking
- These conventions have advantages because of their provisions on extradition and mutual legal assistance
- Another advantage is that they establish universal jurisdiction among States Parties

Extraterritorial Jurisdiction

- The success of the conventions requires that States Parties establish jurisdiction over the offences when committed outside their territory :
 - (1) by their own nationals
 - (2) on their ships or aircraft
 - (3) when an alleged offender is present in their territory and they choose not to extradite
- If an alleged offender is present in the territory of a State party, it must take them into custody and either extradite or prosecute them

SUA, Hostages & Terrorist Financing

- States parties are required to make the offences in the Conventions crimes under their law punishable by severe penalties
- States such as Singapore and Australia have passed laws creating new criminal provisions for the offences exactly as they are defined in the conventions
- Having offences exactly as defined in the conventions decreases the risk of a legal challenge

Ratification and Implementation

- **Several key States in Southeast Asia have not ratified the 1979 Hostages or the 1988 SUA Convention**
- **At least one State which has ratified 1988 SUA has not passed any legislation implementing its provisions into national law**
- **Since most countries in SE Asia do not have extradition treaties with each other, the Conventions would be a useful tool to deal with international criminal syndicates involved in ship hijacking**

Part 6

Conclusions

Conclusions – Contrast to Somalia

- It is unlikely that the Somali business model of piracy will come to Southeast Asia because the States in the region have more control of their waters and coastal communities and because the syndicates are less well organized and financed
- In contrast to Somalia, a major issue in combating attacks on ships in SE Asia is that most of the attacks are armed robbery against ships and under the jurisdiction of coastal States

Conclusions – Foreign Assistance

- States in Southeast Asia are very unlikely to agree to foreign warships patrolling their waters
- If States outside the region have an interest in helping combat piracy in SE Asia, they should provide technical and financial assistance to the Governments in SE Asia to enable them to better secure their waters
- States in SE Asia are more likely to cooperate to combat piracy if it is considered together with other maritime crimes such as the smuggling of people, weapons and drugs

Conclusions – Piracy Regime

- Even though piracy in SE Asia is less severe than Somali piracy, the piracy regime in UNCLOS and the UN terrorism conventions are essential legal tools
- The UNCLOS regime on piracy is an essential tool in combating piracy in SE Asia because it provides the only legal basis for arresting pirates outside the territorial sea of any State
- The States in SE Asia need to review their national legislation so that they can carry out their right to arrest and prosecute persons who commit “piracy” as defined in UNCLOS

Conclusions – 1988 SUA

- 1988 SUA can be a useful tool to combat ship hijackings and serious attacks on ships within the territorial sea and archipelagic waters
- 1988 SUA can only be effective if all the States in the region ratify the Convention and pass the necessary implementing legislation to make it part of the national law, including:
 1. Making the offences in the Convention crimes under their national law punishable by severe penalties
 2. Establishing jurisdiction based on the presence of the offender in their territory as well as on the territorial, nationality and flag state principles

Conclusions - Other UN Conventions

- The 1999 Terrorist Financing Convention can be an effective tool for pursuing persons who provide funds for the purpose of committing a SUA offence such as the hijacking of a ship
- The 1979 Hostage Taking Convention can be an effective tool against persons who hold crew members or passengers hostage for ransom
- As with the 1988 SUA Convention, these conventions are only effective if they are ratified and effectively implemented by all the States in the region

Final Conclusion

- **The Piracy Regime in UNCLOS and the UN Terrorist Conventions provide a legal framework for combating piracy in SE Asia to supplement the efforts at the national level**
- **These regimes have not been effective to date because of a lack of political will and because they have not been ratified and effectively implemented**
- **In this sense the problems in dealing with Somali piracy and piracy in SE Asia are the same**

Thanks for Your Attention

Any Questions ?

Prof Robert Beckman

Director, Centre for International Law (CIL)

National University of Singapore

Email: CILDIR@NUS.EDU.SG

Website: WWW.CIL.NUS.EDU.SG