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**Cooperation to Combat "Piracy"
in Southeast Asia**

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Overview of paper & presentation

1. Traditional “Piracy” in Southeast Asia
2. Challenge of Somali Piracy
3. Trends in Piracy in Southeast Asia, 2008-2011
4. Cooperation in SE Asia under UNCLOS Piracy provisions
5. Cooperation in SEA Asia under the 1988 SUA and 1979 Hostages Conventions
6. Conclusions

Part 1

Traditional "Piracy"

in SE Asia

Overview of “Piracy” in SE Asia

- Most attacks are on ships in port, at anchor or steaming in territorial sea
- 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 engine parts
- Pirates are unemployed or under-employed fisherman or former seafarers who are often engaged by organized syndicates

Armed Robbery Against Ships

- **UNCLOS piracy provisions do not apply if attack is against a ship in port, in territorial sea or in archipelagic waters**
- **Armed robbery against ships (ARAS) is governed by laws of coastal State**
- **Only coastal State can exercise police power in waters under its sovereignty**
- **Foreign warships have no right to patrol or board ships in waters subject to sovereignty**

“Piracy” in Southeast Asia

- **If attack takes place in the exclusive economic zone, the piracy provisions in UNCLOS apply**
- **Article 58(2) of UNCLOS provides that piracy provisions apply in the EEZ**
- **The warships of any State can board pirate ships in the EEZ and arrest the pirates**
- **The State which made the arrest can charge them offenders with piracy under their national laws**

Combating attacks in SE Asia

- The best way to combat attacks on ships in SE Asia is by good police work on land
- Indonesia has argued 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
- Coordinated patrols have been successful in reducing attacks in Straits of Malacca & Singapore

Part 2

Challenge of Somali Piracy

Somali Piracy

- **Somali piracy consists of well-organized and funded pirate gangs hijacking large ships and holding the ship and crew for ransom**
- **Ships and crew are held in coastal communities which support the pirates**
- **Somali government unable to control its waters or control illegal activities in coastal communities**
- **Pirates operating from “mother ships” can attack ships many miles from the coast**

UN Security Council & Somali Piracy

- UN Security Council used its “Chapter VII” powers by declaring Somali piracy at threat to international peace and security
- UNSC created an exception to the rules on piracy
- SCR 1816 authorizes States cooperating with the TNG of Somalia to enter the territorial waters of Somalia for the purpose of repressing acts of piracy and armed robbery at sea

Limits of SC exception on Somalia

- Exception only applies if the Transitional National Government of Somalia has given notice to the UN Secretary-General
- Indonesia and other developing countries in the Security Council insisted that the SC resolution expressly provides that it is a “one-off” which cannot be applied elsewhere or used as evidence of a new rule of customary international law

Problems in Seizing Somali Pirates

- Piracy off Somalia has demonstrated that there are many problems in seizing pirates and pirate ships
 1. Difficult to identify pirate skiffs and their “Mother Ships”
 2. May have no right to seize skiff unless it is attacking a merchant ship
 3. “Mother Ships” themselves may not take part in attacks so warships may be reluctant to seize them

Problems Prosecuting Somali Pirates

- UNCLOS provides that States may seize persons who commit piracy and prosecute them in their courts
- States have a right to arrest pirates, but no obligation to do so
- Also, the piracy legislation in some States is outdated and only gives their courts jurisdiction if
 - (1) the perpetrators were its nationals; or
 - (2) if the victim ship was flying its flag

Problems Prosecuting Somali Pirates

- Prosecution in seizing State is often difficult because of the lack of witnesses and evidence, human rights obligations, etc
- US, UK and other States have entered into Bilateral Transfer Agreements with Kenya and Seychelles providing that seized pirates can be handed over them for prosecution
- Somali Piracy has made the international community realize that States should update their national laws on piracy and bring them into conformity with UNCLOS

Somali Piracy & SE Asia

- **“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 3

Trends in Piracy in SE Asia from 2008-2010

Piracy is on the rise

- In the past three years there has been an increase in the number of “piracy” incidents in the EEZ - 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.

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**
- **It is thought that the syndicates also engage in other illegal activities including various forms of smuggling**

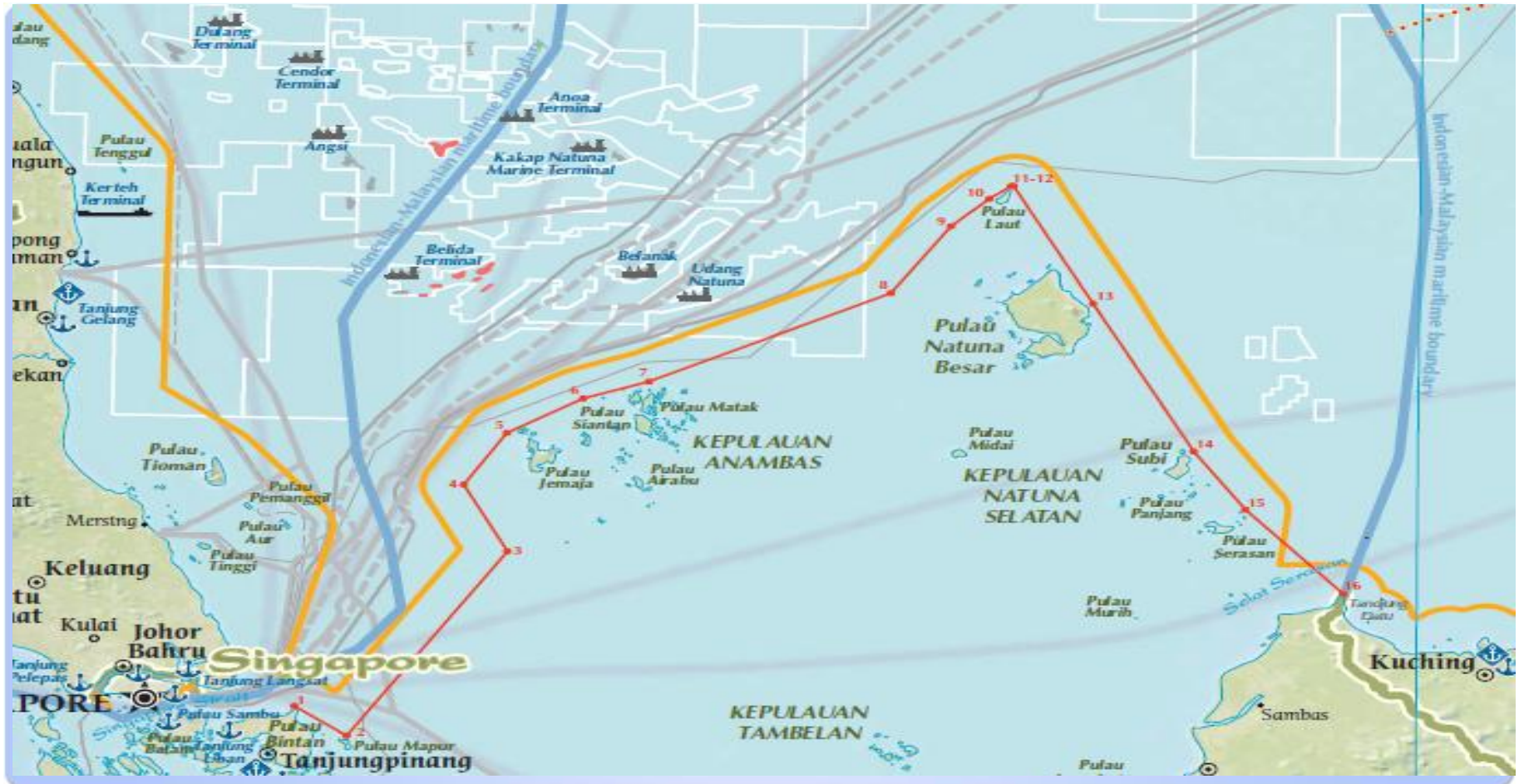
Types of Attacks

- 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

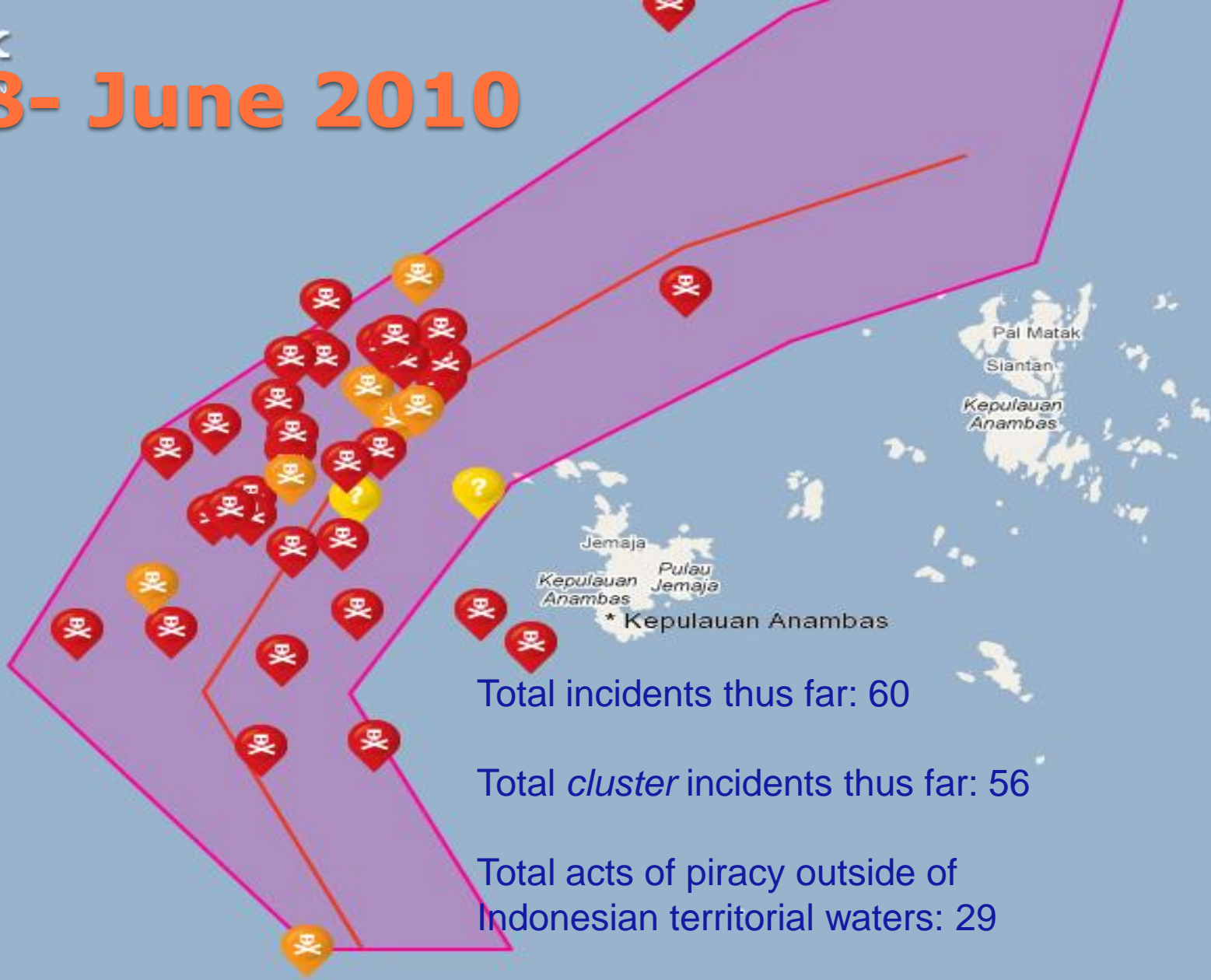
Piracy or Armed Robbery?

- The attacks may be “piracy” if they take place in the Exclusive Economic Zone
- The attacks would be Armed Robbery Against Ships if they take place in the territorial sea or in archipelagic waters

Attacks off Anambas Islands in SCS



2008- June 2010



Total incidents thus far: 60

Total *cluster* incidents thus far: 56

Total acts of piracy outside of Indonesian territorial waters: 29



Anambas Cluster History:

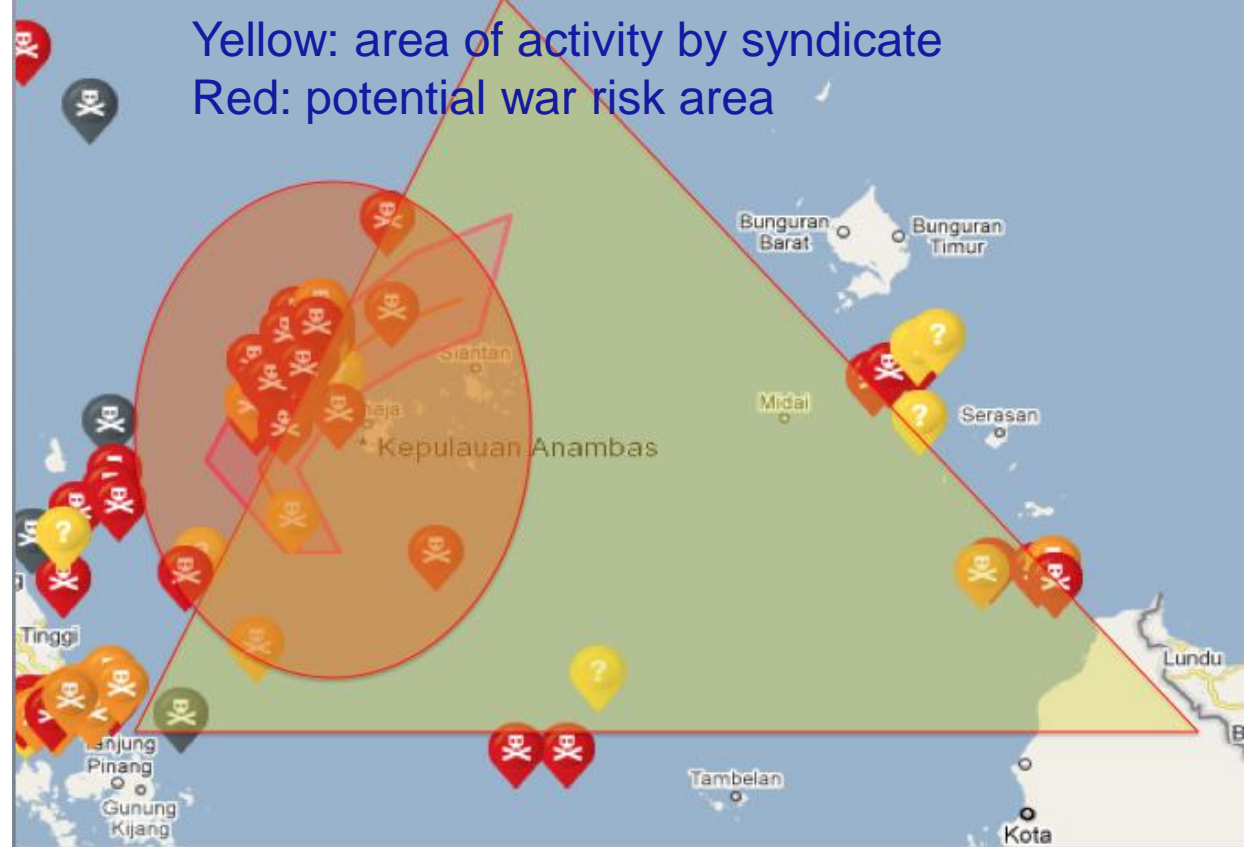
1. April 2008 - 2 x Incidents
2. June 2008 - 3 x Incidents
3. October 2008 - 3 x Incidents
4. April 2009 - 3 x Incidents
5. June 2009 - 4 x Incidents
6. September 2009 - 2 x Incidents
7. November 2009 - 2 x Incidents
8. April 2010 - 2 x Incidents
9. April 2010 - 2 x Incidents
10. May 2010 - 2 x Incidents
11. June 2010 - 7 x Incidents
12. July 2010 - 2 x Incidents
13. August 2010 - 5 x Incidents
14. August 2010 - 5 x Incidents
15. September 2010 - 2 x Incidents
16. November 2010 - 2 x Incidents
17. March 2011 - 2 x Incidents
18. March 2011 - 2 x Incidents
19. Mar/Apr 2011 - 2 x Incidents
20. April 2011 - 2 x Incidents

Cluster Likelihood 2008-2009: 70%

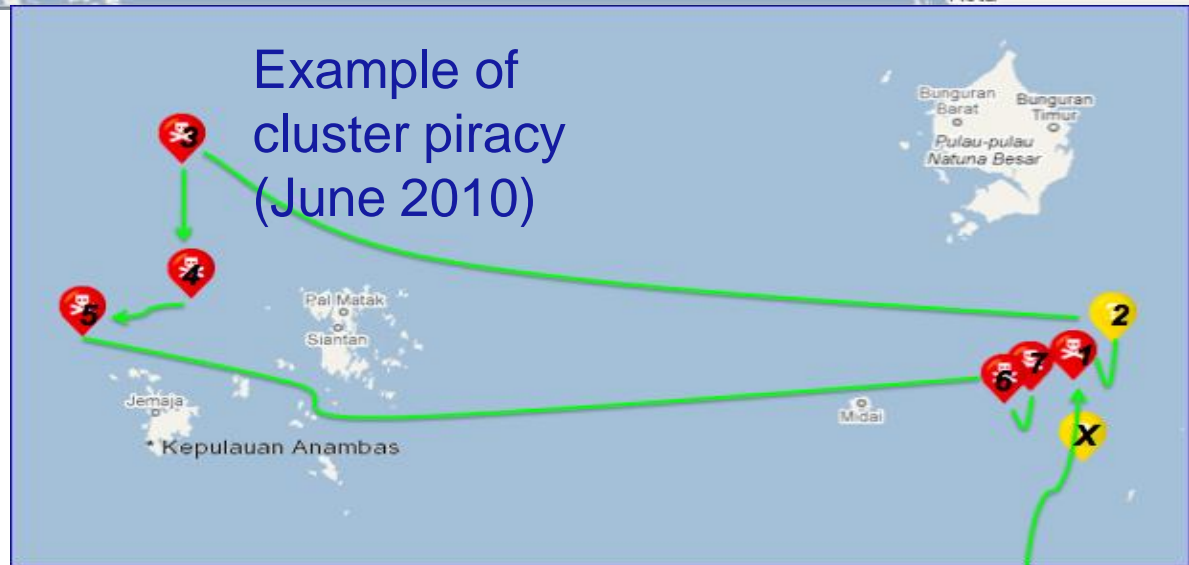
Cluster Likelihood 2010: 99%

Cluster Likelihood 2011: 100%

Yellow: area of activity by syndicate
Red: potential war risk area



Example of cluster piracy (June 2010)



Jurisdiction over Cluster Piracy

- Under UNCLOS piracy rules, the warship of any State could arrest the pirates for attacks in the EEZ
- Coordinated patrols with Malaysia & Singapore could be used to combat the attacks off Anambas
- 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

Part 4

Cooperation in SE Asia under the UNCLOS Piracy Regime

Piracy in Southeast Asia

- **Some attacks on ships in the South China Sea are piracy under UNCLOS because they take place in the EEZ (outside sovereignty)**
- **Important to be able to use piracy provisions in UNCLOS**
- **Is not possible to arrest foreign pirate ships in EEZ unless it is for the offence of piracy**

UNCLOS Implementation & Piracy

- To implement the piracy provisions in UNCLOS, a State should have national legislation:
 1. Making piracy as defined in UNCLOS an offence punishable with severe penalties
 2. Giving its courts jurisdiction over piracy as defined in UNCLOS
 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
- Some States do not have laws giving national courts jurisdiction over attacks on foreign ship by foreign nationals outside the territorial sea
- Some States do not have legislation giving their Navy or Coast Guard the authority to arrest pirates outside the territorial sea of any State

Cooperation under Piracy Regime

- Warships from other States in the region could engage in coordinated patrols with Indonesia in the EEZ off Anambas
- If warships arrested any Indonesian pirates they could turn them over to the Indonesia authorities for the purpose of prosecution
- Such cooperation would not be inconsistent with UNCLOS
- Precedent is coordinated patrols in Straits of Malacca and Singapore

Part 5

Cooperation in SE Asia under 1988 SUA Convention and 1979 Hostages Convention

UN Terrorist Conventions

- **The 1988 SUA Convention and the 1979 Hostages Convention could be effective tools to combat Somali piracy and the 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**

Offences under 1988 SUA

- It is an offence under the 1988 SUA Convention to hijack a ship or use force against someone on the ship which endangers the safety of navigation
- It is an offence under SUA even if it takes place in the territorial sea or archipelagic waters
- However, the SUA Convention gives no increased powers to States to board ships and arrest offenders

Hijacking of Tugs in SE Asia

- Hijacking of tugs is done by organized transnational criminal syndicates
- Hijacking of tugs is 1988 SUA offence and would be “piracy” under UNCLOS if committed outside the 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.

Offences under 1979 Hostages

- It is an offence under the Hostages Convention to hold persons hostage in order to compel the payment of a ransom
- Every attack on a ship in Somalia is an offence under both 1988 SUA and 1979 Hostages
- If “pirates” in SE Asia take crew members hostage for ransom, they are would be committing an offence under the 1979 Hostages Convention

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

Example of Cooperation under SUA

- Indonesian nationals hijack a tug boat flying a Singapore flag in Malaysia's territorial sea and take the tug to the Philippines for resale
- If Philippines is advised of the presence of the hijackers in its territory, it must take them into custody
- Philippines is obligated to either prosecute the hijackers for a SUA offence (ship hijacking) or extradite them to Indonesia, Malaysia or Singapore
- States must provide mutual legal assistance to aid the prosecution

Ratification and Implementation

- **SUA Convention can be effective only if all States in region ratify and implement it**
- **Several key States in Southeast Asia have not ratified the 1979 Hostages or the 1988 SUA Convention**
- **The Philippines has ratified 1988 SUA but has not passed any implementing legislation**
- **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 – Piracy Regime

- The piracy regime in UNCLOS is an essential legal tool to combat attacks in the EEZ or on the high seas
- UNCLOS regime on piracy provides the only legal basis for arresting pirates outside the territorial sea of any State
- States in SE Asia should 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 & 1979 Hostages

- **1988 SUA and 1979 Hostage can be useful tools to combat ship hijackings and serious attacks on ships within the territorial sea and archipelagic waters**
- **They can only be effective if all the States in the region ratify and effectively implement them by:**
 - 1. Making the offences in the Convention crimes under their national law**
 - 2. Establishing jurisdiction over the offence as set out in the Conventions**

Final Conclusion

- **The Piracy Regime in UNCLOS and the two 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 they have not been ratified and effectively implemented**

Thanks for Your Attention

Any Questions ?

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