



FACULTY OF LAW
Lund University

Sofia Kax

Regional cooperation as part of the
solution to piracy – the importance
of ReCAAP in Southeast Asia

A Minor Field Study in Vietnam
February 2012 – March 2012

Master's thesis
30 credits

Abhinayan Basu Bal

Maritime law

Spring 2012

Contents

SUMMARY	1
SAMMANFATTNING	3
PREFACE	5
LIST OF ABBREVIATIONS	6
1 INTRODUCTION	2
1.1 Background	2
1.2 Purpose	3
1.3 Outline	3
1.4 Method and material	4
1.5 Delimitation	6
2 PIRACY	7
2.1 Historical background	7
2.1.1 <i>Piracy in South East Asia</i>	8
2.2 Causes of piracy and why it persists	10
2.2.1 <i>A land-based problem</i>	10
2.2.2 <i>World War II's aftermath</i>	12
2.2.3 <i>Opportunity</i>	15
2.3 Summary	15
3 INTERNATIONAL LAW	17
3.1 UNCLOS	17
3.1.1 <i>Historical background</i>	17
3.1.2 <i>Definition of piracy</i>	18
3.1.3 <i>Universal jurisdiction</i>	22
3.1.4 <i>Hot pursuit</i>	22
3.2 SUA	23
3.2.1 <i>Definition of the crime</i>	24
3.2.2 <i>Jurisdiction</i>	24
3.3 Summary	25
4 COOPERATION AT A REGIONAL LEVEL	26
4.1 Early regional cooperations in the Southeast Asian region	27

4.2	ReCAAP	29
4.2.1	<i>The formulation of ReCAAP</i>	29
4.2.2	<i>The bodies of ReCAAP</i>	31
4.2.3	<i>The ReCAAP agreement</i>	32
4.3	The Djibouti Code of Conduct	35
4.4	Summary	37
5	REGIONAL COOPERATION AT A NATIONAL LEVEL	40
5.1	The work of ReCAAP's focal points	40
5.2	National legislation	42
5.3	A welcomed agreement	43
5.4	Summary	44
6	ANALYSIS	46
6.1	Origins and persistence of piracy	46
6.2	International law	47
6.3	ReCAAP	48
6.3.1	<i>ReCAAP's advantages</i>	49
6.3.2	<i>ReCAAP's disadvantages</i>	50
6.4	ReCAAP in its signatory member states	52
6.5	Is regional cooperation the solution to piracy?	52
7	SUMMARY AND CONCLUSION	55
	APPENDIX	60
	BIBLIOGRAPHY	69

Summary

Piracy is not given very much attention in the western part of the world – there is not many news about it in the medias, and it is not very high prioritized on the politicians’ agenda. However, this does not indicate that it is not a problem. Piracy affects many people, at an individual level as well as at a national, regional and global level.

The problem is complex and has long history, not least in Southeast Asia where reports concerning pirates started circulating around 500 AD and is still relevant today. The affected states have not been able to solve the problem on their own and the international conventions are poor when it comes to the modern type of piracy, which is mostly carried out in territorial waters where The United Nations Convention on the Law of the Sea (UNCLOS) is not applicable.

This has resulted in discussions regarding alternative solutions and one of those solutions is regional cooperation. The states affected by piracy are often relatively weak states from a socio-economic perspective and it is hard for them to allocate adequate resources in order to control their territorial waters, spread information, legislate, arrest and prosecute pirates.

This is especially evident in Southeast Asia where the national boundaries are floating and the geography is beneficial for pirates with its narrow straits and islands. Following an initiative from Japan, a number of Asian countries created and formed The Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP) in order to join hands in combating piracy in the region. ReCAAP came into force in 2006 and has been considered a successful cooperation and has worked as a template for the Djibouti Code of Conduct, which is a similar cooperation in East Africa and the Gulf of Aden.

The majority can probably agree on ReCAAP being a good first step for the region but there are unfortunately some weaknesses in the cooperation and how the signatory parties have incorporated the ReCAAP agreement in to their national legislation. Vietnam has been a part of the cooperation since the start but is not contributing financially, they lack specific anti-piracy laws and the incorporation, which is a recognized problem in Vietnam, is not satisfactory.

ReCAAP is a great initiative and the signatory parties are expected to grow, which will give the cooperation even more credibility. If some of the bigger weaknesses in the cooperation can be sorted out, then regional cooperation is definitely an important part of the solution to piracy in Southeast Asia.

Sammanfattning

Piratverksamhet är inte speciellt uppmärksammat i västvärlden – media lyfter inte upp det och det är heller inte en speciellt prioriterad punkt på politikernas agenda. Det betyder dock inte att det inte är ett stort problem. Det påverkar många, både känslomässigt och ekonomiskt, på en individnivå men också på en nationell, regional och global nivå.

Problemet är komplext och har en lång historia, inte minst i Sydostasien där rapporter om pirater började cirkulera kring 500 e.Kr. och gör det fortfarande idag. De berörda staterna har inte lyckats lösa problemet på egen hand och de internationella konventionerna är bristfälliga när det gäller den moderna piratverksamheten. Detta mycket på grund av att den moderna piratverksamheten håller till inom staters territoriella vatten där exempelvis The United Nations Convention on the Law of the Sea (UNCLOS) inte är tillämplig.

Detta har gjort att alternativa lösningar börjat diskuteras och en sådan lösning är regionalt samarbete. De stater som är drabbade av piratverksamhet är ofta stater som är relativt svaga stater ur ett social-ekonomiskt perspektiv och det kan vara svårt för dem då att tillhandahålla tillräckligt med resurser för att kunna kontrollera sina territoriella vatten, sprida information, lagstifta, arrestera och åtala pirater.

Det här är särskilt tydligt i Sydostasien där de nationella gränserna dessutom är flytande och geografien är fördelaktig för pirater med många smala passager och öar. Efter initiativ från Japan gick ett antal asiatiska länder samman i det regionala samarbetet The Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP) för att tillsammans kunna bekämpa piratverksamheten i området. ReCAAP trädde i kraft år 2006 och har ansetts vara ett lyckat samarbete, det har bland

annat legat till grund för The Djibouti Code of Conduct som är ett liknande samarbete i Östafrika och Adenviken.

De flesta är nog överens om att samarbetet är ett bra första steg för regionen men det finns dessvärre en hel del brister i samarbetet och hur medlemsländerna inkorporerat ReCAAP avtalet i sina nationella lagar. Vietnam har varit delaktiga sedan start men bidrar inte ekonomiskt till samarbetet, har inte lagstiftat om någon specifik anti-piratlag och inkorporeringen, som är ett problem i Vietnam, har inte riktigt fungerat.

ReCAAP är ett väldigt bra initiativ och medlemsländerna förväntas bli fler och fler vilket kommer ge samarbetet mer tyngd. Om några av de större bristerna skulle kunna åtgärdas är regionalt samarbete definitivt en del av lösningen på problemet med piratverksamheten i Sydostasien.

Preface

There are several individuals that deserve a special recognition for helping me with this master thesis.

First of all, thanks to The Swedish International Development Cooperation Agency (SIDA) for giving me the opportunity to go to Vietnam through the Minor Field Study Scholarship.

Abhinayan Basu Bal, for supervising me in an excellent way.

Max Mejia at The World Maritime University, for taking the time to provide me with valuable insights about the topic and with contacts in Vietnam.

Everyone who helped me in Vietnam – the staff at Hanoi Law University and especially Ms. Trang for sharing her office with us, the staff at Vinamarine, everyone I interviewed and of course my dear friend Andrea Andersson who was a great travel companion.

Also, thank you Lund for giving me these wonderful (well, most of the time) years, good friends, Knästorp, falafel, warm days of spring and so many great memories.

Sofia Kax

May 20th 2012

List of abbreviations

ASEAN – The Association of Southeast Asian Nations

ASEAN POA – The Association of Southeast Asian Nations Plan of Action

EEZ – Exclusive economic zone

GPS – Global Positioning System

i.e. – id est

IMB – International Maritime Bureau

IMB PRC – International Maritime Bureau Piracy Reporting Centre

IMO – International Maritime Organization

MALSINDO – An acronym for the first three states involved: Malaysia, Singapore and Indonesia

NM – Nautical Mile

PLO – Palestinian Liberation Organization

ReCAAP – The Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia

ReCAAP ISC – The Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia Information Sharing Centre

RMSI – The Regional Maritime Security Initiative

SUA – Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation

UNCLOS – The United Nations Convention on the Law of the Sea

1 Introduction

1.1 Background

Piracy is probably not considered to be a very big problem for the majority of the world's population. People talking about pirates are probably referring to the movie "Pirates of the Caribbean" rather than to the organized and violent criminals in the Gulf of Aden and in Southeast Asia.

However, even though piracy may be classified as a maritime problem, the consequences of piracy affect everyone and everywhere. Today, over 400 seafarers are being held hostage by pirates and the cost of piracy globally is estimated to be 8-12 billion dollars a year. This cost includes insurance fees, ransom money, loss of trade and tourism, costs regarding surveillance and security equipment, as well as costs related to anti-piracy organisations and prosecution of pirates. We, everyone buying goods transported by sea, ultimately end up paying the costs.¹ Considering that over 90% of the world trade is carried out through shipping, it is hard to avoid the impact of piracy.²

During 2011, 439 actual and attempted attacks around the world were reported to the IMB Piracy Reporting Centre. 103 of the attacks were conducted in Southeast Asia/Far east.³ According to ReCAAP, 155 incidents of piracy, armed robbery and petty theft were reported in 2011 in the ReCAAP region. It is the second highest amount of incidents during ReCAAP's five years of reporting but still a decrease of 7% from 2010. The improvement from 2010 has also been noted in Vietnam. Increased

¹ <http://www.saveourseafarers.com/the-cost-of-piracy.html>, 2012-03-29.

² <http://www.imo.org/About/Pages/Default.aspx>, 2012-03-29.

³ Piracy and armed robbery against ships report 1 january – 31 december 2011, p. 5-7.

enforcement and surveillance in the south of Vietnam has had a good impact in the area. However, there seems to have been a shift in incidents from the south to the north of Vietnam.⁴

There are many proposed solutions to piracy; one of the most important ones being regional cooperation and the most successful so far is probably ReCAAP.

1.2 Purpose

The purpose of this thesis is to examine the importance of regional cooperation in order to tackle the problem of piracy. This will be done with the example of ReCAAP. The author will look at ReCAAP from a regional point of view as well as from a national point of view, Vietnam being the main example. The research questions are the following:

- What is the origin of piracy and what are the causes for its persistence?
- How do piracy look like in Southeast Asia?
- Is the existing international legal framework adequate?
- Why is regional cooperation important?
- How does ReCAAP function?
- How has ReCAAP been implemented in Vietnam?
- Is regional cooperation enough to combat piracy?
- If not, what is still left to be done?

1.3 Outline

In the introductory chapter, the framework for the thesis is presented. In order to understand the issue of piracy and the proposed solutions, chapter 2

⁴ ReCAAP ISC annual report 2011, p. 2-13.

will provide the reader with some background information about piracy and especially piracy in Southeast Asia. In that chapter, possible causes of piracy will be presented, as well as to why it persists, in order to get a better idea of the solutions. The international law on piracy will be presented in chapter 3. Continuing to chapter 4 where the author will examine the need for regional cooperation and thoroughly describe ReCAAP. As a comparison to ReCAAP the author will also explain the Djibouti Code of Conduct, which has got a lot of its inspiration from ReCAAP. In chapter 5 the author will look at the obligations that the signatory parties of ReCAAP have according to the ReCAAP agreement and what Vietnam have done in order to fulfil these. The main example will be Vietnam but with some points of consideration coming from the focal points in Norway and Denmark. An analysis can be found in chapter 6, where the questions of research will be discussed and where personal reflections will be provided. Chapter 7 consists of a summary and a conclusion of the thesis.

Chapters 2-5 will have a short summary in the end, concluding what has been discussed in the chapter and highlight what has been important.

1.4 Method and material

For chapter 2 and chapter 3, a legal dogmatic method has been used and most of the research has been made by the use of books or/and articles. The discussion on international law has also been based on those international legal documents. The material used for chapter 4 also consists of books and articles but also by regional agreements such as the ReCAAP agreement and the Djibouti Code of Conduct. Chapter 5 is mainly the result of the minor field study that was carried out in Vietnam. To get that information, the author has interviewed people working within the area, such as the Vietnamese Marine Police, and corresponded through e-mail with the focal points in Norway and Denmark as well. Due to the sensitivity and

confidentiality in certain matters, the interviewees' names will not be disclosed in the thesis.

The author have had very good contacts in Vietnam but due to certain problems the result has not been exactly what could have been hoped for. The ReCAAP agreement does not seem to be very prioritized and well known in Vietnam. It has been hard to find people who have had enough knowledge on the subject, even professors at Hanoi Law University were uncertain on what ReCAAP is. When the author did get in contact with people that did have knowledge about ReCAAP, there were often some problems of understanding. In those cases the author had someone who could translate, but it is hard to get the closeness with someone using an interpreter. Also, those interviewed have been rather unwilling in giving their personal opinions and to criticize. Many of the questions have been answered with facts instead of their own opinions.

This seems to be quite a common problem when doing research in Vietnam, people answering how it should be rather than how it actually is. The discrepancy in what the law says and how the law works in Vietnam is the consequence of unpopular policies combined with the religion of Confucianism – discouraging questioning of authorities.⁵

Because of the difficulties to get good answers to the questions posed, the author have also e-mailed the focal points in Denmark and Norway as well, asking the same type of questions. That has been very interesting; both are signatory states of ReCAAP but not located in the region and both would be considered to be rather strong states in a socio-economic perspective compared to many of the other signatory parties. Based on their answers the author has had the possibility to compare and analyse what can and should be done by the signatory states in order to fulfil the provisions in the ReCAAP agreement.

⁵ Steffanie Scott, Fiona Miller and Kate Lloyd, 'Doing Fieldwork in Development Geography: Reserach Culture and Research Spaces in Vietnam' (2005), p. 32-33.

1.5 Delimitation

This thesis mainly concerns the regional agreement of ReCAAP and will focus on its regional and national effects. This means that the debated difference between piracy and armed robbery at sea will not be discussed very much.⁶ Excluded will also be the discussion on the overlap of piracy and maritime terrorism.⁷ The author is aware that the ReCAAP agreement may have been implemented in different ways in different signatory states but the thesis will only describe how that has been done in Vietnam, with some notes on how Denmark and Norway have done.

⁶ See for example Maximo Q. Mejia Jr., Pierre Cariou and Francois-Charles Wolff 'Ship piracy: Ship type and flag' in Wayne K. Tailey, *Maritime Safety, Security and Piracy*, (Informa Law 2008), p. 104.

⁷ See for example Gramham Gerard Ong, 'The threat of maritime terrorism and piracy', (2006), *Regional Outlook*, p 12.

2 Piracy

According to the Oxford Learners' Dictionary, the noun 'pirate' means: "(especially in the past) a person on a ship who attacks other ships at sea in order to steal from them."⁸

2.1 Historical background

This part of the historical background will focus on the "western" type of piracy, which is not very old compared to piracy in other parts of the world.

Maritime expansion is what triggered the onset of piracy in the 1500's. Spain had just discovered the Americas and they did not allow any other state to benefit from that. They did not issue any licences for others to visit and those who came to the Americas anyway were treated as lawless and were given harsh punishments. However, the local American citizens welcomed these lawless visitors since they could provide them with appreciated European imports, and temporary camps were established along the shore. The trade resulted in a traffic boom between Europe and the Americas, a boom that the Spanish authorities did not have the force to hinder even though they made some attempts.⁹

These new settlers in America used unpaid privateers in order to fight the Spanish-Americans. The privateers were a mix of European mercenaries and they did not care which flag they sailed under as long as they could get some booty. The prizes that they came back with into port were also an important boost for the economies of the new settlements. During the second half of the seventeenth century they were not needed as much as

⁸ <http://oald8.oxfordlearnersdictionaries.com/dictionary/Pirate>, 2012-02-20.

⁹ Davud F. Marley, *Modern Piracy*, (ABC-CLIO, LLC California 2011), p. 6.

before but that did not stop them. They continued doing raids for their own sake and they did that in the Pacific, in West Africa, in the Red Sea and around India. They were at last stopped in the early eighteenth-century as the maritime trade became more important and the traffic on sea needed to be carried out in a safer way. They were also no longer needed for their original purpose as defenders of colonies. Therefore, their title changed from privateers to pirates and they were hunted down, both literally and legally. The sanctuaries where they earlier could find protection had closed and there were not as many flags that they were welcome to sail under. They were by the English courts considered to be 'hostis humani generis' and stood thus without any protection.¹⁰

The piracy of today is considered to be derived from yet another maritime expansion. In the aftermath of World War II the seaborne trade recovered, reconstructed and expanded to a much larger scale than before the war. The innovations led to a more efficient trade and commerce but also to an increase in maritime criminality.¹¹

2.1.1 Piracy in South East Asia

The historical background described above is the kind of piracy that the western world became aware of and affected by, or at least piracy described from a western point of view. In the waters of Southeast Asia however, there have been pirates for a much longer time even though those pirates do not have the same background as the European privateers.

As early as in the fifth century, Shih Fa-Hsien travelled through the Strait of Malacca from India back to China and reported that pirates were infesting the strait. One cannot be sure if he had witnessed any attacks himself or if it was just hearsay. The word he wrote down was regardless later translated to 'pirate' by its context, even though the word by itself could have other

¹⁰ Supra, note 9 at p. 7 - 8.

¹¹ Supra, note 9 at p. 8.

meanings. Later, around the eight and ninth century, the majority of the citizens of the Southeast Asian kingdoms were described as pirates by Chia-Tan. Once again, the word he used has been translated into ‘pirate’ but one has to bear in mind the difficulty of translations.¹²

Compared to the European piracy, as described earlier, the Southeast Asian piracy served a lot of socially constructed purposes and did not normally contain criminal acts. They were not considered to be ‘hostis humani generis’, but were incorporated into the national laws. This however does not suggest that all acts of piracy were legal.

The pirates were usually well-respected warriors, nothing like the superannuated privateers coming from Europe. The raids were a part of the society in a political, economical and spiritual way and the aim was not always the material booty. This local perception of piracy was however changed when the Europeans started to imperialise and colonialize Asia in the eighteen and nineteen centuries. The traditional way of looking at pirates was replaced by the European view of pirates being equal to criminals. This of course affected how the early descriptions of pirates in the Southeast Asian waters later were translated, maybe not always in the accurate meaning and context. The traditional Southeast Asian pirates had different motives and different practices but this was not taken into account when describing them to the outside world, which later also affected how the Southeast Asian states looked upon it themselves. The consequences of this are relevant even today since the international law builds upon the western definition of piracy, which in turn may affect the application of the international law.¹³

The piracy of today differs from region to region, even though some similarities exist. In Southeast Asia the attacks are normally not very

¹² Adam J. Young, ‘Roots of Contemporary Maritime Piracy in Southeast Asia’ in Derek Johnson and Mark Valencia, *Piracy in Southeast Asia: Status, Issues and Responses*, (Institute of Southeast Asian Studies 2005), p. 7.

¹³ *Supra*, note 12 at p. 9 - 11.

violent, compared to other regions. The Southeast Asian pirates usually board the vessel during the night and then take all the valuables that they can get and carry with them. The characteristics of these types of attacks are that they require a certain level of skill in order to board the ship and that these types of attacks are normally within a state's territorial waters.¹⁴

2.2 Causes of piracy and why it persists

To find an appropriate solution to piracy one first need to identify the causes of the problem. Presented below are a few of the theories; piracy emerging from the problems on land, piracy emerging from changes in the world – such as post-war time – and piracy emerging from opportunity.

2.2.1 A land-based problem

There are of course several factors related to piracy. However, most of the factors indicate that piracy is really a land-based problem.¹⁵ The reason to that consists of several elements, i.e. a permissive environment for pirates due to corruption; there may be national and international legal and jurisdictional problems, and of course, a poor socio-economic situation for the states' citizens.¹⁶ What the elements all have in common is that they are typical for what can be defined as a 'weak' state.

Those are some of the explanations to piracy in general, but they are highly applicable to the piracy in Southeast Asia. Corruption and poor governance are two main factors that contribute to weak political control, and corruption

¹⁴ Jayant Abhyankar, 'Piracy, Armed Robbery and Terrorism at Sea: A Global and Regional Outlook', in Graham Gerard Ong-Webb *Piracy, Maritime Terrorism and Securing the Malacca Straits*, (Institute of Southeast Asian Studies 2006), p 2-3.

¹⁵ Martin N. Murphy, *Small boats, weak states, dirty money*, (HURSTS Publishers Ltd. 2009), p. 28.

¹⁶ *Ibid*, p. 25 – 41.

has been, and still is, a big problem in Southeast Asia.¹⁷ Vietnam for example scored 2,9 out of 10, placed the country as number 112 out of 182 countries in Transparency International's annual report for 2011. Bangladesh, Cambodia, Myanmar (Burma), Laos and the Philippines scored even worse than Vietnam, all being signatory parties to ReCAAP.¹⁸

Corruption in Southeast Asia is a big problem and it can take many different forms. There have for example been allegations of members of the police and armed forces, that they have committed piracy attacks themselves, both on duty and off duty. There are also examples of port staff and crewmembers passing on information about the vessel's itinerary and what type of cargo it carries, in order for the piracy gangs to plan a successful attack in advance.¹⁹

The other key factor for a weak state is poor governance, which is also a highly important topic in Southeast Asia. Lack of capacity and state control makes it hard for the states to control anything out of their immediate environment and the seas often become more or less ungoverned. This is further exacerbated if the states in the region cannot cooperate due to concerns of trust and national sovereignty, giving the pirates sanctuaries in other states' territorial waters.²⁰

Related to a weak state are often poor socio-economic conditions for the state's inhabitants. It can be tempting for inhabitants in coastal villages that already have the equipment, in form of boats and navigation skills, to turn to piracy in difficult economical times. This may also be the case for military personnel; especially since government defence spending suffers in form of low maintenance, training, equipment and even cuts in wages when the economic situation is bad.²¹

¹⁷ Ian Storey, 'Securing Southeast Asia's Sea Lanes: A Work in Progress', (Asia Policy 2008), p 106.

¹⁸ Transparency International, Corruption Perception Index 2011 p. 4. 2012-02-21.

¹⁹ Supra, note 17 at p 106.

²⁰ Ibid, p 106.

²¹ Ibid, p 107.

The Asian financial crisis in 1997-1998 may be a good example of this. Even though the upsurge of piracy in the region at the time cannot be explained by the direct effects of the crisis, like the increase in unemployment and the decrease in standards of living, the indirect effects consisting of less financial resources for the maritime authorities were probably an important factor.²² Worth mentioning is that even in good economical times, a state employee in Vietnam has in general a nominal salary of \$100 per month.²³

Why the problem of piracy persists in the region can also be traced back to the situation on land rather than the situation at sea. Those who really can make a difference have not seen the problem as important enough and it has not been prioritised. Some of the poor states in the region have more urgent problems to tackle before they can start concentrating on the problems offshore. There is of course also a problem in who is going to bear the cost for all the proposed solutions.²⁴

2.2.2 World War II's aftermath

As described above, the end of World War II resulted in an enhanced commercial traffic on sea, which also resulted in an increase in piracy and maritime criminality. Some of the contributing factors being:

- *Deduction of the United States and Western merchant fleets*

Before World War II, a large number of the commercial ships were owned by Great Britain, Canada, Australia and the United States. After World War II, the United States had a big surplus in vessels that had been used during the war. Vessels that they now decided to sell to other allied countries.

²² Stefan Eklöf, *Pirates in Paradise*, (Nordic Institute of Asian Studies Press, 2006), p 138.

²³ Bill Hayton, *Rising Dragon*, (Yale University Press, 2010), p. 23.

²⁴ Supra, note 22 at p. 145-146.

However, these vessels were later re-flagged and put under ‘flags of convenience’ and there was a huge decline in vessels sailing under the American flag. Today, the United States mostly use foreign carriers for imports and exports to and from the United States, which means that the piracy attacks do not directly affect the United States’ merchant fleet.²⁵

- *Larger ships with less crew*

The modern shipyards have also changed since the end of World War II. Before the war the ships were much smaller and the crews larger, consisting of highly skilled seamen. Today’s ships are quite an easy catch for pirates due to their bigger size and lesser crews.²⁶ Typically, commercial ships before the war used to have around 40 crewmembers. Today, for the same size of ship, there are usually around 20 crewmembers.²⁷

- *UNCLOS*

With UNCLOS entering into force, the high seas were diminished and the states territorial waters expanded. Piracy was not on the agenda, other things had to be prioritised, which can be seen in the very few provisions on piracy in UNCLOS.²⁸ The issue with UNCLOS is further described in chapter 3.

- *Expansion of seaborne trade in Asian waters*

After the war, the traffic to and from Asia hit a boom. Vessels carrying valuable cargo passed the coastlines of poor countries as never before.²⁹ And the boom was not temporarily. In 2011, 9 out of the 10 busiest ports in the world were located in Asia.³⁰

²⁵ Supra, note 9 at p. 10 - 11.

²⁶ Ibid, p. 11.

²⁷ Supra, note 22 at p 129.

²⁸ Supra, note 9 at p. 18.

²⁹ Ibid, p. 26 - 27.

³⁰ <http://www.marineinsight.com/marine/top-10-biggest-ports-in-the-world-in-2011/> 2012-02-22.

Even before World War II, many law enforcement authorities in Southeast Asian states lacked capacity and strength, which became even more clearly after World War II when commercial traffic and maritime crime increased in the region. The authorities cannot cope with the vast problems that come with the sea trade and this is also one very important factor to why piracy persists in Southeast Asia.³¹

- *The use of 'flags of convenience'*

To cut costs after the war, many ship-owners registered their vessels in a more economical beneficial country than their own. These registration countries were happy to get some easy money in forms of registration fees etcetera and they did not require any high operational standards.³²

Today, the crew sailing a ship under a flag of convenience may not get the right training in order to ensure the safety of the vessel and the crew. There may even be complications in communicating since there are so many different nationalities on-board, also affecting the safety. This may have started after World War II but as the shipping industry gets more competitive and the world more globalised, the flags of convenience is still a relevant issue.³³

- *The proliferation of arms among citizens*

New types of small arms were mass-produced during World War II and a lot of these weapons were spread after the end of the war. During the Cold War, both sides started providing their allies in Third-World countries with weapons, and the traffic of weapons has continued ever since.³⁴

³¹ Supra, note 22 at p 130-131.

³² Supra, note 9 at p. 27 – 28.

³³ <http://www.itfglobal.org/flags-convenience/sub-page.cfm>, 2012-02-22.

³⁴ Supra, note 9 at p. 30.

2.2.3 Opportunity

Another explanation to piracy is simply opportunity, opportunity both in regards to equipment as well as to geography. Pirates today have access to all new technology in forms of high-speed boats, Internet, GPS, weapons etcetera. At the same time the geography in many hot spot areas is very advantageous for pirates. Narrow straits and many islands do definitely facilitate the work of carrying out a successful attack.³⁵

The geography in Southeast Asia is extremely complex and there are no natural boundaries. The national boundaries that the states have today are a result from when the colonial powers were present in Asia. A lot of the traffic within countries, as well as between countries, is carried out by sea. Even though there may be land roads, it is often more efficient to go by sea and sometimes the only way, as between islands.³⁶

Pirates in the region usually use knives or light arms. The use of knives is very common as they are easy to access; they are legal and often used as a house tool. Plus they often give less jail time than the more advanced types of weapons. Light arms are a more serious threat. They are illegal in many parts of the region and they can obviously do more harm than knives can. There are a huge amount of light weapons circulating in the region, and in other parts of the world, which makes them easy to find and cheap to buy.³⁷

2.3 Summary

Piracy has existed for years in different parts of the world and it has taken different forms, both in how the attacks look like and how pirates have been

³⁵ Supra, note 17 at p 107.

³⁶ Adam J. Young, *Contemporary Maritime Piracy in Southeast Asia: History, Causes and Remedies*, (Institute of Southeast Asian Studies, Singapore 2007). p. 70.

³⁷ Ibid, p. 90-91.

regarded within the society they have operated in. It looks like the early piracy in Southeast Asia was accepted and was a natural part of how the society worked. A bit similar to how the European privateers first were used, as part of a defence for the new settlers in the Americas. However, as the English courts proclaimed pirates to be ‘hostis humani generis’, pirates in every form became an enemy of all humankind. This perception of pirates was spread to Southeast Asia as Europeans started to imperialise and colonialize Asian states.

There are several explanations to the onset of piracy in modern times and why it still persists in some states. The explanations have all to do with either:

- The pirates having the opportunity to carry out a successful attack. Opportunity in regards to the equipment that they got, the geography of the area where they operate and how easy it is to attack and board a vessel.
- Weaknesses both at an international level and at a national level. At an international level the weaknesses consists of states not taking their responsibility, both regarding weapon exporting and states issuing flags of convenience; as well as unsatisfactory international law and lack of a global interest. At a national level the weaknesses consist of the authorities capacity to combat piracy as well as to weak socio-economic conditions for the state’s citizens. These weak states with a high level of piracy attacks need support in order to prevent piracy but also to apprehend and prosecute them.

One can also detect factors that boost piracy, such as an upsurge in maritime traffic – making it hard for the national authorities to keep up with their work, and financial crises – which results in less money being spent on security and more frustrated people trying to find alternative ways to earn money.

3 International law

There are several legal documents at an international level that contain articles on piracy. The two most important ones probably being the 1982 United Nations Convention on the Law of the Sea (UNCLOS) and the 1988 United Nations Convention on the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (SUA).

Since the main example for this thesis is Vietnam, it is worth mentioning that Vietnam is a contracting party to UNCLOS since July 25th 1994³⁸ and to SUA since October 10th 2002³⁹.

3.1 UNCLOS

3.1.1 Historical background

For years there had been discussions on whether the sea should be divided between the states or whether it should be regarded as a ‘common heritage of mankind’. These discussions led to a series of conferences which resulted in the four 1958 conventions on the Law of the Sea and later to UNCLOS in 1982.⁴⁰

UNCLOS has over three hundred provisions, seven of them concerning piracy. The issue of piracy has, unlike some of the other subjects in UNCLOS, a long history. Already in 1698, England had a specific domestic

³⁸ http://www.un.org/Depts/los/reference_files/chronological_lists_of_ratifications.htm, 2012-02-15.

³⁹ <http://www.imo.org/About/Conventions/StatusOfConventions/Pages/Default.aspx>, 2012-02-15.

⁴⁰ Malcolm N. Shaw, *International Law*, (Cambridge University Press 2008), p. 554-555.

legislation on piracy and the view among European states at the time was that piracy should be considered an international problem. The states shared the same view of the problem but they did not share the same legislation, so when League of Nations was established, the law on piracy was one of the first things that they aimed to codify. In 1926, the League of Nation's committee published its 'Draft Provisions for the Suppression of Piracy'. The provisions stated that piracy was an act on the high seas; committed as a private act and the states themselves could decide on the status of the pirates. The committee was not sure that this would be universally agreed upon so the next step was to pass the subject to Harvard Law School for some research. In 1932 they published their answer where they, in one document, tried to describe all the different views on piracy that existed in international and in national law. They described the lack of international coherence on the subject by pointing out that large-scale piracy on the high seas had been a problem before and was now only done sporadically. Some of the ideas that the Harvard group had were dropped when the International Law Commission in 1949 took over the task to prepare the draft. Piracy was however not the only subject for the commission and they tried to come up with solutions that would be accepted by as many states as possible, which they succeeded with. The 1958 Law of the Sea Conference accepted their suggestions for the High Seas Convention and the piracy provisions was later incorporated from the High Seas Convention to UNCLOS without any bigger changes.⁴¹

3.1.2 Definition of piracy

The definition of piracy is found in article 101 UNCLOS and the act has to contain four elements in order to qualify as an act of piracy:

⁴¹ Martin N. Murphy, Piracy and UNCLOS: Does International Law Help Regional States Combat Piracy? In Peter Lehr, *Violence at Sea – piracy in the age of global terrorism*. (Taylor & Francis Group LLC, New York, The United States of America 2007) p. 156-158.

- 1) The act has to be illegal and contain violence, detention or depredation;
- 2) The act has to be committed for private ends;
- 3) The act has to involve two ships; and
- 4) The act has to occur on the high seas.⁴²

It is obvious that the piracy provisions in UNCLOS are relatively old, and by increasing the states' territorial waters to 12NM – shrinking the area of the high seas – the provisions on piracy seems to be even more out of date.⁴³ In fact, only 7%-15% of all violent acts on sea would be classified as piracy if one uses the definition provided in article 101 UNCLOS.⁴⁴ However, when it comes to those 7%-15%, UNCLOS is an adequate legal framework. The problems with the UNCLOS' definition concerns the other type of piracy – the one within states' territorial waters, called 'armed robbery against ships' or 'coastal zone piracy' where UNCLOS is not applicable.

Armed robbery against ships, or coastal zone piracy, is equivalent to piracy under UNCLOS but is not limited to the high seas. If such an unlawful act, or threat thereof, is committed against a ship or against people or property on board a ship within a state's territorial waters, then it is defined as armed robbery against ships or coastal zone piracy. That is the most common form of piracy today but still not a crime under UNCLOS.⁴⁵ Today's piracy is just not within the scope of UNCLOS.

Article 101 UNCLOS contains several weaknesses, which makes it hard to apply it to today's piracy since it is not a very practical tool. Following are the requirements and the issues concerning them:

⁴² Rosemary Collins & Daud Hassan, 'Applications and Shortcomings of the Law of the Sea in Combating Piracy: A South East Asian Perspective', (Journal of Maritime Law & Commerce, 2009), p. 94.

⁴³ Supra, note 41 at p. 158.

⁴⁴ Supra, note 15 at p. 17.

⁴⁵ Max Mejia & P K Mukherjee, 'The SUA Convention 2005: a critical evaluation of its effectiveness in suppressing maritime criminal acts', (The Journal of International Maritime Law, 2006) p. 183.

1. Containing violence, detention or depredation

Nearly half of all successful attacks in Southeast Asia results in crewmembers being injured and the majority of the pirates are armed. Those attacks will clearly fall within the meaning of the first element in article 101 UNCLOS. There are however attacks where the pirates are armed but no one in the crew is being injured, most probably because the crew has been instructed by the shipping companies to cooperate. One therefore has to consider whether threat of violence fall within the scope or not. If not, then the act cannot be an act of piracy according to UNCLOS. It is also not clear if it is an act of piracy when pirates, unnoticed, board the vessel at night stealing things.⁴⁶

2. Committed for private ends

This excludes attacks committed for public ends, such as maritime terrorism where the purpose is to highlighting a political cause. This has its roots from the times when rebels fought for their former colonial nation's independence and they often used maritime terrorism as a way of doing that. There are some scholars saying that an interpretation of the element today would include maritime terrorism but it is more likely that it is excluded. Also, there is one big and important difference between pirates and maritime terrorists – while pirates are trying to avoid attention, terrorists are looking for it.⁴⁷

This requirement may be problematic if one wants UNCLOS to be applicable to maritime terrorism but when it comes to traditional piracy in

⁴⁶ Supra, note 42 at p. 96.

⁴⁷ Ibid, p. 99 - 100.

Southeast Asia this should not be too problematic since most of the piracy attacks there are committed for private ends.⁴⁸

3. *Involvement of two ships*

This element excludes attacks where pirates have acted as passengers on a ship or when they have been hiding on the ship and then overpowers the crew. This upholds the traditional way one looks at pirates but it also ensures that the attacks have to be of a larger scale in order to be considered as piracy attacks.⁴⁹

4. *Occurred on the high seas*

This is limiting the geographical scope of UNCLOS to piracy attacks committed on the high seas and according to some, with a few legal detours, within the EEZ.⁵⁰ Others believe that attacks within the EEZ are under the jurisdiction of the coastal state and not subject to UNCLOS.⁵¹ However, many of the attacks in Southeast Asia do occur within the states' territorial waters since many commercial vessels are concentrated near the ports and are going through narrow straits. The states have no obligation under UNCLOS to suppress piracy, or armed robbery attacks, in their own territorial waters, even though these pirates attack vessels on the high seas as well. Those pirates are under the jurisdiction of the coastal states and UNCLOS is therefore not applicable.⁵²

⁴⁸ Supra, note 42 at. 99 - 100.

⁴⁹ Ibid, p. 100 - 101.

⁵⁰ Ibid, p. 97 - 98.

⁵¹ Hassim Djalal, 'Combating Piracy: Co-operation Needs, Efforts and Challenges', In Derek Johnson and Mark Valencia, *Piracy in Southeast Asia: Status, Issues and Responses*, (Institute of Southeast Asian Studies, 2005), p. 144.

⁵² Supra, note 42 at p. 97 - 98.

3.1.3 Universal jurisdiction

A pirate is considered to be a "hostis humani generis", meaning an enemy of mankind. This indicates that piracy is considered to be one of the worst possible crimes. As a consequence of this, piracy is one of the exclusions from the principle of the flag state's exclusive jurisdiction on the high seas, as described in article 92 UNCLOS. This is further described in article 105 UNCLOS which gives any state the right to seize a pirate ship on the high seas.⁵³

After seizing a pirate ship, the courts of the state that carried out the seizure can apprehend and prosecute the pirates.⁵⁴ Even though all pirates are enemies of mankind they will not all be tried and penalised the same way. It is the laws of the apprehending state that sets the framework for the procedure and the penalties. This is particularly problematic when pirates are seized by states that lack anti-piracy legislation.⁵⁵

3.1.4 Hot pursuit

The right of hot pursuit is to be found in article 111 UNCLOS. This possibility enables vessels, which are clearly marked with being on government service, to pursue foreign ships suspected of violating the state's laws and regulations. The pursuit can commence within the state's internal waters, archipelagic water, territorial sea or EEZ and has to stop immediately when the foreign ship reaches its own territorial waters or the territorial waters of a third state.⁵⁶

⁵³ Donald R Rothwell & Tim Stephens, *The International Law of the Sea*, (Hart Publishing Ltd., 2010), p. 162-163.

⁵⁴ Article 105 UNCLOS.

⁵⁵ Supra, note 42 at p. 102.

⁵⁶ Article 111 UNCLOS.

In Southeast Asia this is of real concern since many of the states are close to their neighbouring states' territorial sea. This means that pirates in Southeast Asia easily can flee from one state's territorial waters to another's which will stop a legal hot pursuit immediately. There may be a possibility for states to continue their pursuit into other state's territorial waters but then they have to get that state's consent.⁵⁷

3.2 SUA

One attempt to fix the shortcomings of UNCLOS has been made by the SUA convention. The convention is the result of the hijacking of the ship Achille Lauro in 1985. A few persons from the Palestinian Liberation Organization (PLO) took the passenger ship in control and the event made IMO revise the laws on maritime violence in an international perspective.⁵⁸

As mentioned earlier, Vietnam and other countries in the Southeast Asian region are signatory parties to SUA. However, Malaysia and Indonesia are not. SUA can be a good complement to UNCLOS but only for serious maritime crimes, such as maritime terrorism or severe piracy attacks. The most common attacks in Southeast Asia would not fall within the scope of SUA.⁵⁹

What is problematic with SUA is that it is not a binding document for the majority of the states in the region, which makes it a weak instrument in suppressing piracy.⁶⁰ Since SUA is an IMO convention that does not reflect customary international law, it is only binding for the states that have ratified it, similar as with a contract.

⁵⁷ Supra, note 42 at p. 103.

⁵⁸ Supra, note 36 at p. 132.

⁵⁹ Ibid, p. 80 – 81.

⁶⁰ Supra, note 42 at p. 106.

3.2.1 Definition of the crime

The definition of the offence in SUA can be found in article 3.⁶¹ The offence includes anyone who deliberately commits an unlawful act, for private or public ends and such acts include:

- Seizing control or exercise over a ship with force or threat thereof
- Violence against someone on-board that may endanger the safe navigation
- Damage to the ship that may endanger safe navigation.⁶²

Attempts to commit such an act, helping to assist in such an act or threats of such an act are also offences. Unlike UNCLOS, the geographical limitation is not as narrow. As long as the vessel was scheduled to travel outside a state's territorial waters it does not matter where the attack happens, it will still be considered an offence under SUA.⁶³

3.2.2 Jurisdiction

While every state under UNCLOS has a right to prosecute pirates the jurisdiction for prosecution under SUA is not as extensive. A prosecuting state must have a link to the offence. That can for example be related to the state's territory, the registration of the ship, a citizen of the state etcetera. An offender must be extradited to a state that have sufficient jurisdiction which means that there has to be an extradition treaty between the two states. If such a treaty does not exist, an offender can go free.⁶⁴

Like UNCLOS, it is the national laws that set the framework for the trial procedure and penalties. That means that there are a lot of inconsistency

⁶¹ Article 3 SUA.

⁶² Supra, note 42 at p. 106.

⁶³ Ibid, p. 107.

⁶⁴ Ibid, p. 108.

between how the states deal with the same type of crime. This is something that SUA has been criticized for since lack of uniformity in this area also results in uncertainty.⁶⁵

3.3 Summary

The two main conventions containing provisions on piracy are UNCLOS and SUA. UNCLOS is built upon quite old research and the old perception of pirates, making it a bit irrelevant for today's piracy. SUA is an attempt to compensate for some of UNCLOS weaknesses. An attack within SUA does not have to be committed for private ends and the geographical limitation is not as narrow as the one in UNCLOS either. However, SUA is to be applied to the most serious maritime crimes such as severe piracy attacks and maritime terrorism.

SUA does not address the right of hot pursuit, which means that the provision in UNCLOS should be applied.

When it comes to jurisdiction, UNCLOS provides international jurisdiction, meaning all states have the right to apprehend and prosecute a pirate caught on the high seas. In SUA there is no such right. For a state to have jurisdiction under SUA the prosecuting state needs to have some type of connection to the offence. What the conventions both have in common is that they leave it up to the prosecuting state to decide on the procedure and the punishment.

Even though SUA do compensate for some of UNCLOS' weaknesses there seems to be a lot of shortcomings in international law that the states have to figure out themselves how to deal with.

⁶⁵ Supra, note 42 at p. 108 - 109.

4 Cooperation at a regional level

Article 100 in UNCLOS states that:

All States shall cooperate to the fullest possible extent in the repression of piracy on the high seas or in any other place outside the jurisdiction of any State.⁶⁶

This article stipulates a responsibility for states to cooperate to the fullest possible extent. However, it is not more specified than this which makes the article a bit unclear and it does not really obliges the states to do anything concrete. It is fairly easy to give a few examples on what states in general could do in order to fulfil the article but looking at each individual state the requirements will differ a lot depending on their resources, or rather lack thereof. It will of course also depend on how good the relationships are among the neighbouring states and their joint history. What is clear is that the provisions of UNCLOS do not provide any help to the states in form of an international organisation that deals specifically with the problem of piracy.⁶⁷

In SUA, the obligation for the signatory parties to cooperate is clearer than in UNCLOS. The obligation to cooperate includes i.e. assisting each other in connection with criminal proceedings⁶⁸, exchanging information and taking all possible measures in order to prevent piracy preparations in their territories etc.⁶⁹

⁶⁶ Article 1 UNCLOS.

⁶⁷ Supra, note 42 at p. 104 – 105.

⁶⁸ Article 12 SUA.

⁶⁹ Article 13 SUA.

While the cooperation article in UNCLOS has been criticized for being too vague, the cooperation articles in SUA have been criticized for being deterrent due to their clarity and strength. Some Southeast Asian states believe that SUA will only benefit the states in the region that already have a strong navy and clear territorial borders. Weaker states fear that SUA will enable foreign forces to enter their territorial waters, which may compromise the national security, and especially the national pride.⁷⁰

Nonetheless, regional cooperation is essential in order to combat piracy and in order for the cooperation to be successful, accurate information is needed.⁷¹

4.1 Early regional cooperations in the Southeast Asian region

There have been several attempts to coordinate the Southeast Asian states' powers in order to suppress piracy. In the 1990's some of the Southeast Asian states entered into bilateral agreements in order to coordinate their patrolling at sea. The patrols would control their own territorial sea but they would have contact with one another. However, these agreements were not implemented effectively and were later abandoned.⁷²

In 2004 the United States projected for the Regional Maritime Security Initiative (RMSI) that would improve the cooperation in the Southeast Asian region. The aim was that this cooperation would help the Southeast Asian countries to tackle different maritime security threats. However, this proposal was not well received by many Southeast Asian countries. There were concerns that this would interfere with the states' sovereignty and that the presence of the United States' forces in the region would boost Islamic

⁷⁰ Supra, note 42 at p. 109 - 110.

⁷¹ Supra, note 9 at p. 76 – 77.

⁷² Supra, note 17 at p. 112.

radicalisms. Further, some of the states meant that they were capable to control their seas by themselves and external powers were not needed. This criticism came mostly from Malaysia and Indonesia. Even though the United States has implemented some of RMSI's ideas in the region it is not what it was intended to be.⁷³

However, the prospect of the RMSI had some effect in the region since Malaysia, Singapore and Indonesia shortly after dismissing the RMSI decided to improve their own naval patrols in the Malacca strait by launching the cooperation of MALSINDO.⁷⁴ However, MALSINDO seemed to be more of an initiative to control possible foreign intervention in the region rather than controlling the piracy situation and it got a lot of criticism right from the start.⁷⁵

The Association of Southeast Asian Nations (ASEAN) has over the years supported the bilateral agreements that have been made between the states as a means of suppressing piracy. However, ASEAN has been reluctant to initiate a wider multilateral agreement due to the concerns of national sovereignty in the region. Instead they have developed different plans in order to fight transnational crimes, for example the ASEAN Plan of Action (POA) to combat transnational crimes. The plan is supposed to support the states in taking actions, sharing information and cooperating in legal matters. In 2002, at the meeting of ASEAN Senior Officials, harmonization of national laws on transnational crimes was discussed and the importance of it was stressed. A Malaysian minister stated that in order to carry out successful prosecutions, effective regional and international cooperation is essential, as are extradition treaties and mutual assistance treaties.⁷⁶

⁷³ Supra, note 17 at p. 113 - 114.

⁷⁴ Supra, note 22 at p. 141.

⁷⁵ J.N. Mak, 'Unilateralism and Regionalism', in Graham Gerard Ong-Webb, *Piracy, Maritime Terrorism and Securing the Malacca Straits*, (Institute of Southeast Asian Studies 2006), p. 155-156.

⁷⁶ Greg Chaikin, 'Piracy in Asia', in Derek Johnson and Mark Valencia, *Piracy in Southeast Asia: Status, Issues and Responses*, (Institute of Southeast Asian studies, 2005), p. 128-129.

4.2 ReCAAP

A regional agreement between states is usually an instrument *para droit*, or ‘soft law’. An agreement as such does not stipulate any sanctions if breached and is therefore not binding, but persuasive, for the signatory parties unless an explicit provision in the agreement makes it mandatory.⁷⁷ Even though such agreements do not stipulate ‘hard law’ they can still be of importance and are often appealing for states to agree upon. Regional agreements usually indicate a political will to act in a certain way and may be easier to follow since they are more flexible than ‘hard law’.⁷⁸

The Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP) is one example of such a persuasive agreement, and it aims to enhance joint efforts in order to suppress piracy and armed robbery at sea.⁷⁹

4.2.1 The formulation of ReCAAP

The very first initiative to what would later be ReCAAP came in November 1999 from the prime minister of Japan, Keizo Obuchi. He proposed the concept of a regional cooperation agreement at the ASEAN+1 Summit Meeting in Manila. The reason for that was the increasing number of piracy attacks in the Southeast Asian region and especially in the Malacca Strait. There had been both hijackings of vessels as well as kidnaps for ransom that involved Japanese vessels and Japanese citizens. Some of them had even resulted in loss of life. The Japanese Government feared that this would affect the navigation in the region and harm people, as well as the shipping

⁷⁷ Regarding the discussion on *para droit* - Proshanto K. Mukherjee, ‘The ISM Code and the ISPS Code – A critical legal analysis of Two SOLAS Regimes’ (WMU Journal of Maritime Affairs, 2007), p. 2.

⁷⁸ *Supra*, note 40 at p. 118.

⁷⁹ Factsheet on ReCAAP, <http://app.mot.gov.sg> 2012-02-14, p. 1.

industry.⁸⁰ Worth mentioning is that one-third of all global trade passes through the Strait of Malacca each year and estimated numbers for year 2020 will mean 141.000 vessels every year. Around 90 % of Japan's energy imports pass through the strait every year and around 70-80 % of China's.⁸¹

The concern of the Japanese government resulted in an Asian anti-piracy conference in year 2000. The aim was to discuss different ways to tackle the problem and the conference resulted in two documents: the Tokyo Appeal and the Model Action Plan.⁸²

16 member countries then adopted ReCAAP in Tokyo on November 11th 2004. The member countries were the 10 ASEAN countries (Brunei, Cambodia, Indonesia, Lao, Malaysia, Myanmar, Philippines, Singapore, Thailand and Vietnam) plus China, Japan, Republic of Korea, Bangladesh, India and Sri Lanka. 10 ratifications were needed before it could come into force, which it did on September 4th 2006.⁸³ First the agreement was only open for signature to states within the region but when entering into force, any state could join.⁸⁴ Today, ReCAAP has 17 Contracting Partners including Denmark, Norway and the Netherlands.⁸⁵ Why Malaysia and Indonesia have chosen not to sign the agreement is unclear. Some suggest that it is because of the location of the Piracy Reporting Centre of IMB in Kuala Lumpur, while Indonesia's concerns are related to its reputation as a high frequent area for piracy.⁸⁶ Others say that they refused to sign the agreement due to the location of the Information Sharing Centre. In 2004, at the Tokyo meeting, Indonesia, Malaysia, South Korea and Singapore all bid

⁸⁰ Joshua Ho, 'Combating Piracy and armed robbery in Asia: The ReCAAP Information Sharing Centre (ISC)', (Marine Policy, 2009), p.1.

⁸¹ Supra, note 17 at p. 102 - 103.

⁸² Supra, note 80 at p.1.

⁸³ Supra, note 17 at p.1.

⁸⁴ Robin Geiss & Anna Petrig, *Piracy and Armed Robbery at sea: The Legal Framework for Counter-piracy Operations in Somalia and the Gulf of Aden*, (Oxford University Press, 2011), p. 45.

⁸⁵ ReCAAP's website, <http://www.recaap.org/AboutReCAAPISC.aspx>, 2012-02-15.

⁸⁶ Samuel Pyeatt Menefee, 'A recap of ReCAAP', in Maximo Q Mejia, *Maritime Security & Crime*, (WMU Publications, 2010), p. 190.

to host the Information Sharing Centre and instead of trying to decide the question by consensus, Singapore won after a vote.⁸⁷

4.2.2 The bodies of ReCAAP

The composition of ReCAAP's bodies is to be found in part II of the agreement and the main bodies are the Information Sharing Centre (ISC), the Secretariat and the Governing Council.⁸⁸

The Information Sharing Centre

The ISC was launched on November 29th 2006 in Singapore and on January 30th 2007 it was recognised as an international organisation.⁸⁹ It is the first multilateral government-to-government anti-piracy and armed robbery effort in the region.⁹⁰

The main objectives for the centre is:

- Sharing information between the signatory states,
- Sharing best practices in combating piracy and armed robbery at sea which will result in increased capacity,
- Cooperation with similar organisations in order to improve the signatory states ability to cope with piracy and armed robbery at sea.⁹¹

The centre is based in Singapore and Singapore funded the start up of the centre and will continue to finance its annual costs.⁹² The focal points reports to the ISC and after ISC has received a report they categorize the

⁸⁷ Supra, note 17 at p. 115.

⁸⁸ Part II of the ReCAAP agreement.

⁸⁹ <http://www.recaap.org/AboutReCAAPISC.aspx>, 2012-02-17.

⁹⁰ Supra, note 80 at p.1.

⁹¹ Ibid, p.1.

⁹² Factsheet on ReCAAP, <http://app.mot.gov.sg> 2012-02-14, p. 3.

event into either CAT 1: very significant, CAT 2: moderately significant or CAT 3: less significant. The significance of the event is based upon the violence used in the attack and the economic loss. Economic loss is based on the value of the things stolen while violence is a bit more complicated to estimate. One has to look at the type of weapons used, how the crew was treated and how many pirates were involved in the attack. It is of course hard to estimate the significance of an attack based upon the violence used when each attack differs from another and this of course makes it hard to categorize the attacks.⁹³

The Secretariat

One of the components in the ISC is the Secretariat, which is headed by the Executive Director - chosen by the Governing Body. He or she is assisted by the staff and is responsible for administrative, operational and financial matters of the ISC. He or she is also the representative of the centre and can make rules and regulations of the Secretariat with the approval of the Governing Council.⁹⁴

The Governing Council

The Governing Council is the second component in the ISC and its governing body. It consists of one representative from each member state and they shall meet at least once a year. They shall develop policies for the work of ISC and every decision shall be taken in consensus.⁹⁵

4.2.3 The ReCAAP agreement

Definition of the offence

⁹³ Supra, note 84 at p. 193-194

⁹⁴ Article 4 ReCAAP agreement.

⁹⁵ Article 4 ReCAAP agreement.

The definition of piracy and armed robbery against ships is in article 1 of the agreement. The definition on piracy is the same as the definition that can be found in UNCLOS and the definition of armed robbery against ships is the same as the definition IMO provides.⁹⁶

This means that the offences covered in the ReCAAP agreement are the same offences as covered in UNCLOS, but without the high seas limitation. That means that one of UNCLOS' shortcomings has been rectified but there are still some weaknesses attached when using UNCLOS' definition. It is still unclear whether attempted attacks are offences, whether an offence must include two ships and whether it has to be committed for private ends.⁹⁷

The obligations of the parties

First of all, according to article 2, the contracting parties shall implement the ReCAAP agreement in accordance to their national laws and regulations but also to their resources and capabilities.⁹⁸

Further, the general obligations of the contracting parties are to be found in article 3 of the agreement:

1. Each Contracting Party shall, in accordance with its national laws and regulations and applicable rules of international law, make every effort to take effective measures in respect of the following:

- (a) to prevent and suppress piracy and armed robbery against ships;
- (b) to arrest pirates or persons who have committed armed robbery against ships;
- (c) to seize ships or aircraft used for committing piracy or armed robbery against ships, to seize ships taken by and

⁹⁶ Maximo Mejia, 'Regional Cooperation in Combating Piracy and Armed Robbery against Ships: Learning Lessons from ReCAAP', in Anna Petrig, *Sea Piracy Law / Droit de la Piraterie Maritime*, (Duncker and Humblot, 2010), p. 129 – 130.

⁹⁷ Supra, note 42 at p. 110 – 111.

⁹⁸ Article 2 ReCAAP agreement.

under the control of pirates or persons who have committed armed robbery against ships, and to seize the property on board such ships; and
(d) to rescue victim ships and victims of piracy or armed robbery against ships.

2. Nothing in this Article shall prevent each Contracting Party from taking additional measures in respect of subparagraphs (a) to (d) above in its land territory.⁹⁹

These obligations lay the ground for the cooperation, exchange of information and capacity building that ReCAAP envisages for the signatory members.¹⁰⁰

Cooperation

The ReCAAP agreement focuses on cooperation and exchange of information and this can be seen in several articles in the ReCAAP agreement.

Part III of the agreement contains provisions on cooperation through the Information Sharing Centre and Part IV contains provisions on cooperation between the signatory states.¹⁰¹

Article 10 for example, stipulates that a contracting party may request another contracting party, directly or through the Information Sharing Centre, for cooperation regarding detecting offenders, victims or vessels that have been involved in a pirate or armed robbery attack.¹⁰² A contracting party that has been requested to help shall make every effort for implementing such a request and notify the Information Sharing Centre about the measures that have been taken.¹⁰³ However, if the request for

⁹⁹ Article 3 ReCAAP agreement.

¹⁰⁰ Supra, note 84 at p. 46.

¹⁰¹ ReCAAP agreement, p. 7 – 10.

¹⁰² Article 10 ReCAAP agreement.

¹⁰³ Article 11 ReCAAP agreement.

cooperation concerns extradition or mutual legal assistance, the request shall be made directly to the other contracting party.¹⁰⁴

Extradition

Extradition is regulated in ReCAAP's article 12. The article stresses that a contracting party shall strive for, according to their national laws and regulations, extradite offenders of piracy or armed robbery to the contracting state that have jurisdiction over them upon request from that contracting state.¹⁰⁵

However, this article does not oblige any contracting state to extradite or prosecute suspects. It is merely an aim and an encouragement for how the contracting parties shall act.¹⁰⁶

Mutual Legal Assistance

Article 13 encourages the contracting parties to, upon request of another contracting party, render mutual legal assistance, which for example includes submission of evidence. The article contains the same reservation as in article 12; a contracting state's national laws and regulations will stipulate the framework for the cooperation.¹⁰⁷ Once again, the article does not oblige the state to do anything concrete.

4.3 The Djibouti Code of Conduct

Another regional cooperation is set in Africa, dealing with the increased rate of piracy attacks in East Africa and in the Gulf of Aden.

¹⁰⁴ Article 10 ReCAAP agreement.

¹⁰⁵ Article 12 ReCAAP agreement.

¹⁰⁶ Supra, note 84 at p. 46-47.

¹⁰⁷ Article 13 ReCAAP agreement.

The Djibouti Code of Conduct was signed at the Djibouti meeting in January 29th 2009. The Code of Conduct concerns the repression of piracy and armed robbery against ships in the Western Indian Ocean and the Gulf of Aden. The signatory parties are: Djibouti, Ethiopia, Kenya, Madagascar, Maldives, Seychelles, Somalia, Tanzania, Yemen, Comoros, Egypt, Eritrea, Jordan, Mauritius, Oman, Saudi Arabia, Sudan and the United Arab Emirates, all together 18 states.¹⁰⁸

The aims of The Code of Conduct are to increase the regional cooperation between the countries in the region. That means enhancing the states' effectiveness when it comes to prevention, interdiction, prosecution and penalties concerning piracy. The Code of Conduct will help the states to cooperate when it comes to information sharing and information reporting.¹⁰⁹

One can easily recognize some of the features from ReCAAP in The Code of Conduct and in the preamble, ReCAAP has been recognized as a source of inspiration.¹¹⁰ Some of the similarities are the protection measures for ships, provisions on information sharing, incident reporting and assistance among the signatory parties. As with ReCAAP, The Djibouti Code of Conduct is a means that hopefully will help the information sharing flow smoothly between the focal points and between the information exchange centres that are based in Kenya, Tanzania and Yemen.¹¹¹ The definition of piracy and armed robbery against ships are to be found in article 1 and it is the same definitions as ReCAAP use.¹¹²

¹⁰⁸ IMO's website, <http://www.imo.org/OurWork/Security/PIU/Pages/DCoC.aspx>, 2012-02-23.

¹⁰⁹ Supra, note 84 at p. 48

¹¹⁰ Annex of The Djibouti Code of Conduct, p. 7.

¹¹¹ Supra, note 84 at p. 49.

¹¹² Article 1 The Djibouti Code of Conduct.

However, there are a few things that are different from ReCAAP as well. To start with, The Djibouti Code of Conduct is not a legally binding instrument, nor is it open for all states to participate.¹¹³

Article 4 stipulates the measures to be taken in suppressing piracy and is encouraging the signatory parties to cooperate to their fullest extent in for example arresting, investigation, prosecuting and seizing pirate ships. However, there is no difference from UNCLOS, or ReCAAP, in regards to hot pursuit. The right for a state to pursue a ship ends in another state's territorial waters unless consent has been given by that state.¹¹⁴

To ensure that pirates actually are being caught, prosecuted and punished, the signatory parties need to review their national legislation according to article 11. This also applies to the laws regarding extradition of pirates when a state does not have the required jurisdiction. The signatory parties intend to evaluate their anti-piracy laws and their guidelines concerning exercising jurisdiction, conducting investigations and later prosecuting pirates.¹¹⁵

The Djibouti Code of Conduct has been complimented as being a milestone and a central instrument for suppressing piracy within a regional cooperation. IMO among, for example the ISC of ReCAAP, continues to assist in the implementation process of the Djibouti Code of Conduct and this is financed by its trust fund, established after significant donations from Japan.¹¹⁶

4.4 Summary

Both UNCLOS and SUA address the importance of regional cooperation, UNCLOS in a more general and encouraging way and SUA in a more direct

¹¹³ Supra, note 84 at p. 49-50.

¹¹⁴ Article 4 The Djibouti Code of Conduct.

¹¹⁵ Article 11 The Djibouti Code of Conduct.

¹¹⁶ Supra, note 84 at p. 49-51.

way. Despite the differences it is clear that the two main international law documents on the subject suggest that regional cooperation is an important part of the solution to suppressing piracy.

There have been earlier attempts to cooperation in the Southeast Asian region. Bilateral attempts, multilateral attempts and attempts from outside the region. However, it does seem like none of these attempts have been very successful for different reasons.

Even though Malaysia and Indonesia are not signatory parties to the ReCAAP agreement it is still an important step in the right direction. As stated earlier, regional cooperation is essential and the first step to provide good assistance to the states is to have, and share, the accurate information. Besides information sharing via the Information Sharing Centre, the states shall also try to assist each other when it comes to the legal issues such as extradition and mutual legal assistance. The provisions on this seems however to be some of the weaker ones in ReCAAP. The provisions do not put up any obligations on the signatory parties and they do not have to do anything that exceeds their obligations according to their own national laws.

This is of course the result of an agreement that does not constitute any legal norms. While such an agreement may be attractive for states to agree upon and sign, there are no obligations on the states and no sanctions if they do not follow the agreement – making the cooperation a bit vulnerable.

The regional cooperation in East Africa, The Djibouti Code of Conduct, has got a lot of inspiration from ReCAAP and some of the articles are more or less identical. The definitions of piracy and armed robbery are the same and there is no right of hot pursuit exceeding the one defined in UNCLOS etcetera. However, one important difference is in article 11. The signatory parties are according to that article not obliged to, but encouraged to, review their national anti-piracy laws. Even though the article does not force them

to do anything specific, the importance of national legislation is being highlighted. An equivalent article cannot be found in ReCAAP.

5 Regional cooperation at a national level

5.1 The work of ReCAAP's focal points

The focal points have several tasks according to the agreement, which for example include:

- Managing the piracy and armed robbery within their territorial waters
- Acting as a point of information exchange with the ISC
- Facilitate the country's law enforcement investigations
- Coordinate surveillance and enforcement for piracy and armed robbery with neighbouring focal points.¹¹⁷

In Vietnam, the Vietnamese Marine Police is the focal point. This means that they help the ISC to collect or analyse relevant information. They are also transferring information to other signatory parties in order to suppress piracy and armed robbery attacks. Information is also being passed on to shipping companies, fishing vessels etcetera when they are passing a troublesome area.¹¹⁸ The focal point in Norway is doing the same thing, receiving and distributing the incident reports to companies and vessels sailing under the Norwegian flag.¹¹⁹

¹¹⁷ Supra, note 80 at p. 2.

¹¹⁸ Gleaned from personal communication with the Vietnamese Marine Police.

¹¹⁹ Gleaned from personal communication with Morten A. Lossius.

In article 2 in the ReCAAP agreement the signatory parties shall implement the agreement to the fullest extent possible according to their national laws.¹²⁰

According to the Marine Police in Vietnam, the prime minister took the decision to sign and implement the ReCAAP agreement. However, it has not been fully implemented in the national laws. According to the Marine Police, it is not evident that everything in ReCAAP is going to be implemented into national laws either. When there have been discussions on implementation at a regional level, the Vietnamese Marine Police suggests what needs to be done at a national level. The decision on implementing or not implementing is then taken by the politicians higher up in the hierarchy after considering possible impacts on other commitments that Vietnam has.¹²¹ It may be interesting to compare Vietnam with Denmark, which is also a ReCAAP member. Even though Denmark is not situated in the region it seems like they have done more in order to implement the ReCAAP agreement than Vietnam have done.¹²² On November 23rd 2011 Denmark launched their anti-piracy order in which most of the ReCAAP provisions have been covered. This order entered into force on January 1st 2012 and contains articles on how shipping companies shall act according to best management practices etcetera.¹²³

When it comes to the effective measures in article 3¹²⁴ in the agreement the Vietnamese Marine Police only points out that a decision for cooperation has been taken and that they have been established as the focal point of Vietnam.¹²⁵

¹²⁰ Article 2 ReCAAP agreement.

¹²¹ Gleaned from personal communication with the Vietnamese Marine Police.

¹²² Gleaned from personal communication with Claus Jørgensen.

¹²³ Bekendtgørelse om teknisk forskrift om forholdsregler til forebyggelse af pirateri og væbnede overfald på danske skibe, November 30th 2011.

¹²⁴ Article 3 ReCAAP agreement.

¹²⁵ Gleaned from personal communication with the Vietnamese Marine Police.

As described earlier, Vietnam is one of the signatory parties that have not contributed financially at all. This may be problematic since there is a risk that the signatory parties that do finance ReCAAP will end up running it, which will erode the cooperation. This is however not something that worries the Vietnamese Marine Police. They state that financing is voluntary as a signatory party and that Singapore and Japan are the states that have chosen to contribute the most.¹²⁶ This is not something that the focal point in Norway is worried about either, saying that the council will probably address it if it becomes a problem. Norway however is contributing financially.¹²⁷

5.2 National legislation

The Vietnamese Marine Police is not versed with the legal cooperation between the signatory parties but they claim that they follow the agreement primarily and secondarily its own national maritime laws. They are not familiar with the procedure of extradition and the court proceedings but they do state that Vietnam lacks specific anti-piracy laws.¹²⁸ When it comes to extradition, Vietnam will not extradite a Vietnamese citizen. Any foreign citizen can however be extradited if there is a bilateral agreement between the two states.¹²⁹

According to the legal department at Vinamarine, Vietnam's Maritime administration, a pirate would in Vietnam be prosecuted and sentenced according to the national penal code. 'Piracy' is not a crime itself but a pirate would be charged with robbery, theft etcetera. A sentence can consist of a fine, in the milder cases, or prison for 3 months or more in the more severe cases. According to them, the national penal code is enough as for now since Vietnam is not that affected by piracy. Attacks in Vietnam are

¹²⁶ Gleaned from personal communication with the Vietnamese Marine Police.

¹²⁷ Gleaned from personal communication with the Morten A. Lossius.

¹²⁸ Gleaned from personal communication with the Vietnamese Marine Police.

¹²⁹ Interview with a legal expert in the area.

mostly on vessels at anchor or armed robbery attacks, and it would be difficult to implement a new anti-piracy law.¹³⁰ This may have something to do with the problem of law implementation in Vietnam. When a law has been declared, the enforcement authorities have to wait until they get the rules for its implementation in forms of government decrees or circulars. These guidelines are rarely published at the same time as the laws, making it impossible for the enforcement authorities to implement the laws in a reasonable time, as well as understanding the laws themselves.¹³¹

Implementation is recognized as a problem in Vietnam, especially when it comes to international conventions and treaties. In theory, Vietnam has a monistic system, meaning that conventions do not have to be implemented in national legislation; the convention has the status of law and prevails national legislation from the moment it has been signed.¹³² The clear provisions in the convention apply therefore directly. In practice however, it is difficult for the judges in a court and for the civil servants and the officials in an office to implement and interpret the conventions properly. When the convention is in English they may have difficulties understanding it, and when it has been translated, there may be some errors or differences from the original document, making it incorrect. There are no national guidelines on how to interpret and apply a convention nationally unless some of the provisions are in conflict with the national law, in which case a decree will give some guidelines. There is also a problem that the judges prefer using national laws instead of conventions and treaties.¹³³

5.3 A welcomed agreement

¹³⁰ Gleaned from personal communication with the Legal Department at Vinamarine.

¹³¹ Anonymous, 'Vietnam's WTO commitments: Good on Paper but Implementation is Lagging', (AsiaLaw, 2008).

¹³² More information regarding monistic and dualistic systems can be found in Professor P.K. Mukherjee, 'Implementation of Maritime Conventions through national legislation', p. 225-226.

¹³³ Interview with a legal expert in the area.

Even though Vietnam does not consider piracy to be a very big problem in the country, ReCAAP is still a welcomed initiative. While UNCLOS and SUA may be sufficient for other purposes, when it comes to piracy in specific regions the two conventions are too general in order to be helpful. It is better and more efficient that the states in the region deals with the problem that they all share.¹³⁴

This may also be on of the reasons to why the Southeast Asian states are more keen to use the ReCAAP ISC rather than the IMB's PRC.¹³⁵ The Norwegian focal points argues that the IMB PRC does not distribute their information the same way as the ReCAAP ISC and it is still too early to say whether the same job could have been done by the IMB PRC instead.¹³⁶

Looking at the future, the focal points seem to be positive. The Vietnamese Marine Police states that the agreement is good and that it will widen in the future, including more signatory parties.¹³⁷ The focal point in Norway agrees and says that they know that the ReCAAP agreement has been welcomed within IMO and that many European States consider it to be a valuable organization, probably resulting in more European States joining.¹³⁸ Hopefully, Vietnam will decide to revise their national laws and legislate a specific anti-piracy law but it is doubtful since the notion is that the ReCAAP provisions are already covered in the national laws.¹³⁹

5.4 Summary

Each signatory party in the ReCAAP collaboration should establish a national focal point. In Vietnam, it is the Vietnamese Marine Police. They are mostly dealing with the information sharing part of the ReCAAP

¹³⁴ Gleaned from personal communication with the Legal Department at Vinamarine.

¹³⁵ Gleaned from personal communication with the Vietnamese Marine Police.

¹³⁶ Gleaned from personal communication with Morten A. Lossius.

¹³⁷ Gleaned from personal communication with the Vietnamese Marine Police.

¹³⁸ Gleaned from personal communication with Morten A. Lossius.

¹³⁹ Interview with a legal expert in the area.

agreement, acting as an intermediary between the affected vessels and companies and the ISC in Singapore. In other words, they are doing the practical work within the signatory state. When asking what they do more specifically the Vietnamese Marine Police only refers to their existence more or less and cannot give any examples on what they do more than what they exactly are obliged to do according to the ReCAAP agreement.

When looking at the more legal parts of the agreement and how those have been implemented in Vietnamese law it is obvious that much more could be done. Even though ReCAAP does not require any form of implementation, article 2.1 is encouraging the signatory parties to implement the agreement and it is clear that Vietnam lacks the skill of properly implementing, interpreting and using the laws – especially international law.

6 Analysis

6.1 Origins and persistence of piracy

There seems to be a tradition of piracy in the Southeast Asian waters¹⁴⁰, different from the tradition and the history of the Western type of piracy. Some, as described above, are concerned that this affects the application of the international law concerning piracy. The concerns are not fully clear for this author but it seems to be related with how the UNCLOS criteria for piracy stipulate the conduction of the crime on the high seas. This is truly an obstacle in Southeast Asia where a lot of the maritime areas are within a state's territory. However, even though this may have been problematic in Southeast Asia for a long time, the problem seems to now have spread to other areas in the world, hence the use of the 'armed robbery at sea', or 'coastal zone piracy', definition. That the problem of piracy within territorial waters has spread to other parts of the world has not had any effect on UNCLOS, more than making the convention even more out of date.

In this author's opinion, what are problematic is how the onset of piracy in the region looked like and how the problem has been able to persist during all these years. There are of course several reasons, many of them connected to the state and how it functions, or rather not functions. However, there are other states, not within the region, that have worsened the problem and are now not taking their responsibility. Those states are for example all weapon-exporting states. These states have a responsibility to make sure that the weapons that they are exporting do not end up in the wrong hands and the

¹⁴⁰ Supra, note 12 at p. 10.

first step is probably to recognize the problem of piracy as an international problem rather than a maritime problem.

6.2 International law

As described in the earlier chapters, the piracy in Southeast Asia is often conducted within states' territorial waters, due to the geography in the region, where international law is not applicable. Therefore, international law is hindered to fully address the problem of piracy in Southeast Asia.¹⁴¹ Even though SUA does not have the same geographical criteria as UNCLOS, it cannot fully be seen as a satisfying substitute.

One solution would of course be to modify the provisions on piracy but UNCLOS has for many signatory parties been considered to come as a package deal, which should be upheld, and the problem of piracy is just one of many contemporary concerns. Since UNCLOS and international law cannot provide adequate applicability, regional solutions have been sought in the form of ReCAAP and the Djibouti Code of Conduct. Even though such initiatives will not extend the enforcement competencies in the customary law, going beyond UNCLOS in the near future, it is not impossible that these types of collaborations do form a part of the evolution of the customary law.¹⁴² On the topic of hot pursuit however, the states do not seem to be too concerned on the limited right that UNCLOS provides, or maybe it is too hard to find a better solution that everyone can agree upon.

To sum up, UNCLOS has been criticized for being too weak; SUA has been criticized for being too concrete. It seems to be hard to please everyone at an international level so maybe a more successful result will come out of a regional cooperation. If so, a few countries can agree on a more specific

¹⁴¹ Supra, note 42 at p. 112.

¹⁴² Supra, note 84 at p. 52-54.

solution to the problem of piracy – using UNCLOS and SUA as two very general platforms.

6.3 ReCAAP

National pride is rather problematic in Southeast Asia. States are reluctant to let go of some of their national powers in order to solve a regional problem. At the same time it is important that they do that since many of the states in Southeast Asia are weak states, from a socio-economic perspective, that cannot solve the issue of piracy by themselves. Working together will be more powerful and more efficient than working one by one, which will improve the final result.

This could perhaps have been done through the IMB's Piracy Reporting Centre, but states in Southeast Asia have felt a bit of resentment to the Reporting Centre in Kuala Lumpur. The states have been concerned that IMB is not an appropriate channel for cooperation and coordination between the law enforcement authorities since IMB is non-governmental.¹⁴³ Therefore, states have probably been more eager to find an inter-governmental solution, which they finally found in ReCAAP.

Since the start, the importance of ReCAAP has increased in the region. Letting other parties in, outside of the region, is a great attempt to strengthen the collaboration. States with a major role in shipping, such as states with global interests – like the United States – should join as well. The budget question needs to be revised however, it should be more transparent and all the signatory parties should contribute. Improving some of ReCAAP's weaknesses, the collaboration will work as a great template for other similar cooperation programmes in the region.¹⁴⁴

¹⁴³ Supra, note 22 at p. 145.

¹⁴⁴ Supra, note 84 at p. 198-199.

An important factor for a regional cooperation to succeed in Southeast Asia has been considered to be the cooperation from the international maritime community, such as states using the maritime area and the international shipping industry.¹⁴⁵ There has also been suggested that neighbouring states with resources, such as Australia and New Zealand, would enhance a regional cooperation.¹⁴⁶ While Australia and New Zealand have not joined yet, The Netherlands, Denmark and Norway have.

6.3.1 ReCAAP's advantages

Since the cooperation article in UNCLOS has not been taken very seriously and the articles in SUA have deterred states to become signatory parties, the initiative of ReCAAP has been a success when it comes to cooperation in information sharing and collaboration in transnational crimes. It is also a very good start for future cooperation in the region.¹⁴⁷ One important proof of ReCAAP's success is the launching of the Djibouti Code of Conduct.

Making the signatory parties appointing national focal points gives the states the type of training that is necessary within any inter-agency cooperation. Another type of training is the more practical one that ReCAAP encourages. A regional cooperation will enhance the practical capacity in the states through exercises, workshops and sharing of best practices. This will lead to greater transparency and awareness among maritime organisations within a state, but also between different states.¹⁴⁸

The fact that ReCAAP also is open for non-state signatory parties is very positive. Piracy does affect governments and states but the direct cost of piracy is primarily affecting the shipping companies. They have been bearing a lot of the costs and they do have a lot of experience on piracy and armed robbery. Acknowledging the experience and knowledge of

¹⁴⁵ Supra, note 22 at p. 146.

¹⁴⁶ Supra, note 42 at p. 113.

¹⁴⁷ Ibid, p. 113.

¹⁴⁸ Supra, note 80 at p. 2.

companies and organisations will benefit the ReCAAP cooperation as well as the situation in general.¹⁴⁹ Letting companies and organisations be a part of ReCAAP will also result in more attention. These companies and organisations can shine a light on the problem in a way that the governments cannot, in networks and other social contexts where governments cannot be present. Also, the companies and organisations may have the possibility to prioritise the problem of piracy higher than some of the governments.

6.3.2 ReCAAP's disadvantages

Some of the articles, especially those regarding requesting help from other states, are unclear in what type of assistance can be granted from the other states. Since it is not specified, it may be possible for a state to have a quite wide request but there is also the possibility that due to the uncertainty, the states will not find the article very useful. There is no mentioning of the use of force in the ReCAAP agreement either, nor the use of maritime patrols. The states are not obliged to do any anti-piracy training according to the agreement and the use of hot pursuit does not differ from what is stipulated in UNCLOS – making it illegal to pursue vessels in other states' territorial waters. So, while the initiative is good when it comes to information sharing, the agreement lacks provisions on practical means, such as regulation for maritime polices and how to apprehend and deal with pirates legally.¹⁵⁰ For extraditing suspected pirates, extradition treaties are still necessary between the signatory parties.

One would maybe hope that an agreement such as ReCAAP would be able to clarify and harmonize some of the legal issues in the region. However, the procedures and penalties for pirates continue to look different from state to state. There is also an aspiration that the definition of piracy should be broader, including not only attacks or attempts by another vessel, but also attacks and attempts by people already on the boat. Attacks and attempts on

¹⁴⁹ Ibid, p. 2.

¹⁵⁰ Supra, note 42 at p. 111-112.

the high seas should naturally be included but also attacks and attempted attacks on vessels scheduled to pass the state's territorial waters, similar to the criteria in SUA.¹⁵¹ ReCAAP has been described as a good effort towards further cooperation in the legal area but for the time being it lacks teeth.¹⁵²

Something that also many consider is lacking is the participation of Malaysia and Indonesia. Since many of the piracy attacks and armed robbery attacks take place in their waters, a regional cooperation without them will not be as effective. However, as described above, their reasons for not joining ReCAAP are unclear but ReCAAP is trying to do the best of the situation by including them and collaborate with them as far as possible.¹⁵³

Some of the more practical means that have been suggested in order to further improve the cooperation would be to introduce a Regional Coast Guard that could patrol the area and a Regional Piracy Tribunal which would harmonize the laws on piracy but also the procedure and the penalties.¹⁵⁴ Other ideas have been to put up an operational centre within ReCAAP so that shipmasters of attacked vessels can report directly to the centre rather than to the national focal points. This is believed to make reporting and responses more efficient since the operational centre will get a better overview of the situation and can contact the national operational centres who are patrolling the waters.¹⁵⁵

¹⁵¹ Supra, note 42 at p. 112-113.

¹⁵² Supra, note 84 at p. 47.

¹⁵³ Supra, note 80 at p. 2.

¹⁵⁴ Supra, note 42 at p. 113.

¹⁵⁵ Supra, note 80 at p. 2.

6.4 ReCAAP in its signatory member states

There are some concerns that the political climate in the region may hinder any cooperation to work out as planned to.¹⁵⁶ Malaysia and Indonesia not joining ReCAAP is probably a good example of that but the political climate within the signatory parties is just as important.

In Vietnam there are no specific anti-piracy laws. The reason for that is that it is considered enough to have the national penal code since they themselves are not that troubled by piracy. There have been some armed robbery attacks, mainly at ships on anchor and in the harbours, in Vietnamese waters but that is not considered to be a problem of great concern. However, in this author's opinion, even though piracy is not considered to be a big national problem, Vietnam is a signatory party to ReCAAP, which should make them want look at the bigger picture. Lacking specific anti-piracy laws when you are a signatory party does not give the cooperation very much credibility.

However, due to the serious problem with implementing new laws in Vietnam – a well-incorporated penal code may be more efficient, at least in the short run, rather than legislating a specific anti-piracy law.

6.5 Is regional cooperation the solution to piracy?

ReCAAP is a great initiative for states to recognize a regional problem and collaborate in order to solve it. The agreement's operating principles do not collide with the national sovereignty of the signatory parties, which

¹⁵⁶ Supra, note 42 at p. 112.

probably makes it a popular template for future regional cooperation in Southeast Asia, but also in other parts of the world.¹⁵⁷ However, as described earlier in this thesis, the root of the problem of piracy cannot just be solved by one means. The problem is more complex than that. Regional cooperation is essential and ReCAAP is a good first step but in this author's opinion the agreement lacks some very important legal clarifications.

The signatory parties to The Djibouti Code of Conduct intend to review their national legislation to ensure that they have adequate anti-piracy legislation.¹⁵⁸ It is good that there is a clear provision on the improvement of the states' national legislation, but this is not really an obligation since it only stipulates that the party 'intends to review'. However, an equivalent to this provision is not to be found in ReCAAP. When it comes to improving the national legislation, the provisions in ReCAAP remain silent and a lot of the responsibilities are to be carried out according to the state's national laws and regulations. This means that the agreement is limited to the states' national legislation and the states have no obligation to neither review nor improve it. In this author's opinion this may be one of the main obstacles for ReCAAP to develop in the future since a more harmonized anti-piracy legislation seem to be a natural next step in the cooperation.

One of the major obstacles in arresting pirates has been the delay of the report to the law enforcement authorities, if they have got a report at all. Shipmasters and shipping companies have felt that they cannot afford the delay in the itinerary that a police investigation would cause. Another problem has been, at least in Indonesia, lack of witnesses. Even though there are witnesses they are usually foreigners working on international vessels and to transfer them to national courts would be both costly and time consuming. This means that there has not been much evidence against the suspected pirates even though the suspicions have been strong.¹⁵⁹ This problem seems to be partly related to the tight working conditions within the

¹⁵⁷ Supra, note 80 at p. 3.

¹⁵⁸ Article 11 The Djibouti Code of Conduct.

¹⁵⁹ Supra, note 22 at p. 142.

shipping industry. The fact that the shipmaster and the crew do not feel that they have time to report a crime due to their tight schedule is unfortunate, but probably nothing that a regional cooperation can solve. What could be part of the solution though, is to carry out the idea of establishing a piracy tribunal. This author strongly believes that harmonizing the anti-piracy laws and harmonizing the procedures of apprehending, prosecuting and punishing pirates will lead to a stronger sense of rule of law but also to a more efficient system. As it is today, every state can decide on the content of their anti-piracy laws, if they even have anti-piracy laws, and how the procedure in order to finally punish pirates should look like. Within a region such as Southeast Asia where democracy is not to be taken for granted and corruption is a huge problem, the rule of men seems to be a stronger principle than the rule of law. Giving some of the national legislation power to a regional unit, a kind of piracy council, and letting a regional piracy tribunal carry out that regional legislation – similar to the Council of Europe and the European Court of Human Rights – would in this authors opinion improve a great deal of the legal weaknesses that exists in ReCAAP.

7 Summary and conclusion

As described in the background, piracy and armed robbery is a big criminal business that costs huge amounts of money every year. It is evident that the problem is rather complex and dates back many years, especially in Southeast Asia.

The origin of piracy in the Southeast Asian waters has a very long history and also a complex one. It may have started out as a more or less legal business with social support, but changed and became the criminal piracy we recognize today. However, the piracy of today has been illegal for quite some time so one cannot really explain that piracy by referring to the piracy that was accepted in the fifth century. With that said, it may still be interesting to reflect on how long piracy has been around and why it was later defined as a crime.

The modern piracy seems to have been around since the end of World War II, when the maritime trade exploded in the region, as well as the criminality on sea. The authorities could not tackle the crimes off shore and some realized that there was some money to be earned by being paid off. The situation on land is very much the reason to why piracy persists, but weapon exporting, advanced technology and geography are also playing a big part in why pirates can continue to carry out successful attacks. The attacks in Southeast Asia are usually carried out within a state's territorial waters and since the area is rather large, there are of course different methods that the pirates use, some violent, some non-violent. Attacks or attempts have been carried out in narrow straits, in ports or while the vessel is at anchor – at places where UNCLOS is not applicable.

The first step to solve the problem is, in this author's opinion, to recognize piracy as an international problem and show how it affects everyone. The next step is to involve as many states and parties as possible.

Unfortunately, international law will not be that much of help for the states actively trying to combat piracy. Even though the international legal framework is adequate for the small amount of piracy attacks that are within the scope of i.e. UNCLOS, implementing international law is problematic since there are so many requirements that the modern piracy does not fulfil. Also, for the type of piracy that does fall under UNCLOS, there are no provisions or guidelines on how to prosecute and penalize pirates – that is for the individual state to decide. Since most of the attacks and attempts have been carried out within the territorial waters, UNCLOS is not a very efficient means for the authorities in Southeast Asia. UNCLOS seems to be rather out of date when it comes to modern piracy, working only as a general platform for other types of legal documents and agreements.

SUA is more up to date, including for example attacks and attempts on vessels that only are scheduled to leave a state's territorial waters. However, the SUA convention is to be used for the more serious piracy attacks and maritime terrorism, which means that a lot of attacks and attempts are not covered there either.

Both conventions have its strengths but, especially UNCLOS, also its weaknesses. This makes them rather hard to apply and not a very efficient tool in tackling the problem. Affected states seem to believe that international law is either too broad, or too old, in order to be helpful and have therefore sought other helpful methods and means. Also, pirates operate in different manners in different parts of the world, making it difficult to come up with a universal solution. However,

pirates do operate regionally rather than nationally which would make a regional effort more powerful than individual efforts.

This is especially true in a region such as Southeast Asia where geographic boundaries are literally floating and states do not have the means one-by-one to control these boundaries and prevent piracy and armed robbery attacks.

ReCAAP is cooperation government-to-government through the national focal points and the Information Sharing Centre. ReCAAP is mostly focusing on information sharing, which they do by for example publishing information on their website. However, sharing accurate information is probably the best first step, but it is only the first step in finding a permanent solution to the problem of piracy. The focal points seem to agree that the cooperation will continue to grow in the number of signatory parties, including even more states and organizations.

There is however some concerns that ReCAAP lacks teeth since it is not really putting any obligations on the signatory parties and the enforcement powers do not go beyond what UNCLOS prescribes. There are some provisions stating that states should help each other when it comes to legal assistance and extradition, but the signatory parties are not obliged to do anything that is not supported within their own national laws and extradition is still depending on bilateral agreements between the states.

This is a problem and the consequences are evident in Vietnam. Vietnam has been a signatory party since the launching of ReCAAP in 2006 and the national focal point is the Vietnamese Marine Police. When describing how ReCAAP has been implemented in Vietnam they describe what ought to have been done rather than what actually have been done. They can unfortunately not give any examples on what they have done in order to fulfil the ReCAAP agreement, more than deciding

on the focal point. Some argue that Vietnam's national laws are already covering the ReCAAP agreement, meaning nothing more needs to be done.

However, it is of great concern that implementation of new legislation and new conventions are not working very well in Vietnam. Judges do not understand the new documents and they do not have any guidelines on how to implement and interpret them which will make them use national laws well within their safety zone instead.

This author believes that Vietnam could, and should, have done more. As it is now, it looks like they have joined ReCAAP just to show that they are doing something. They are not contributing financially, they do not have any specific anti-piracy laws nor have they done nothing more than what they specifically need to do according to the agreement. The ReCAAP agreement does not put up any obligations but it do contain quite many encouraging provisions on what signatory parties could do.

Anyhow, regional cooperation is desirable even though it is not the whole answer. In the case of ReCAAP it is a great first step and hopefully, since it has been a successful first step, the cooperation will develop further. However, as it is now, it is not enough. There are too many weaknesses and not enough obligations on the signatory parties. The legal issues have not been solved and the implementation of the agreement differs from state to state.

It is understandable that the ReCAAP agreement is vague in some provisions in order for everyone to agree upon them, but in order to actually make and see some positive changes the signatory parties will have to work hard for it.

To conclude, there is still a lot that has to be done, both within the states but also in the ReCAAP agreement. However, as mentioned earlier, the

problem of piracy must be recognized as a global problem that affects many people emotionally and economically. Also, several solutions how to tackle the problem are needed. Regional cooperation is one of many solutions but it is not the only solution. One needs to look at all the causes to piracy and try to prevent those as well.

There are parallels to be drawn to the economical term ‘Goodhart’s law’ meaning that curing the symptoms of a problem will not cure the problem itself but only make the problem more difficult to identify. Piracy is a symptom of several complex factors that also needs to be addressed and solved.

Appendix

Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia

The Contracting Parties to this Agreement,

Concerned about the increasing number of incidents of piracy and armed robbery against ships in Asia,

Mindful of the complex nature of the problem of piracy and armed robbery against ships,

Recognizing the importance of safety of ships, including their crew, exercising the right of navigation provided for in the United Nations Convention on the Law of the Sea of 10 December 1982, hereinafter referred to as "the UNCLOS",

Reaffirming the duty of States to cooperate in the prevention and suppression of piracy under the UNCLOS,

Recalling "Tokyo Appeal" of March 2000, "Asia Anti-Piracy Challenges 2000" of April 2000 and "Tokyo Model Action Plan" of April 2000,

Noting the relevant resolutions adopted by the United Nations General Assembly and the relevant resolutions and recommendations adopted by the International Maritime Organization,

Conscious of the importance of international cooperation as well as the urgent need for greater regional cooperation and coordination of all States affected within Asia, to prevent and suppress piracy and armed robbery against ships effectively,

Convinced that information sharing and capacity building among the Contracting Parties will significantly contribute towards the prevention and suppression of piracy and armed robbery against ships in Asia,

Affirming that, to ensure greater effectiveness of this Agreement, it is indispensable for each Contracting Party to strengthen its measures aimed at preventing and suppressing piracy and armed robbery against ships,

Determined to promote further regional cooperation and to enhance the effectiveness of such cooperation,

Have agreed as follows:

Part I Introduction

Article 1

Definitions

1. For the purposes of this Agreement, "piracy" means any of the following acts:

(a) any illegal act of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:

(i) on the high seas, against another ship, or against persons or property on board such ship;

(ii) against a ship, persons or property in a place outside the jurisdiction of any State;

(b) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;

(c) any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b).

2. For the purposes of this Agreement, "armed robbery against ships" means any of the following acts:

(a) any illegal act of violence or detention, or any act of depredation, committed for private ends and directed against a ship, or against persons or property on board such ship, in a place within a Contracting Party's jurisdiction over such offences;

(b) any act of voluntary participation in the operation of a ship with knowledge of facts making it a ship for armed robbery against ships;

(c) any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b).

Article 2

General Provisions

1. The Contracting Parties shall, in accordance with their respective national laws and regulations and subject to their available resources or capabilities, implement this Agreement, including preventing and suppressing piracy and armed robbery against ships, to the fullest extent possible.

2. Nothing in this Agreement shall affect the rights and obligations of any Contracting Party under the international agreements to which that Contracting Party is party, including the UNCLOS, and the relevant rules of international law.

3. Nothing in this Agreement shall affect the immunities of warships and other government ships operated for non-commercial purposes.

4. Nothing in this Agreement, nor any act or activity carried out under this Agreement shall prejudice the position of any Contracting Party with regard to any dispute concerning territorial sovereignty or any issues related to the law of the sea.

5. Nothing in this Agreement entitles a Contracting Party to

undertake in the territory of another Contracting Party the exercise of jurisdiction and performance of functions which are exclusively reserved for the authorities of that other Contracting Party by its national law.

6. In applying paragraph 1 of Article 1, each Contracting Party shall give due regard to the relevant provisions of the UNCLOS without prejudice to the rights of the third Parties.

Article 3

General Obligations

1. Each Contracting Party shall, in accordance with its national laws and regulations and applicable rules of international law, make every effort to take effective measures in respect of the following:

- (a) to prevent and suppress piracy and armed robbery against ships;
- (b) to arrest pirates or persons who have committed armed robbery against ships;
- (c) to seize ships or aircraft used for committing piracy or armed robbery against ships, to seize ships taken by and under the control of pirates or persons who have committed armed robbery against ships, and to seize the property on board such ships; and
- (d) to rescue victim ships and victims of piracy or armed robbery against ships.

2. Nothing in this Article shall prevent each Contracting Party from taking additional measures in respect of subparagraphs (a) to (d) above in its land territory.

Part II Information Sharing Center

Article 4

Composition

1. An Information Sharing Center, hereinafter referred to as “the Center”, is hereby established to promote close cooperation among the Contracting Parties in preventing and suppressing piracy and armed robbery against ships.

2. The Center shall be located in Singapore

3. The Center shall be composed of the Governing Council and the Secretariat.

4. The Governing Council shall be composed of one representative from each Contracting Party. The Governing Council shall meet at least once every year in Singapore, unless otherwise decided by the Governing Council.

5. The Governing Council shall make policies concerning all the matters of the Center and shall adopt its own rules of procedure, including the method of selecting its Chairperson.

6. The Governing Council shall take its decisions by consensus.

7. The Secretariat shall be headed by the Executive Director who shall be assisted by the staff. The Executive Director shall be chosen by the Governing Council.

8. The Executive Director shall be responsible for the administrative,

operational and financial matters of the Center in accordance with the policies as determined by the Governing Council and the provisions of this Agreement, and for such other matters as determined by the Governing Council.

9. The Executive Director shall represent the Center. The Executive Director shall, with the approval of the Governing Council, make rules and regulations of the Secretariat.

Article 5

Headquarters Agreement

1. The Center, as an international organization whose members are the Contracting Parties to this Agreement, shall enjoy such legal capacity, privileges and immunities in the Host State of the Center as are necessary for the fulfillment of its functions.

2. The Executive Director and the staff of the Secretariat shall be accorded, in the Host State, such privileges and immunities as are necessary for the fulfillment of their functions.

3. The Center shall enter into an agreement with the Host State on matters including those specified in paragraphs 1 and 2 of this Article.

Article 6

Financing

1. The expenses of the Center, as provided for in the budget decided by the Governing Council, shall be provided by the following sources:

- (a) Host State financing and support;
- (b) Voluntary contributions from the Contracting Parties;
- (c) Voluntary contributions from international organizations and other entities, in accordance with relevant criteria adopted by the Governing Council; and
- (d) Any other voluntary contributions as may be agreed upon by the Governing Council.

2. Financial matters of the Center shall be governed by a Financial Regulation to be adopted by the Governing Council.

3. There shall be an annual audit of the accounts of the Center by an independent auditor appointed by the Governing Council. The audit report shall be submitted to the Governing Council and shall be made public, in accordance with the Financial Regulation.

Article 7

Functions

The functions of the Center shall be:

- (a) to manage and maintain the expeditious flow of information relating to incidents of piracy and armed robbery against ships among the Contracting Parties;
- (b) to collect, collate and analyze the information transmitted by the Contracting Parties concerning piracy and armed robbery against ships, including other relevant information, if any, relating to individuals and transnational organized criminal groups committing

acts of piracy and armed robbery against ships;

(c) to prepare statistics and reports on the basis of the information gathered and analyzed under subparagraph (b), and to disseminate them to the Contracting Parties;

(d) to provide an appropriate alert, whenever possible, to the Contracting Parties if there is a reasonable ground to believe that a threat of incidents of piracy or armed robbery against ships is imminent;

(e) to circulate requests referred to in Article 10 and relevant information on the measures taken referred to in Article 11 among the Contracting Parties;

(f) to prepare non-classified statistics and reports based on information gathered and analyzed under subparagraph (b) and to disseminate them to the shipping community and the International Maritime Organization; and

(g) to perform such other functions as may be agreed upon by the Governing Council with a view to preventing and suppressing piracy and armed robbery against ships.

Article 8

Operation

1. The daily operation of the Center shall be undertaken by the Secretariat.
2. In carrying out its functions, the Center shall respect the confidentiality of information provided by any Contracting Party, and shall not release or disseminate such information unless the consent of that Contracting Party is given in advance.
3. The Center shall be operated in an effective and transparent manner, in accordance with the policies made by the Governing Council, and shall avoid duplication of existing activities between the Contracting Parties.

Part III Cooperation through the Information Sharing Center

Article 9

Information Sharing

1. Each Contracting Party shall designate a focal point responsible for its communication with the Center, and shall declare its designation of such focal point at the time of its signature or its deposit of an instrument of notification provided for in Article 18.
2. Each Contracting Party shall, upon the request of the Center, respect the confidentiality of information transmitted from the Center.
3. Each Contracting Party shall ensure the smooth and effective communication between its designated focal point, and other competent national authorities including rescue coordination centers, as well as relevant non-governmental organizations.
4. Each Contracting Party shall make every effort to require its ships, ship owners, or ship operators to promptly notify relevant national authorities including focal

points, and the Center when appropriate, of incidents of piracy or armed robbery against ships.

5. Any Contracting Party which has received or obtained information about an imminent threat of, or an incident of, piracy or armed robbery against ships shall promptly notify relevant information to the Center through its designated focal point.

6. In the event that a Contracting Party receives an alert from the Center as to an imminent threat of piracy or armed robbery against ships pursuant to subparagraph (d) of Article 7, that Contracting Party shall promptly disseminate the alert to ships within the area of such an imminent threat.

Article 10

Request for Cooperation

1. A Contracting Party may request any other Contracting Party, through the Center or directly, to cooperate in detecting any of the following persons, ships, or aircraft:

(a) pirates;

(b) persons who have committed armed robbery against ships;

(c) ships or aircraft used for committing piracy or armed robbery against ships, and ships taken by and under the control of pirates or persons who have committed armed robbery against ships; or

(d) victim ships and victims of piracy or armed robbery against ships.

2. A Contracting Party may request any other Contracting Party, through the Center or directly, to take appropriate measures, including arrest or seizure, against any of the persons or ships mentioned in subparagraph (a), (b), or (c) of paragraph 1 of this Article, within the limits permitted by its national laws and regulations and applicable rules of international law.

3. A Contracting Party may also request any other Contracting Party, through the Center or directly, to take effective measures to rescue the victim ships and the victims of piracy or armed robbery against ships.

4. The Contracting Party which has made a direct request for cooperation pursuant to paragraphs 1, 2 and 3 of this Article shall promptly notify the Center of such request.

5. Any request by a Contracting Party for cooperation involving extradition or mutual legal assistance in criminal matters shall be made directly to any other Contracting Party.

Article 11

Cooperation by the Requested Contracting Party

1. A Contracting Party, which has received a request pursuant to Article 10, shall, subject to paragraph 1 of Article 2, make every effort to take effective and practical measures for implementing such request.

2. A Contracting Party, which has received a request pursuant to Article 10, may seek additional information from the requesting Contracting Party for the implementation of such request.

3. A Contracting Party, which has taken measures referred to in paragraph 1 of this Article, shall promptly notify the Center of the relevant information on the measures taken.

Part IV Cooperation

Article 12

Extradition

A Contracting Party shall, subject to its national laws and regulations, endeavor to extradite pirates or persons who have committed armed robbery against ships, and who are present in its territory, to the other Contracting Party which has jurisdiction over them, at the request of that Contracting Party.

Article 13

Mutual Legal Assistance

A Contracting Party shall, subject to its national laws and regulations, endeavor to render mutual legal assistance in criminal matters, including the submission of evidence related to piracy and armed robbery against ships, at the request of another Contracting Party.

Article 14

Capacity Building

1. For the purpose of enhancing the capacity of the Contracting Parties to prevent and suppress piracy and armed robbery against ships, each Contracting Party shall endeavor to cooperate to the fullest possible extent with other Contracting Parties which request cooperation or assistance.

2. The Center shall endeavor to cooperate to the fullest possible extent in providing capacity building assistance.

3. Such capacity building cooperation may include technical assistance such as educational and training programs to share experiences and best practices.

Article 15

Cooperative Arrangements

Cooperative arrangements such as joint exercises or other forms of cooperation, as appropriate, may be agreed upon among the Contracting Parties concerned.

Article 16

Protection Measures for Ships

Each Contracting Party shall encourage ships, ship owners, or ship operators, where appropriate, to take protective measures against piracy and armed robbery against ships, taking into account the relevant international standards and practices, in particular, recommendations adopted by the International Maritime Organization.

Part V Final Provisions

Article 17

Settlement of Disputes

Disputes arising out of the interpretation or application of this Agreement, including those relating to liability for any loss or damage caused by the request made under paragraph 2 of Article 10 or any measure taken under paragraph 1 of Article 11, shall be settled amicably by the Contracting Parties concerned through negotiations in accordance with applicable rules of international law.

Article 18

Signature and Entry into Force

1. This Agreement shall be open for signature at the depository referred to in paragraph 2 below by the People's Republic of Bangladesh, Brunei Darussalam, the Kingdom of Cambodia, the People's Republic of China, the Republic of India, the Republic of Indonesia, Japan, the Republic of Korea, the Lao People's Democratic Republic, Malaysia, the Union of Myanmar, the Republic of the Philippines, the Republic of Singapore, the Democratic Socialist Republic of Sri Lanka, the Kingdom of Thailand, the Socialist Republic of Viet Nam.

2. The Government of Singapore is the depository of this Agreement.

3. This Agreement shall enter into force 90 days after the date on which the tenth instrument of notification by a State listed in paragraph 1, indicating the completion of its domestic requirements, is submitted to the depository. Subsequently it shall enter into force in respect of any other State listed in paragraph 1 above 30 days after its deposit of an instrument of notification to the depository.

4. The depository shall notify all the States listed in paragraph 1 of the entry into force of this Agreement pursuant to paragraph 3 of this Article.

5. After this Agreement has entered into force, it shall be open for accession by any State not listed in paragraph 1. Any State desiring to accede to this Agreement may so notify the depository, which shall promptly circulate the receipt of such notification to all other Contracting Parties. In the absence of a written objection by a Contracting Party within 90 days of the receipt of such notification by the depository, that State may deposit an instrument of accession with the depository, and become a party to this Agreement 60 days after such deposit of instrument of accession.

Article 19

Amendment

1. Any Contracting Party may propose an amendment to this Agreement, any time after the Agreement enters into force. Such amendment shall be adopted with the consent of all Contracting Parties.

2. Any amendment shall enter into force 90 days after the

acceptance by all Contracting Parties. The instruments of acceptance shall be deposited with the depository, which shall promptly notify all other Contracting Parties of the deposit of such instruments.

Article 20
Withdrawal

1. Any Contracting Party may withdraw from this Agreement at any time after the date of its entry into force.
2. The withdrawal shall be notified by an instrument of withdrawal to the depository.
3. The withdrawal shall take effect 180 days after the receipt of the instrument of withdrawal by the depository.
4. The depository shall promptly notify all other Contracting Parties of any withdrawal.

Article 21
Authentic Text

This Agreement shall be authentic in the English language.

Article 22
Registration

This Agreement shall be registered by the depository pursuant to Article 102 of the Charter of the United Nations.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this Agreement.

Bibliography

Conventions and agreements

- Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, 1988 (SUA)
- The United Nations Convention on the Law of the Sea, 1982 (UNCLOS)
- Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia.
<http://www.recaap.org/AboutReCAAPISC.aspx>.
- The Djibouti Code of Conduct C102/14, January 9th 2009,
<http://www.imo.org/OurWork/Security/PIU/Pages/DCoC.aspx>.

Books

- Abhyankar, Jayant. Piracy, Armed Robbery and Terrorism at Sea: A Global and Regional Outlook. In Graham Gerard Ong-Webb, *Piracy, Maritime Terrorism and Securing the Malacca Straits*. 2006 Institute of Southeast Asian Studies, Singapore.
- Chaikin, Greg, Piracy in Asia. In Derek Johnson and Mark Valencia, *Piracy in Southeast Asia: Status, Issues and Responses* (pp. 123-142). 2005 Institute of Southeast Asian Studies, Singapore.
- Djalal, Hasjim. Combating Piracy: Co-operation Needs, Efforts and Challenges. In Derek Johnson and Mark Valencia, *Piracy in Southeast Asia: Status, Issues and Responses* (pp. 143-160). 2005 Institute of Southeast Asian Studies, Singapore.
- Eklöf, Stefan. *Pirates in Paradise*. 2006 Nordic Institute of Asian Studies Press, Copenhagen, Denmark.
- Geiss, Robin & Petrig, Anna. *Piracy and Armed Robbery at sea: The Legal Framework for Counter-piracy Operations in Somalia and the Gulf of Aden*. 2011 Oxford University Press, New York, The United States of America.
- Hayton, Bill. *Rising Dragon*. 2010 Yale University Press, Cornwall, Great Britain.
- Mak, J.N.. Unilateralism and Regionalism. In Graham Gerard Ong-Webb, *Piracy, Maritime Terrorism and Securing the Malacca Straits*. 2006 Institute of Southeast Asian Studies, Singapore.

- Marley, David F., *Modern Piracy*. 2011 ABC-CLIO, LLC California, The United States of America.
- Mejia, Maximo. Regional Cooperation in Combating Piracy and Armed Robbery against Ships: Learning Lessons from ReCAAP. In Anna Petrig, *Sea Piracy Law / Droit de la Piraterie Maritime* (pp. 125-137). 2010 Dunckler and Humblot, Berlin, Germany.
- Mejia, Maximo Q., Cariou, Pierre and Wolff, Francois-Charles, Ship piracy: Ship type and flag. In Wayne K. Tailey, *Maritime Safety, Security and Piracy*, 2008 Informa Law, London, Great Britain
- Menfee, Samuel Pyeatt. A recap of ReCAAP. In Maximo Q Mejia Jr, *Maritime Security & Crime* (pp. 187-199). 2010 WMU Publications, Malmö, Sweden.
- Murphy, Martin N. Piracy and UNCLOS: Does International Law Help Regional States Combat Piracy? In Peter Lehr, *Violence at Sea – piracy in the age of global terrorism*. 2007 Taylor & Francis Group LLC, New York, The United States of America.
- Murphy, Martin N., *Small boats, weak states, dirty money*, 2009 HURSTS Publishers Ltd. London, Great Britain.
- Rothwell, Donald R & Stephens, Tim. *The International Law of the Sea*. 2010 Hart Publishing Ltd. Oxford.
- Shaw, Malcolm N., *International Law*, 2008 sixth edition, Cambridge University Press, Cambridge.
- Young, Adam J., *Contemporary Maritime Piracy in Southeast Asia: History, Causes and Remedies*. 2007 Institute of Southeast Asian Studies, Singapore.
- Young, Adam J., Roots of Contemporary Maritime Piracy in Southeast Asia. In Derek Johnson and Mark Valencia, *Piracy in Southeast Asia: Status, Issues and Responses* (pp. 1-34). 2005 Institute of Southeast Asian Studies, Singapore.

Articles

- Anonymous. *Vietnam's WTO commitments: Good on Paper but Implementation is Lagging*. AsiaLaw, February 2008 Euromoney Institutional Investor PLC, London, United Kingdom.
- Collins, Rosemary & Hassan, Daud. Applications and Shortcomings of the Law of the Sea in Combating Piracy: A South East Asian

Perspective. 2009 *Journal of Maritime Law & Commerce*, Vol 40, No 1.

- Ho, Joshua. Combating Piracy and armed robbery in Asia: The ReCAAP Information Sharing Centre (ISC). 2009 *Marine Policy* 33.
- Mejia, Max & Mukherjee, P K. The SUA Convention 2005: a critical evaluation of its effectiveness in suppressing maritime criminal acts. 2006 *The Journal of International Maritime Law*, Volume 12, Issue 3, Lawtext Publishing.
- Mukherjee, Proshanto K. The ISM Code and the ISPS Code – A critical legal analysis of Two SOLAS Regimes, 2007 *WMU Journal of Maritime Affairs*, Volume 6, Issue 2, World Maritime University.
- Mukherjee, Proshanto K. Implementation of Maritime Conventions through national legislation.
- Ong, Graham Gerard, The threat of maritime terrorism and piracy, *Regional Outlook*, 2006, Institute of Southeast Asian studies, Singapore.
- Scott, Steffanie; Miller, Fiona and Lloyd, Kate. *Doing Fieldwork in Development Geography: Research Culture and Research Spaces in Vietnam*. 2005, Institute of Australian Geographers.
- Storey, Ian. Securing Southeast Asia's Sea Lanes: A Work in Progress. 2008 *Asia Policy*, number 6.

Correspondence and interviews

- E-mail from Claus Jørgensen, Ship Surveyor at Danish Maritime Authority, Centre for Ships, Denmark 2012-03-21.
- E-mail from Morten Alsaker Lossius, Senior Advisor at the Department of International Environment, Safety and Security, Norway 2012-02-21.
- E-mail from the Vietnam Marine Police, translated to this author on 2012-02-28.
- Interview with a legal expert, Ministry of Justice, 2012-03-30.
- Interview with the legal department at Vinamarine, 2012-02-28.

Miscellaneous

- Bekendtgørelse om teknisk forskrift om forholdsregler til forebyggelse af pirateri og væbnede overfald på danske skibe, November 30th 2011.
- Corruption Perception Index 2011. Transparency International http://www.transparency.org/publications/publications/other/corruption_perceptions_index_2011.
- Factsheet on ReCCAP <http://app.mot.gov.sg>.
- IMB Annual Piracy Report 2011, Piracy and armed robbery against ships report, report for the period 1 January – 31 December.
- IMO's website, <http://www.imo.org/Pages/home.aspx>.
- International Transport Worker's Federation, <http://www.itfglobal.org/flags-convenience/sub-page.cfm>.
- Marine Insight, Top 10 Biggest Ports in the world in 2011, <http://www.marineinsight.com/marine/top-10-biggest-ports-in-the-world-in-2011/>.
- Oxford Learners Dictionary. <http://oald8.oxfordlearnersdictionaries.com/dictionary/Pirate>.
- ReCAAP ISC annual report 2011.
- ReCAAP's website, <http://www.recaap.org/>.
- Save Our Seafarers, <http://www.saveourseafarers.com/the-cost-of-piracy.html>, 2012-03-29.
- UN's website, <http://www.un.org/en/>.