CHAPTER 13

Security, Piracy and Terrorism in the Straits of Malacca and Singapore

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1 Introduction

Piracy, armed robbery and maritime terrorism are the main human threats at sea. While piratical acts in the Gulf of Aden have caught global attention, piracy in the Straits of Malacca and Singapore is among the most prevalent and threatens the highest proportion of international commerce. In critiquing the legal framework for combating piracy in the Straits, this paper addresses the treatment of piracy and maritime terrorism at the international, regional and municipal level. Piracy is not simply an international crime; it is a universal offence—delictum juris gentium—that includes elements of other offences such as armed robbery, grievous bodily harm or simple harm to persons and property. Jurisdiction, and the applicable law, depends on the nature and location of the offense. Stateless persons on the high seas who maraud certain passing ships for private gain are hostis humanis generis subject to the 1982 Law of the Sea Convention (LOSC)1 and universal jurisdiction. Acts of armed robbery in territorial seas of States are subject to municipal laws. Maritime terrorism is defined as international terrorism at sea where the ship is used as a vehicle of terror punishable under the 1988 Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (SUA) & 1988 Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf2 and the 2005 SUA Convention and Protocol.3 Piracy and terrorism are different offences and very broadly piracy could become terrorism when pirates with terrorist objectives prevent flag States from enjoying navigational rights in a maritime zone under the 1982 LOSC and international customary law.

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Fundamentally central to piracy law are the substantive and procedural contents of universal jurisdiction in the seizure and trial of pirates. However the current international legal framework is inadequate, a fact also manifest at the regional level as reflected in the ASEAN (Association of Southeast Asian Nations) framework. The ASEAN States in their Work Programme to Implement the ASEAN Plan of Action to Combat Transnational Crime adopted at Kuala Lumpur on 17 May 2002 decided that both sea-piracy and terrorism, not including maritime-armed robbery, were transnational crimes. The fear of taking action against terrorism on the sole basis of the international counter-terrorist conventions prompted the ASEAN States to adopt a treaty called the Mutual Assistance in Legal Matters as an additional basis for action amongst like-minded States. Subsequent to this development, the ASEAN States have concluded several bilateral treaties on cooperation in criminal matters including piracy and terrorism. Following these legal developments, the number of reported incidents of piracy in the Straits of Malacca has decreased presumably as a result of the political will of the ASEAN Member Countries who, in cooperation with their international partners, have galvanized ASEAN cooperation for the suppression of the offence of piracy through a complicated labyrinth of legally binding and non-binding instruments.

Unfortunately, ASEAN Member countries have not yet tried pirates in court under their municipal legal systems. Furthermore, the national legal frameworks of the States bordering the Straits of Malacca and Singapore are in need of modernization. This paper examines the shortcomings of the international law of piracy and provides a number of recommendations for improving the national frameworks consistent with reports by the international community.

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