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Enhancing the Security of Shipping in Southeast Asia: The Relevance of International Law

Robert Beckman

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I. INTRODUCTION

This article will examine measures to enhance the security of commercial shipping in Southeast Asia from an international law perspective. The examination starts in Part II with a summary of the rules of international law governing jurisdiction over crimes committed on or against ships. Part III will then summarize global initiatives that have been taken by the United Nations and the International Maritime Organization (IMO) to enhance the security of international shipping, including measures taken to combat maritime terrorism. Next, in Part IV, it will summarize initiatives that have been taken to enhance the security of shipping in Southeast Asia. Lastly, in Part V, it will discuss issues arising from the aforementioned regional initiatives and make recommendations on how these initiatives can better enhance the security of shipping in Southeast Asia.

II. JURISDICTION OVER CRIMES ON OR AGAINST SHIPS UNDER INTERNATIONAL LAW

It is a trite principle of international law that States have jurisdiction over crimes committed within their territory, including their internal waters, territorial sea, and archipelagic waters. In addition, States have jurisdiction over crimes committed on ships registered in their territory and flying their flag.¹

1. Bernard H. Oxman, *Jurisdiction of States*, MAX PLANCK ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW, (last updated Nov. 2007), <https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1436?rskey=czu2yx&result=2&prd=MPIL>; Dolliver Nelson, *Maritime Jurisdiction*, MAX PLANCK ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW (last updated Jan. 2010), <https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1195?rskey=YIH57D&result=4&prd=MPIL>.

A State's criminal laws set out a range of offenses for which persons could be charged for offenses committed on or against ships within its territory or on ships flying its flag. States have various offenses in their criminal code for crimes relating to the unauthorized entry into private premises and the theft of property. The range of offenses include criminal trespass, house-breaking, theft, burglary, robbery, and armed robbery. If force is used against persons within the premises other offenses may also apply, including voluntarily causing hurt, voluntarily causing grievous hurt, voluntarily causing grievous hurt by dangerous weapons or means, wrongful restraint, wrongful confinement, assault, etc.

The general principles governing criminal jurisdiction over ships on the high seas were first developed under customary international law and subsequently codified in the 1958 Geneva Convention on the High Seas.² They are now set out in the 1982 United Nations Convention on the Law of the Sea (UNCLOS).³ The fundamental principle set out in Article 92 of UNCLOS is that ships on the high seas are subject to the exclusive jurisdiction of the flag State. Consequently, if a ship is outside the territorial sea of any State, the flag State has exclusive jurisdiction if there is an attack on the ship, an illegal boarding to commit theft on the ship, or an act of violence on or against the ship.

The offense of piracy is the one major exception to the principle of exclusive jurisdiction of the flag State. Under Article 105 of UNCLOS and customary international law, all States have jurisdiction over piracy on the high seas and the warships of any State may seize a pirate ship, arrest the pirates, and seize the property on board. Historically, the rules on piracy applied only on the high seas, which consisted of the waters outside the territorial sea. UNCLOS established a new zone called the Exclusive Economic Zone (EEZ) in which coastal States have sovereign rights and jurisdiction to explore and exploit its natural resources. Significantly, Article 58(3) of UNCLOS provides that the provisions on piracy also apply in the EEZ. Therefore, the high seas rules on jurisdiction over ships, including the rules on piracy, apply to an attack on a ship seaward of the territorial sea of any State. A major change is that under UNCLOS, States have the right to establish

2. Convention on the High Seas, Apr. 29, 1958, 13 U.S.T. 2312, T.I.A.S. No. 5200, 450 U.N.T.S. 11.

3. United Nations Convention on the Law of the Sea, Dec. 10, 1982, 1833 U.N.T.S. 397.

the breadth of their territorial sea to a maximum of twelve nautical miles from the baseline along their coast.⁴

Piracy is defined in Article 101 of UNCLOS. In simplified terms, the crime of piracy consists of four elements: (1) an illegal act of violence or detention, or an act of depredation; (2) committed for private ends; (3) against the crew or passengers of a private ship or directed against another ship; (4) in a place outside the twelve nautical mile territorial sea of any State.

To constitute piracy, there must be illegal acts of violence or detention, or an act of depredation. Depredation is an act of taking or destroying, especially plundering or pillaging.⁵ Finally, the acts must be done for “private ends,” which would exclude acts done by privateers acting on behalf of or under the authority of a government.

Finally, there must be two ships involved, unless the acts committed are against a ship, aircraft, persons, or property “in a place outside the jurisdiction of any State,” which would include acts against persons floating on a raft or against a ship on the shores of an island over which no State claims sovereignty.⁶

In essence, what is most significant is that to constitute piracy the act must be serious. There must be an illegal act of violence or detention, or an act of depredation. The undetected boarding of a vessel outside the territorial sea and the theft of spare engine parts, stores, or valuables would not fulfil the required level of gravity to constitute piracy. In such cases, if the perpetrator was apprehended, he would arguably be subject to the criminal laws of the flag State for offenses such as criminal trespass, housebreaking, theft, or burglary.

III. GLOBAL INITIATIVES TO ENHANCE THE SECURITY OF SHIPPING

A. *UN Conventions on International Crimes*

The international community has responded to activities that threaten international peace and security by drafting international treaties making certain acts international crimes among the States parties to the treaty. These treaties create exceptions to the general rules of international law governing criminal

4. *Id.* art. 3.

5. *Depredation*, BLACK’S LAW DICTIONARY (11th ed. 2019).

6. Int’l Law Comm’n, Rep. Covering the Work of its Eighth Session, U.N. Doc. A/3159 (1956), reprinted in 1956 YEARBOOK OF THE INTERNATIONAL LAW COMMISSION, vol. 2, at 282 (commentary ¶ 4 to art. 39).

jurisdiction. The general rules on criminal jurisdiction were inadequate because they provided that a State did not have criminal jurisdiction over an offense unless it was committed within its territory or on a ship or aircraft registered in its territory.

To address this lacuna, international organizations have convened international conferences and adopted international treaties generally referred to as “international crimes conventions.” The conventions define particular offenses, establish jurisdiction among all States parties to the treaty based on the presence of the alleged offender in its territory, and impose obligations on States parties to cooperate to ensure that alleged perpetrators are arrested and prosecuted.

The first three international crimes conventions were developed by the International Civil Aviation Organization in response to a series of incidents in which civilian aircraft were attacked or hijacked. They were intended to establish jurisdiction among contracting parties for acts that threatened the safety of international civil aviation. They are: (1) the 1963 Convention on the Offences and Certain Other Acts Committed on Board Aircraft; (2) the 1970 Convention for the Suppression of Unlawful Seizure of Aircraft; and (3) the 1971 Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation.

These three conventions, and those that followed in their wake, have standard provisions concerning jurisdiction and cooperation among the contracting parties. They define particular activities that will be criminal offenses under the conventions. They contain the following standard provisions setting out the obligations of the States parties to cooperate and to combat offenses under the convention:

1. Parties must make the offense punishable by serious penalties under their law.
2. Parties must establish jurisdiction over the offense if it is committed by their national, in their territory, on a ship flying their flag, etc.
3. Parties must establish jurisdiction if an offender is present in their territory.
4. If an alleged offender is present in their territory, it must take them into custody.
5. If an alleged offender is present in their territory, it must either prosecute them or extradite them to another State party with jurisdiction over the offense.

6. The convention can be used as a legal basis for extradition if there is no extradition treaty between the two parties.

7. Parties must provide mutual legal assistance in prosecuting offenders.

There are now eleven United Nations conventions on international crimes. The first such convention designed to address maritime crimes was the 1988 Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (1988 SUA Convention).⁷ This convention was a response to the *Achille Lauro* incident.

On October 7, 1985, the *Achille Lauro*, a passenger ship flying an Italian flag, was hijacked by four men from the Palestine Liberation Front in the Mediterranean Sea, off the coast of Egypt. The four men had boarded the ship as passengers and took control of the ship when it was outside the territorial sea of any State. The incident provoked an international debate on whether the hijacking constituted piracy under the law of the sea given that all the events took place only on one ship, and piracy under UNCLOS requires two ships. As a result of this debate, the IMO drafted and adopted the 1988 SUA Convention.⁸

Article 3 of the SUA Convention obligates States parties to make the following activities offenses under their national laws:

Any person commits an offence if that person unlawfully and intentionally:

- 1) *seizes or exercises control over a ship* by force or threat thereof or any other form of intimidation; or
- 2) performs an *act of violence* against a person on board a ship if that act is *likely to endanger the safe navigation of that ship*; or
- 3) destroys a ship or causes damage to a ship or to its cargo which is *likely to endanger the safe navigation of that ship*.⁹

To constitute an offense under the SUA Convention, the acts must be serious. The perpetrators must either seize control over a ship or commit other acts that are likely to endanger safe navigation of the ship.

7. Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, Mar. 10, 1988, 1678 U.N.T.S. 221 [hereinafter SUA].

8. See, e.g., George R. Constantinople, Note, *Towards a New Definition of Piracy: The Achille Lauro Incident*, 26 VIRGINIA JOURNAL OF INTERNATIONAL LAW 723 (1986); Malvina Halberstam, *Terrorism on the High Seas: The Achille Lauro, Piracy and the IMO Convention on Maritime Safety*, 82 AMERICAN JOURNAL OF INTERNATIONAL LAW 269 (1988).

9. SUA, *supra* note 7, art. 3 (emphasis added).

There are two other UN Conventions on international crimes that are relevant to the crimes on or against ships. The first is the 1979 International Convention against the Taking of Hostages (Hostages Convention).¹⁰ Under Article 1 of the Hostages Convention, States parties are obligated to make the following an offense under their national laws:

Any person who seizes or detains and threatens to kill, to injure or to continue to detain another person (hereinafter referred to as the “hostage”) in order to compel a third party, namely, a State, an international intergovernmental organization, a natural or juridical person, or a group of persons, to do or abstain from doing any act as an explicit or implicit condition for the release of the hostage commits the offence of taking of hostages (“hostage-taking”) within the meaning of this Convention.¹¹

This offense is interesting because unlike the conventions on civil aviation and maritime crimes, it requires a “terrorist motive,” that is, the act must be done “to compel a third party to do or abstain from doing any act as an explicit or implicit condition for the release of the hostage.” The other conventions contain no provisions requiring that the act be done with a particular motive or intent. Nevertheless, this convention would apply to attacks on merchant ships when the perpetrators take crew members or passengers hostage for ransom.

In the 1990s, the United Nations adopted another international crimes convention in response to the threat of international terrorism—the 1999 Convention for the Suppression of the Financing of Terrorism.¹² Article 2 of this convention provides that:

Any person commits an offence . . . if that person by any means, directly or indirectly, unlawfully and willfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out: (a) An act which constitutes an offence within the scope of and as defined in one of the treaties listed in the annex.¹³

10. International Convention Against the Taking of Hostages, Dec. 17, 1979, T.I.A.S. No. 11081, 1316 U.N.T.S. 205 [hereinafter Hostages Convention].

11. *Id.* art. 1.

12. International Convention for the Suppression of the Financing of Terrorism, Dec. 9, 1999, T.I.A.S. 13075, 2178 U.N.T.S. 197.

13. *Id.* art. 2.

The UN conventions listed in the Annex to the Convention include the 1979 Hostages Convention and the 1988 SUA Convention.¹⁴ Consequently, if a person provides funds to others with the intention that they board a petroleum tanker and steal its fuel, or with the intention that they board a ship and take its crew members hostage for ransom, that person would be committing an offense under this convention for “financing terrorism.”

The status of the relevant UN international crimes conventions generally and in relation to Association of Southeast Asian Nations (ASEAN) member States, as of December 1, 2021, is as follows: The 1979 Hostages Convention has 176 State parties, including all ASEAN member States except Indonesia.¹⁵ The 1988 SUA Convention has 166 State parties, including all ASEAN member States except Indonesia, Malaysia, and Thailand.¹⁶ The 1999 Convention on Suppression of Financing of Terrorism has 189 State parties, including all ASEAN member States.¹⁷

B. *IMO Actions on Piracy and Armed Robbery Against Ships*

In response to a significant rise on attacks on ships in the Straits of Malacca and Singapore in the late 1990s and early 2000s, the IMO took several measures to address maritime security and piracy. The initiatives were headed by the IMO’s Maritime Safety Committee with input from its Legal Committee and its Facilitation Committee.¹⁸

In June 1999, the Maritime Safety Committee adopted Recommendations to Governments on Preventing and Suppressing Piracy and Armed Robbery Against Ships.¹⁹ At its 22nd Session on November 29, 2001, the

14. *Id.* annex.

15. See United Nations Treaty Collection, Status of the International Convention Against the Taking of Hostages, https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtsg_no=XVIII-5&chapter=18&clang=_en (last visited June 3, 2022).

16. See IMO, Status of IMO Treaties 443–45 (Apr. 22, 2022), [https://www.cdn.imo.org/localresources/en/About/Conventions/StatusOfConventions/Status%20-%202022%20\(2\).pdf](https://www.cdn.imo.org/localresources/en/About/Conventions/StatusOfConventions/Status%20-%202022%20(2).pdf).

17. See United Nations Treaty Collection, Status of the International Convention for the Suppression of the Financing of Terrorism, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtsg_no=XVIII-11&chapter=18&clang=_en (last visited June 3, 2022).

18. For a summary of the actions of the IMO relating to piracy, see IMO, Piracy and Armed Robbery Against Ships, <https://www.imo.org/en/OurWork/Security/Pages/PiracyArmedRobberydefault.aspx> (last visited June 3, 2022).

19. IMO, Recommendations to Governments for Preventing and Suppressing Piracy and Armed Robbery Against Ships, IMO Doc. MSC/Circ.622/Rev.1 (June 16, 1999).

IMO Assembly adopted Resolution A.922 containing a Code of Practice for the Investigation of the Crimes of Piracy and Armed Robbery Against Ships.²⁰ The Code of Practice was amended by the IMO Assembly on January 18, 2010 at its 26th Session by Resolution A.1025(26).²¹

The Code of Practice states that “piracy” means an act defined as piracy under Article 101 of UNCLOS. It states that “armed robbery against ships” means any of the following acts:

(1) any illegal act of violence or detention or any act of depredation, or threat thereof, other than an act of piracy, committed for private ends and directed against a ship or against persons or property on board such a ship, within a State’s internal waters, archipelagic waters and territorial sea.

(2) any act of inciting or of intentionally facilitating an act described above.²²

The definition of “armed robbery against ships” in the Code of Practice is the same as the definition of piracy in UNCLOS, except that it takes place in waters within the territorial sovereignty of a coastal State. Therefore, like the offense of piracy, to constitute the offense of “armed robbery against ships” there must be a serious act against another ship that includes acts of violence, detention, or depredation.

Unlike the UN conventions on international crimes, the IMO Code of Practice does not impose legal obligations on States. It recommends that States take such measures as may be necessary to establish their jurisdiction over the offenses of piracy and armed robbery against ships, including adjustment of their legislation, if necessary, to enable them to apprehend and prosecute persons committing such offenses. It also encourages States to take measures necessary to enable them to receive, prosecute, or extradite suspected pirates and armed robbers. It also recommends that States encourage masters to report incidents of piracy and armed robbery against ships and encourages coastal States and port States to make every endeavor to

20. IMO, Code of Practice for the Investigation of the Crimes of Piracy and Armed Robbery Against Ships, IMO Res. A.922(22) (Nov. 29, 2001), [https://wwwcdn.imo.org/localresources/en/KnowledgeCentre/IndexofIMOResolutions/AssemblyDocuments/A.922\(22\).pdf](https://wwwcdn.imo.org/localresources/en/KnowledgeCentre/IndexofIMOResolutions/AssemblyDocuments/A.922(22).pdf).

21. IMO, Code of Practice for the Investigation of the Crimes of Piracy and Armed Robbery Against Ships, IMO Res. A.1025(26) (Dec. 2, 2009), <https://wwwcdn.imo.org/localresources/en/OurWork/Security/Documents/A.1025.pdf>.

22. *Id.* annex ¶ 2.2.

ensure that masters and their ships will not be unduly delayed and that the ship will not be burdened with additional costs related to such reporting.²³

C. IMO Actions in Response to the Threat of Maritime Terrorism

In response to the terrorist attack on the World Trade Center, the IMO took several additional measures to address the threat of maritime terrorism. As with the amendments to the 1988 SUA Convention, the initiatives were headed by the Maritime Safety Committee with input from the Legal Committee and Facilitation Committee.

At a diplomatic conference on maritime security held in London in December 2002, the IMO adopted several amendments to the IMO Convention on Safety of Life at Sea (SOLAS) to enhance the security of commercial shipping.²⁴ These amendments are legally binding on all States parties to the SOLAS Convention, which means it is binding on almost all States.²⁵ The amendments included shortening the deadlines for ships to carry Automatic Identification Systems; requiring that ships' identification numbers be permanently marked in two places on the ship; and requiring ships to carry a "continuous synopsis record" providing a record of the history of the ship.

The 2002 amendments to the SOLAS Convention also saw the addition of Chapter XI-2, entitled "Special Measures to Enhance Maritime Security." The new chapter applied to ships engaged on international voyages, the companies operating the ships, and the port facilities serving ships engaged on such international voyages. Supplementary to Chapter XI-2 was the International Ship and Port Facility Security Code (ISPS Code). Among other measures to enhance the security of ships and ports, the ISPS Code required all ships to be equipped with a ship security alert system for initiating and transmitting a ship-to-shore security alert to a competent authority designated by the flag State administration.²⁶

23. *Id.* annex ¶ 3.3.

24. *See* IMO, Adoption of Amendments to the International Convention for the Safety of Life at Sea, 1974, IMO Res. MSC.134(76) (Dec. 12, 2002), [https://wwwcdn.imo.org/localresources/en/KnowledgeCentre/IndexofIMOResolutions/MSCResolutions/MSC.134\(76\).pdf](https://wwwcdn.imo.org/localresources/en/KnowledgeCentre/IndexofIMOResolutions/MSCResolutions/MSC.134(76).pdf).

25. As of April 25, 2022, 167 States representing 98.89 percent of the world's tonnage of shipping were parties to the 1974 SOLAS Convention. *See* IMO, Status of Treaties, *supra* note 16.

26. IMO, SOLAS XI-2 and the ISPS Code, <https://www.imo.org/en/OurWork/Security/Pages/SOLAS-XI-2%20ISPS%20Code.aspx> (last visited June 3, 2022).

The IMO also amended the 1988 SUA Convention to address terrorist threats to international shipping and the possible use of ships to commit acts of terrorism. This resulted in the adoption of the 2005 Protocol to the 1988 SUA Convention (2005 SUA Protocol).²⁷ The 2005 SUA Protocol created new offenses in response to the increased threat of maritime terrorism, such as using a ship to commit an act of terrorism. It also established procedures for the boarding and search of vessels suspected of committing offenses under the 2005 SUA Protocol seaward of the outer limit of the territorial sea. However, the boarding and search of suspect vessels can still only be undertaken with the consent of the flag State. As of December 1, 2021, the 2005 SUA Protocol has fifty-two State parties, but no States from Southeast Asia are parties.²⁸

IV. REGIONAL INITIATIVES TO ENHANCE THE SECURITY OF SHIPPING IN SOUTHEAST ASIA

A. Cooperation in the Straits of Malacca and Singapore

Piracy in Southeast Asia became a serious issue between 1998 and 2004, especially in Indonesian waters. This was a result of several factors, including the 1997 ASEAN Economic Crisis, a period of instability in Indonesia following the fall of the Suharto government in 1998, and the rise of a separatist movement in the Indonesian province of Aceh. The Annual Report of the International Maritime Bureau in 2000 reported that the largest number of attacks on ships in the world took place in Southeast Asia. Indonesian waters were reported to be the most dangerous in the world.²⁹

The main concern in Southeast Asia was the security of commercial shipping for ships transiting through the Straits of Malacca and Singapore. This was important as those straits are the main route for commercial shipping that connects Europe, the Middle East, and South Asia with Southeast Asia

27. See generally IMO, Maritime Security, <https://www.imo.org/en/OurWork/Security/Pages/GuideMaritimeSecurityDefault.aspx> (last visited June 3, 2022).

28. IMO, Status of IMO Treaties, *supra* note 16, at 456–57.

29. Robert Beckman, *Piracy and Armed Robbery Against Ships in Southeast Asia*, in MODERN PIRACY: LEGAL CHALLENGES AND RESPONSES 13, 16 (Douglas Guilfoyle ed., 2013); see also Karsten von Hoesslin, *Piracy and Armed Robbery Against Ships in the ASEAN Region: Incidents and Trends*, in PIRACY AND INTERNATIONAL MARITIME CRIMES IN ASEAN: PROSPECTS FOR COOPERATION 119 (Robert Beckman & J. Ashley Roach eds., 2012).

and East Asia. The Straits of Malacca and Singapore are straits used for international navigation subject to the legal regime set out in Part III of UNCLOS. The southern half of the Malacca Strait and the entire Singapore Strait are within the territorial sea of the three littoral States—Indonesia, Malaysia, and Singapore. The three littoral States agreed in 1971 to manage the straits as a single strait and they have consistently maintained that they have primary responsibility for the safety and security of shipping and for combatting ship-source pollution in the straits.

In the early 2000s, the IMO facilitated discussions between the three littoral States and user States on safety, security, and environmental protection in the Straits of Malacca and Singapore. As result, the three littoral States agreed among themselves to take certain measures to enhance the security of shipping in the straits. The measures included coordinated patrols by the three littoral States as well as eye-in-the-sky aerial patrols. In addition, the attacks on commercial shipping from the Indonesian province of Aceh were severely reduced after the 2004 Indian Ocean tsunami and the 2005 Helsinki Agreement, which ended the separatist movement in Aceh Province.³⁰ In addition, it appears that Indonesia gave a higher priority to patrolling the international sea lanes that passed through its waters.

Nevertheless, incidents of piracy and sea robbery in the sea lanes passing through Southeast Asia continue to increase periodically.³¹ For example, in 2020 there were thirty-four reported sea robbery incidents in the Singapore Strait. However, twenty-nine were petty theft by unarmed perpetrators, and all were in the east-bound lane of the traffic separation scheme.³² This means that the boardings were either in Indonesian waters, or in an area at the eastern end of the Singapore Strait where the territorial sea boundaries have not been delimited. A recent report suggests that because of enduring underlying

30. International Chamber of Commerce, International Maritime Bureau, ICC IMB Piracy and Armed Robbery Against Ships Annual Report, 1 January—31 December 2004, at 16; Ian Storey, *Addressing the Persistent Problem of Piracy and Sea Robbery in Southeast Asia*, ISEAS PERSPECTIVE (June 7, 2016), https://www.iseas.edu.sg/wp-content/uploads/pdfs/ISEAS_Perspective_2016_30.pdf.

31. PIRACY IN SOUTHEAST ASIA: TRENDS, HOT SPOTS AND RESPONSES (Carolin Liss & Ted Biggs eds., 2016).

32. Singapore Parliament, Written Reply of Singapore Minister of Transport Ong Ye Kung to Parliamentary Question on Number of Incidents in Straits of Singapore in 2020 (Feb. 2, 2021), <https://sprs.parl.gov.sg/search/sprs3topic?reportid=written-answer-na-7195>.

structural causes, the problem of sea robbery in the Singapore Strait is likely to persist.³³

B. ReCAAP Information Sharing Centre

The increase in piracy and armed robbery against ships in the late 1990s and early 2000s was met with concern by the shipping industry and by maritime States that rely on passage through the Straits of Malacca and Singapore, especially Japan. Following Regional Conferences on Combatting Piracy and Armed Robbery Against Ships in Tokyo in April 2000 and October 2001, the Prime Minister of Japan proposed the convening of a working group of government experts to examine the drafting of a regional anti-piracy cooperation agreement. As a result of these efforts, the Regional Cooperation Agreement on Combatting Piracy and Armed Robbery against Ships in Asia (ReCAAP) was concluded in November 2002.³⁴ The agreement entered into force on November 29, 2006, with fourteen contracting parties.³⁵

Unlike most regional agreements, ReCAAP is not an agreement among member States from a region. Rather, it is “regional” in the sense that its purpose is to combat piracy and armed robbery against ships in the Asian region. The States parties to the agreement include States in Asia as well as States from outside Asia with an interest in the security of shipping in Asia. The current parties include eight States from Southeast Asia (Brunei Darussalam, Cambodia, Laos, Myanmar, the Philippines, Singapore, Thailand, and Vietnam); three States from East Asia (China, Japan, and Korea); three States from South Asia (Bangladesh, India, and Sri Lanka); five from Europe (Denmark, Germany, the Netherlands, Norway, and the United Kingdom); Australia; and the United States.

Although one of ReCAAP’s main objectives was to address the issue of piracy and armed robbery against ships in the Straits of Malacca and Singapore, two of the States bordering it (Indonesia and Malaysia) are not parties

33. Mohammed F. Rahman, *The Persistence of Piracy and Armed Robbery Against Ships in the Straits of Malacca and Singapore*, MODERN DIPLOMACY (July 19, 2021), <https://modern diplomacy.eu/2021/07/19/the-persistence-of-piracy-and-armed-robbery-against-ships-in-the-straits-of-malacca-and-singapore/>.

34. For a history of ReCAAP and its activities, see ReCAAP, COMMEMORATING A DECADE OF REGIONAL COOPERATION 2006–2016, <https://www.recaap.org/resources/ck/files/corporate-collaterals/10%20ann%20comm%20book.pdf> (last visited June 3, 2022).

35. ReCAAP, ReCAAP Agreement, <https://www.recaap.org/resources/ck/files/ReCAAP%20Agreement/ReCAAP%20Agreement.pdf> (last visited June 3, 2022).

to the ReCAAP Agreement. Although they are not parties, representatives of Indonesia and Malaysia attend its meetings as observers. Indonesia and Malaysia have not articulated the reasons why they are not parties to the ReCAAP Agreement but their absence has provoked some academic comment.³⁶ Although one of ReCAAP's main objectives was to address the issue of piracy and armed robbery against ships in the Straits of Malacca and Singapore, two of the States bordering it (Indonesia and Malaysia) are not parties to the ReCAAP Agreement. Unconfirmed sources have advised that representatives of both States have stated that they did not become parties because of "sovereignty concerns," without elaborating on the nature of their concerns. If this is indeed the case, they may be of the view that the establishment of a regional organization with members from outside the region to address the security of shipping in the Straits of Malacca and Singapore is not consistent with the responsibility of littoral States for the security of shipping in waters subject to their sovereignty. The failure of Indonesia to become a party was also discussed in a recent article by an Indonesian academic.³⁷

ReCAAP's Information Sharing Centre (ReCAAP ISC), based in Singapore, was established under the agreement and officially launched on November 29, 2006. It manages a network of information sharing with focal points from the contracting parties. It analyzes incidents of piracy and armed robbery against ships in Asia and publishes periodic reports and special reports. The ReCAAP ISC has cooperative arrangements with shipping industry associations (BIMCO, INTERTANKO, OCIMF, and the ASEAN Ship-owners Association) as well as with the IMO, INTERPOL, and World Maritime University.

ReCAAP ISC's web page sets out some of the measures that it has taken to address piracy and armed robbery against ships in Asia. The measures include: (1) warnings and alerts; (2) an interactive map of past incidents by date, location, ship name, etc.; (3) reports of incidents; (4) weekly reports; (5) monthly reports; and (6) annual reports. ReCAAP ISC also organizes capacity-building programs for the coast guards of participating States.

Furthermore, ReCAAP has undertaken studies and prepared several guides for the shipping industry that set out what steps they can take to minimize the risk of different types of attacks. The following guides are available

36. See, e.g., Achmad Ismail, *Indonesia's Policy in Delaying the Ratification of Cooperation Agreement on Combating Piracy and Armed Robbery Against Ships in Asia (ReCAAP) 2006–2019*, 3 *INDONESIAN JOURNAL OF PEACE AND SECURITY STUDIES* 1 (2021).

37. *Id.*

on the ReCAAP home page: (1) Regional Guide to Counter Piracy and Armed Robbery Against Ships in Asia; (2) Guidance on Abduction of Crew in the Sulu-Celebes Seas and the Waters off Eastern Sabah; (3) Guide for Tankers Operating in Asia against Piracy and Armed Robbery Involving Oil Cargo Theft; and (4) Tugboats and Barges Guide Against Piracy and Sea Robbery. In addition, its 2020 Annual Report contains a detailed analysis of incidents in the Singapore Strait.³⁸

C. *Information Fusion Centre at Changi Naval Base*

The Information Fusion Centre (IFC) is a regional maritime security center hosted by the Republic of Singapore Navy at Changi Naval Base. It was established on April 27, 2009, and has a much broader mandate than the ReCAAP ISC. The IFC's objective is to facilitate information sharing and collaboration between its partners to enhance maritime security. Its partners include regional and international navies, coast guards, and other maritime agencies. It is concerned with the full range of threats and incidents relating to maritime security, including piracy, sea robbery, maritime terrorism, proliferation of weapons of mass destruction, and drug smuggling.³⁹

At the IFC, an integrated team comprising international liaison officers and Republic of Singapore Navy personnel work together to facilitate and catalyze maritime information sharing. The twenty-four States that have deployed international liaison officers to the IFC include eight ASEAN member States (Brunei, Cambodia, Indonesia, Malaysia, Myanmar, the Philippines, Thailand, and Vietnam); three East Asian States (China, Japan, and Korea); two Asia-Pacific States (Australia and New Zealand); four European States (France, Greece, Italy, and the United Kingdom); two South Asian States (India and Pakistan); two North American States (Canada and the United States); two South American States (Chile and Peru); and one African State (South Africa). The IFC has also established linkages with ninety-seven centers in forty-seven countries that are concerned with maritime security.⁴⁰

38. See ReCAAP, *Piracy and Armed Robbery Against Ships in Asia: Annual Report January–December 2020*, [https://www.recaap.org/resources/ck/files/reports/annual/ReCAAP%20ISC%20Annual%20Report%202020%20v1\(1\).pdf](https://www.recaap.org/resources/ck/files/reports/annual/ReCAAP%20ISC%20Annual%20Report%202020%20v1(1).pdf) (last visited June 3, 2022).

39. PAVING THE WAY FOR REGIONAL MARITIME DOMAIN AWARENESS (Christian Bueger & Jane Chan eds., 2019), <https://www.ifc.org.sg/ifc2web/Publications/Professional%20Reading/Regional%20MDA/Chapter%201.pdf>.

40. Information Fusion Centre, About Us, https://www.ifc.org.sg/ifc2web/app_pages/User/common/aboutus.cshhtml (last updated Apr. 23, 2019).

The IFC is concerned with all threats to maritime security. The IFC Monthly Map and Annual Report set out maritime security incidents under the following categories: (1) theft, robbery, and piracy at sea; (2) maritime terrorism; (3) maritime incidents; (4) illegal, unreported, and unregulated fishing; (5) contraband smuggling; (6) irregular human migration; (7) cyber security; and (8) others. The reports also contain maps indicating the location of incidents in particular sub-regions in Asia.

Notably, the IFC characterizes crimes against ships as “theft, robbery and piracy at sea” rather than “piracy and armed robbery against ships.” It is unclear from its website why it uses this classification. The IFC monthly reports also contain recommendations and advice on threats to the security of commercial shipping in particular areas as well as advice on reporting incidents. Moreover, the IFC collaborated with ReCAAP in publishing three guides and handbooks that address threats to commercial shipping in Southeast Asia: (1) Tugboats and Barges; (2) Guide for Tankers Operating in Asia; and (3) Counter Piracy Guide.

D. ASEAN Cooperation on Piracy and International Maritime Crimes

ASEAN is the regional organization in Southeast Asia. It consists of ten member States and was established in 1967 by Indonesia, Malaysia, the Philippines, Singapore, and Thailand. Another five States joined subsequently: Brunei Darussalam, Cambodia, Laos, Myanmar, and Vietnam.

ASEAN has addressed issues of maritime security under two general headings—transnational crimes and counter-terrorism. ASEAN has dealt with “sea piracy” under its work on transnational crimes and has dealt with the UN conventions on international crimes under its work on counter-terrorism.

ASEAN has no specific instrument dealing with cooperation among members to address the issue of piracy and sea robbery. The 1997 ASEAN Declaration on Transnational Crimes includes piracy as one of the targeted crimes, together with money laundering and trafficking in drugs, small arms, and persons.⁴¹ The ASEAN Plan of Action to Combat Transnational Crime

41. ASEAN, ASEAN Declaration on Transnational Crimes ¶ 8 (Dec. 20, 1997), <https://asean.org/wp-content/uploads/2012/05/ASEAN-Declaration-on-Transnational-Crime-1997.pdf>.

2016–2025 listed “sea piracy” as one of its eight priority areas.⁴² However, ASEAN has not adopted any legal instrument defining sea piracy or providing for cooperation to address the issue.

ASEAN has taken steps to strengthen cooperation among its member States to address the issue of counter-terrorism. It has adopted conventions that complement and supplement the regimes established in the UN conventions on international maritime crimes. In 2004 ASEAN adopted the Treaty on Mutual Legal Assistance in Criminal Matters.⁴³ It complements the provisions in the UN conventions with respect to mutual legal assistance by setting out in greater detail how the parties are to cooperate regarding the production of documents, witnesses, and other procedural matters. The most significant ASEAN document on counter-terrorism is the 2007 ASEAN Convention on Counter Terrorism. It was designed to establish a framework for regional cooperation to counter, prevent, and suppress terrorism in all forms.⁴⁴ It encourages ASEAN member States to become parties to the UN counter-terrorism conventions. It supplements the UN terrorism conventions by obliging ASEAN member States to promulgate the national legislation necessary to implement the UN terrorism conventions to which they are a party. All the UN conventions on international maritime crimes are dealt with under this convention, including the 1979 Hostages Convention and 1988 SUA Convention.

The level of cooperation called for among States parties to the 2007 ASEAN Convention on Counter Terrorism exceeds the cooperation set out in the UN conventions on international maritime crimes. However, the provisions on cooperation only apply when the ASEAN States concerned are parties to the UN convention in question as well.

All ASEAN member States are parties to the two ASEAN conventions. Therefore, if Indonesia, Malaysia, Singapore, and Thailand became parties to the 1979 Hostages Convention, the 1988 SUA Convention, and the 1999 Convention on Financing Terrorism, the ASEAN States bordering the major sea lanes of communication in Southeast Asia would have a legal framework in place to enable them to suppress activities within those conventions that

42. ASEAN, ASEAN Plan of Action to Combat Transnational Crime 2016–2025 (Sept. 20, 2017), https://asean.org/wp-content/uploads/2021/01/ASEAN-Plan-of-Action-in-Combating-TC_Adopted-by-11th-AMMTC-on-20Sept17.pdf.

43. Treaty on Mutual Legal Assistance in Criminal Matters, Nov. 29, 2004, 2336 U.N.T.S. 271, <https://asean.org/wp-content/uploads/2021/01/20160901074559.pdf>.

44. ASEAN Convention on Counter Terrorism, Jan. 13, 2007, U.N. Treaty Registration No. 54629, <https://asean.org/wp-content/uploads/2012/05/ACCT.pdf>.

threaten the security of shipping in Southeast Asia. The major hurdle that will have to be overcome is that they will have to accept that certain categories of threats to shipping in Southeast Asia are governed by the UN counter-terrorism conventions even though the sea robbers in Southeast Asia are normally not thought to be terrorists.

E. Issues Concerning the Classification of Offenses by ReCAAP ISC

The ReCAAP Agreement provides that it was established to address the issues of piracy as defined in UNCLOS and armed robbery against ships as defined by the IMO. As explained earlier, both terms cover only serious offenses that involve an “illegal act of violence or detention or any act of depredation, or threat thereof.” However, in practice, ReCAAP ISC reports all incidents involving the unauthorized boarding or attempted boarding of ships. This is arguably in the interests of the shipping industry and user States because any unauthorized boarding is a threat to the personal safety of a ship’s crew, especially if the boarding is by persons carrying weapons.

ReCAAP ISC does not attempt to determine which of the incidents are serious enough to be classified as piracy or armed robbery against ships as defined in the ReCAAP Agreement. Instead, it has developed its own classification system for incidents consisting of four categories based on two factors—the violence factor and the economic factor. The violence factor considers the level of violence employed by the pirates/robbers. The economic factor considers the type and value of the property taken from the ship. These categorizations provide useful information on the threat posed by unauthorized boarding or attempted boarding to the safety of the crew as well as on economic loss suffered.

Most of the incidents described in ReCAAP ISC’s reports do not meet the level of seriousness required for them to come within the strict definitions of either piracy or armed robbery against ships. Some of the incidents that involve the highest level of violence may fall within the definition of either piracy or armed robbery against ships. However, ReCAAP ISC does not attempt to determine whether they should be so classified. Nevertheless, in some reports, ReCAAP ISC has categorized particular boardings as “piracy,” but this categorization seems to be based on the fact that the boardings took place in waters that were clearly outside the territorial sea of any State. It is unclear whether this categorization as piracy also considered the level or threat of violence that is required by the definition of piracy in Article

101 of UNCLOS. For example, in ReCAAP's 2018 annual report, it classified an incident that occurred on 18 April as "piracy" as the incident occurred 14 nautical miles from the Philippines' territorial sea. However, it is unclear if the incident met the level of threat of violence required by the definition of piracy in Article 101 of UNCLOS. In this incident, while the perpetrators were armed, they never actually boarded the ship.⁴⁵

ReCAAP ISC's reports do not indicate whether the incidents took place in waters subject to the jurisdiction of the coastal State (ports, internal waters, archipelagic waters, or territorial sea) or in waters subject to the high seas rules on jurisdiction over ships (EEZ or high seas). This is unfortunate as this information is critically important in determining which State or States would have jurisdiction over the offenses.

F. Issues Concerning the UN Conventions on International Maritime Crimes

States dealing with the security of shipping in Southeast Asia have not considered the conventions on international crimes as useful tools to enhance the security of shipping. This might be attributed to the fact that these conventions are known as "counter-terrorism conventions." States in Southeast Asia view the threats to the security of shipping in Southeast Asia as sea robbery or piracy, but not as a type of "terrorism." In addition, ASEAN has addressed the issue of sea robbery or piracy within its work on transnational crimes rather than within its work on counter-terrorism. Consequently, the "counter-terrorism conventions" have not been considered by States in Southeast Asia as potential tools for enhancing the security of shipping in Southeast Asia.

If States in Southeast Asia were to seriously consider the international crimes conventions as tools to address threats to the security of commercial shipping, they are likely to conclude that these conventions could help enhance the security of shipping. If all the States in Southeast Asia were parties to the 1979 Hostages Convention, 1988 SUA Convention, and 1999 Financing of Terrorism Convention they would possess useful tools to deal with certain types of attacks on merchant ships in Southeast Asia.

First, there were a series of incidents in which tankers operating in Southeast Asia were attacked and their oil cargo was stolen. Such attacks would be offenses under the 1988 SUA Convention because the perpetrators seized

45. ReCAAP, *Piracy and Armed Robbery Against Ships in Asia: Annual Report 2019*, <https://www.recaap.org/resources/ck/files/reports/annual/ReCAAP%20ISC%20Annual%20Report%202018.pdf> (last visited June 3, 2022).

or exercised control over the tankers before siphoning off their fuel.⁴⁶ Second, there were a series of incidents in which tugs and barges were seized and stolen by the attackers.⁴⁷ Such attacks would be offenses under the 1998 SUA Convention because the perpetrators seized or exercised control over the tugs and barges.

As noted earlier, the 1988 SUA Convention and the 1979 Hostages Convention would be especially useful in combatting incidents in the Sulu-Celebes area where crew members are abducted for ransom.⁴⁸ One reason they would be useful is that there are no agreements setting out the maritime boundaries in the Sulu-Celebes area. Consequently, it is often not clear which State would have jurisdiction over the offense because boarding and abduction must take place in waters subject to its sovereignty. However, if the 1979 Hostages Convention and 1988 SUA Convention were applicable, it would not matter where the boarding and abduction took place. If the perpetrators are found in the territory of any State party, that State has an obligation to arrest them, take them into custody, and either prosecute or extradite them. If all the States in the region were parties to these two conventions, they would have a very useful tool at their disposal to deal with such incidents. Given that Indonesian and Malaysian ships and crew members were the victims in some of the hostage-taking incidents, these two States may decide that it would be in their national interest to become parties to the two conventions.

The 1999 Convention on Suppression of Financing of Terrorism could also be a very useful tool in dealing with certain types of attacks on ships in Southeast Asia. In incidents where tankers were hijacked and fuel was stolen, and incidents where tugboats and barges were stolen, it is likely that the perpetrators were funded by third parties to carry out the acts. Consequently, if the perpetrators were arrested and they identified the persons who had funded them, the persons who funded the attacks could be arrested and charged for offenses under the 1999 Financing of Terrorism Convention.

46. ReCAAP, *Guide for Tankers Operating in Asia Against Piracy and Armed Robbery Involving Theft*, <https://www.recaap.org/resources/ck/files/guide/Guide%20for%20Tankers%20Operating%20in%20Asia%20Against%20Piracy%20and%20Armed%20Robbery%20Involving%20Oil%20Cargo%20Theft.pdf> (last visited June 3, 2022).

47. ReCAAP, *Tugboats and Barges (TaB) Guide Against Piracy and Sea Robbery*, [https://www.recaap.org/resources/ck/files/guide/Tug%20Boats%20and%20Barges%20\(TaB\)%20Guide%20\(Final\).pdf](https://www.recaap.org/resources/ck/files/guide/Tug%20Boats%20and%20Barges%20(TaB)%20Guide%20(Final).pdf) (last visited June 3, 2022).

48. See ReCAAP, *Guidance on Abduction of Crew in the Sulu-Celebes Seas and Waters off Eastern Sabah* (July 2019), [https://www.recaap.org/resources/ck/files/guide/Recaap_guidance_FA\(single\).pdf](https://www.recaap.org/resources/ck/files/guide/Recaap_guidance_FA(single).pdf).

G. Issues Concerning the Classification of Incidents by ReCAAP ISC and Changi IFC

One problem with respect to the current cooperative arrangements under ReCAAP ISC and Changi IFC is that their methods of classifying incidents relating to the security of shipping do not consider the rules of international law on jurisdiction over crimes committed on or against merchant ships. If international lawyers are advised that there has been an attack against a merchant ship or an unauthorized boarding of a merchant ship, their first question is likely to be: “Where did the attack or boarding take place, and where are the offenders now?” This is because the location of the incident and the current location of the perpetrators are critically important in determining which State or States have jurisdiction to arrest and prosecute the offenders.

Although the exact location of an incident is critically important because it determines which State has criminal jurisdiction over the offense, neither the navigational charts used by mariners in Southeast Asia nor the maps of the location of incidents in Southeast Asia indicate territorial sea boundaries. Consequently, the master of a ship may know the exact coordinates of the location of his ship when it was boarded or attacked, but he may not know whether the attack took place in waters under the sovereignty of a particular State or in waters outside the sovereignty of any State. For example, when a ship is transiting through the Singapore Strait in the west-bound lane of the traffic separation scheme approved by the IMO, the master may not know at a given point whether his ship is in the territorial sea of Indonesia, Malaysia, or Singapore, or whether his ship is in an area where the territorial sea boundary has yet to be determined.

Ideally, the navigational charts used by mariners should indicate the territorial sea claims that have been officially declared by coastal States or the territorial sea boundaries that have been established in maritime boundary agreements. Navigational charts issued by the U.S. National Oceanographic and Atmospheric Administration show the maritime zone claims of coastal States,⁴⁹ but most mariners in Asia use navigational charts prepared by the UK Hydrographic Office that do not show the limits of maritime claims or the maritime boundaries established in maritime boundary agreements.

49. Ole Valmer, Suzanne Bass & Meredith Westington, Presentation at the Proceedings of the 14th Biennial Coastal Zone Conference: Demystifying the Maritime Zones and Other Marine Boundaries on NOAA’s Nautical Charts (July 17–21, 2005), https://www.gc.noaa.gov/documents/2012/varmer-2005_coastal_zone.pdf.

V. RECOMMENDATIONS CONCERNING RECAAP ISC
AND THE CHANGI IFC

It is critically important to know exactly where an attack on a ship or an unauthorized boarding of a ship took place because the rules on jurisdiction over the offense depend on whether the incident took place in waters within the territorial jurisdiction of a coastal State or outside the territorial sea of any State. Therefore, hydrographic experts should be assigned by the cooperating States to ReCAAP ISC and the Changi IFC so that they can plot territorial sea boundaries on maps used in their work. In plotting the territorial sea boundary claims, the ISC and IFC could use coastal States' official documents or official information provided by their governments. Maritime boundary agreements setting out the territorial sea boundaries are usually registered with the United Nations Treaties Division and are publicly available on the United Nations Treaties' website.⁵⁰ Additionally, references to the agreements are usually available in the database of Legislation and Treaties of the United Nations Division of Oceans Affairs and Law of the Sea.⁵¹

If territorial sea boundaries were included on their maps and charts, the masters of ships that have been attacked or unlawfully boarded should be required to give the exact geographical coordinates where the attacks or incidents took place when reporting to the ReCAAP ISC or Changi IFC. This would enable the ISC and IFC to determine if the attack took place in an area that is indisputably within the territorial jurisdiction of any State, and so advise the authorities concerned.

In some cases, the territorial sea boundaries between opposite or adjacent States have yet to be delimited. In other cases, there may be a dispute between two or more States on which State has sovereignty over an offshore island or other land territory. In such an instance, it will not be clear which State has sovereignty in the territorial sea adjacent to that island or land territory. These unclear areas should be indicated on the navigational charts or maps used by ReCAAP ISC and Changi IFC. The territorial sea boundaries that are a major source of controversy in Southeast Asia are those surrounding the disputed Spratly Islands and Paracel Islands in the South China Sea. The sea areas surrounding the Spratly Islands can be clearly

50. *See generally* U.N., Treaty Collection, https://treaties.un.org/Pages/Home.aspx?clang=_en (last visited June 3, 2022).

51. *See generally* U.N., Maritime Space: Maritime Zones and Maritime Delimitation, <https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/index.htm> (last visited June 3, 2022).

marked as “disputed.” In any case, the location of the territorial sea around these features will not be of concern to most commercial ships transiting in the South China Sea because the major shipping lanes do not pass near the disputed islands.

Since the Changi IFC is also reporting incidents such as IUU fishing, its maps or charts should arguably also include EEZ claims, especially in areas where the EEZ boundary has been established by a maritime boundary agreement. In areas where the EEZ boundaries have not been resolved, the maps should arguably not include the EEZ claims.

If the States participating in the cooperative arrangements under ReCAAP ISC or Changi IFC agreed, the ISC or IFC could make a preliminary determination on the offense committed as well as a preliminary determination on which States have jurisdiction over the offense. This would require a considerable amount of trust between cooperating States. It might also require several of the cooperating States to assign legal officers to the ISC or IFC so that they could advise on what offenses may have been committed and which State or States would have jurisdiction. It is likely that States would be reluctant to agree to this unless such determinations were only considered preliminary. Any final decision would be the responsibility of the State that decides that it has jurisdiction over the offense.

The preliminary decisions of the ReCAAP ISC or Changi IFC could fall within the following categories:

1. Piracy: Attack on a ship or boarding of a ship outside the territorial sea of any State with perpetrators using weapons and committing violence against the crew to steal property or take control of the ship may be piracy under Article 101 of UNCLOS. There is universal jurisdiction over this offense.⁵²

2. 1988 SUA Convention Offense: Seizure of a ship by force or an act of violence against a person on that ship if the act of violence is likely to endanger the safe navigation of the ship in any maritime zone may be an offense under the 1988 SUA Convention if it takes place inside or outside the territorial sea of a coastal State. States must take perpetrators in their territory into custody and either prosecute or extradite them.⁵³

52. U.S. v. Smith, 18 U.S. 153 (1820).

53. SUA, *supra* note 7, art. 7(1).

3. 1979 Hostages Convention Offense: Persons who board a ship and seize or detain and threaten to kill, injure, or continue to detain another person (hereinafter referred to as the hostage) in order to compel a State, an international intergovernmental organization, a natural or juridical person, or a group of persons, to do or abstain from doing any act as a condition for the release of the hostage commits the offense of hostage-taking under Article 1 of the Convention. If the offenders enter a State party's territory, the State must take them into custody and either prosecute or extradite them.

4. Theft, robbery, or armed robbery on a ship in waters under a State's sovereignty: Such offenses are lesser offenses in which unauthorized persons board ships to steal property. Incidents involving the use of weapons will not be 1988 SUA Convention offenses unless their use endangers the ship's safe navigation. However, if violence is used against persons in command of the vessel it could be a 1988 SUA Convention offense as well. Offenses will be governed by laws of the coastal State if it takes place within their territorial sea, archipelagic waters, ports, or internal waters.

5. Theft, robbery, or armed robbery on a ship outside waters under a State's sovereignty: Such offenses are lesser offenses in which unauthorized persons board a moving ship outside the territorial sea limits of any State to steal property. Incidents involving the use of weapons will not be 1988 SUA Convention offenses unless their use endangers the ship's safe navigation. However, if violence is used against persons in command of the vessel it could be a 1988 SUA Convention offense as well. Offenses will be governed by the laws of the flag State of the vessel boarded.

ReCAAP ISC or Changi IFC could also establish mechanisms to contact the ship owner or operator as well as the relevant coastal State or flag State that has jurisdiction over the offense. Flag States may decide, in consultation with the ship owner or operator, to authorize the authorities of a coastal State to board the ship and investigate.

If the above measures were adopted, they would not interfere with or be inconsistent with the jurisdiction of coastal States over offenses in maritime areas subject to their sovereignty. The measures are also likely to indicate that the majority of incidents in Southeast Asia are relatively minor offenses that do not come within the definitions of piracy, armed robbery against ships, or offenses under the 1988 SUA Convention or 1979 Hostages Convention. Furthermore, most offenses take place within waters under the sovereignty of coastal States and are subject to their jurisdiction.

VI. CONCLUSIONS

The IMO's categorization of any unauthorized boarding or attack on a ship as either piracy or armed robbery against ships has been the impetus for increased cooperation on the security of shipping in Southeast Asia, including the establishment of the ReCAAP ISC and Changi IFC. Both bodies have significantly contributed to the enhancement of the safety and security of shipping in Southeast Asia and their work should be commended.

However, the classification of all unauthorized boardings or attempted boardings as either piracy or armed robbery against ships has also been a source of confusion. The majority of unauthorized boardings of ships in Southeast Asia in waters subject to the jurisdiction of coastal States are not serious enough to meet the definition of "armed robbery against ships." In addition, it is unclear how many of the attacks on ships in Southeast Asia give rise to universal jurisdiction because they took place outside the territorial sea of any State and meet the requirements of piracy in Article 101 of UNCLOS.

Two of the UN conventions on international maritime crimes, the 1988 SUA Convention and the 1979 Hostages Convention, could be useful tools to enhance the security of shipping in Southeast Asia if all States in Southeast Asia ratified and implemented them in accordance with their provisions and the applicable ASEAN agreements. However, this will require ASEAN States, especially Indonesia and Malaysia, to accept that these UN conventions, which are generally referred to as "counter-terrorism conventions," can be useful tools to combat crimes against ships by persons who are not generally considered to be terrorists. It will also require them to understand that cooperation under these conventions would not in any manner compromise their jurisdiction over ships in waters subject to their sovereignty.

To determine which State or States have jurisdiction over an unauthorized boarding or attack on a ship, it is critically important to determine whether the incident took place in waters subject to the jurisdiction of a coastal State or in waters seaward of the territorial sea of any State. Unfortunately, most of the incidents reported to and analyzed by the ReCAAP ISC do not indicate the exact location of the incident. Therefore, it is often unclear from the reports which State or States had jurisdiction over the offense. Cooperation under the ReCAAP ISC could be enhanced if it revised its forms for reporting incidents to include the exact geographic coordinates where the incident took place and used maps indicating the uncontested territorial sea boundaries. This would enable ReCAAP to determine which State

or States have jurisdiction over the offense. The forms for reporting incidents should also require information that would enable the ReCAAP ISC to make a preliminary determination on whether an incident seaward of the territorial sea of any State was of the severity necessary to constitute piracy, or whether the incident met the requirements for an offense under either the 1988 SUA Convention or 1979 Hostages Convention. This information could then be provided to the relevant States, and they could then consult on how to cooperate.

In summary, the security of shipping in Southeast Asia can be enhanced without drafting or adopting any new conventions. What is needed is the ratification and implementation of the relevant existing conventions and enhanced cooperation among States in the region with the ReCAAP ISC to enable those conventions to be utilized in a manner that is consistent with the rules of international law on jurisdiction over crimes committed on or against ships.