Filling the legal vacuum in combatting maritime crimes: a law reform strategy for Malaysia

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Abstract: Maritime security is a major concern for Malaysia as a maritime nation. The crucial question nevertheless is whether there are adequate laws to deal with key maritime crimes that need effective law enforcement measures. The paper finds that no maritime offences are criminalised in the Penal Code, the principal criminal law of Malaysia and that there is neither an anti-piracy law nor any other special criminal law available in Malaysia to combat maritime crimes. A regretful failure to apply a more appropriate law to prosecute Somali pirates demonstrates well an urgent need in Malaysia for a law reform that can effectively combat maritime crimes. On the basis of an analysis of the laws of selected common law countries, the paper concludes with suggestions on proposed maritime crimes law to be recommended to the Government of Malaysia.

Keywords: maritime security threats; maritime crimes in Malaysia; lack of anti-piracy law; proposed maritime crimes law.

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1 Introduction

Among the national security issues, maritime security plays a central role for a maritime nation like Malaysia.[1] The main objective of the present paper is to stress the urgent need for a law reform that can effectively address maritime security concerns of the country.

Piracy and armed robbery at sea are serious maritime security threats to Malaysia. Although piracy cases were under control for a couple of years in the Straits of Malacca and the South China Sea, at present there is a recurrence of these cases, in particular in

relation to small oil tankers. The recent hijacking of the Malaysian oil tanker Orkim Harmony by pirates on 11 June 2015 has raised further concerns over the growing threat of piracy in the region.[2] The number of cases of armed robbery against ships is also rather alarming. Pollution of the marine environment and illegal fishing, though not so rampant, regularly threaten the maritime security of Malaysia. Against this background, the following questions may arise:

1 What are the maritime crimes in Malaysia that need to be seriously taken care of?

2 Does Malaysia have adequate laws to address these maritime crimes?

3 Do we need a specific 'maritime crimes law' to deal with these maritime crimes and if so how would the proposed law look like?

The present paper is an attempt to answer these questions thorough an evaluation of existing laws that may be relevant in combatting maritime crimes in Malaysia and an analysis of the laws of selected common law countries. The evaluation has been enhanced by the results of roundtable discussions and interviews with experts from relevant maritime enforcement agencies[3].

The first section of the paper states the problem and the methods used in dealing with it. The second section identifies the key maritime crimes in Malaysia. In section three, relevant laws of Malaysia, including the Penal Code, are evaluated in terms of their applicability to deal with maritime crimes and their extraterritorial coverage. An analysis of the laws of countries, which have the same common law background as Malaysia, is conducted in the later section, in order to see whether these can be taken as a benchmark for Malaysia. The final section summarises research findings and makes recommendations for the proposed 'Maritime Crimes Act' for the consideration of the Malaysian Government.

2 Maritime security threats and identifying maritime offences in Malaysia

Malaysia is one of the three littoral States to the Straits of Malacca, the second most piracy-prone area in the Asia-Pacific[4] and is bordering the South China Sea, another sensitive area for maritime crimes. Piracy and armed robbery against ships, of course, are the most challenging maritime offences in Malaysia. Table 1 shows a yearly comparison of piratical attacks in South East Asian waters from the year 2011 to 2015.

The table clearly indicates a sharp increase in the year 2014 and 2015 compared to previous years and also an increasing trend in the yearly data for the last five years in South East Asian waters in cases of piracy and armed robbery against ships. In the case of Malaysia, the sudden surge of piratical attacks to 24 cases in 2014 is quite remarkable. Furthermore, the data in the Malaysian column has to be added from that in Malacca Straits as some piratical attacks in Malacca Straits occurred on the Malaysian side of the Straits. In 2015, there were 13 attacks in the Malaysian waters and five attacks in the Straits of Malacca, of which two occurred in Malaysian waters.[5] The actual total figure of piratical attacks for 2015 in Malaysian waters, therefore, is 15 (13 + 2), which is also on the high side.

Table 1 Piracy and armed robbery against ships in South East Asia (January–December, 2011–2015)

Location	*2011*	*2012*	*2013*	*2014*	*2015*
Indonesia	46	81	106	100	108
Malacca Straits	1	2	1	1	5
Malaysia	16	12	9	24	13
Myanmar	1				
Philippines	5	3	3	6	11
Singapore Straits	11	6	9	8	9
Thailand					4
Total	*80*	*104*	*128*	*139*	*150*

Source: ICC IBM Piracy and Armed Robbery against Ships – 2015 Annual Report[6]

It is the consensus view of the Malaysian maritime enforcement agencies that piracy and armed robbery against ships are the two most serious maritime security threats to Malaysia, maritime terrorism is a potential threat, and that although there are cases of illegal, unreported and unregulated (IUU) fishing, it is not a serious threat.[7] Damage to marine environment is a real threat as there are a number of cases of oil pollution and oil spills. It has been reported that there were a total of 121 oil pollution cases in Malaysian waters between 2009 and 2015.[8] Terrorist attacks against oil platforms is a potential threat due to a number of off shore oil and gas drilling installations in Malaysia though there is not yet any such attack until now. Without taking into account other oil companies operating in Malaysia, the National Oil Company, Petroliam Nasional Berhad (PETRONAS), alone has 320 oil and gas platforms and 27 oil rigs in Malaysia.[9]

In view of the existence of these maritime security threats, the following can be identified as real and potential maritime crimes in the case of Malaysia:

1 piracy and armed robbery against ships

2 maritime terrorism

3 seizing, destroying or damaging ship or fixed platform

4 illegal, unreported and unregulated (IUU) fishing

5 damage to the marine environment.

3 Assessing the adequacy of laws in Malaysia in combatting maritime crimes

Of the real and potential maritime crimes in Malaysia, it appears that there are adequate legal framework for the suppression of the last two, namely: the IUU fishing and damage to the marine environment.

3.1 The IUU fishing

The IUU fishing in Malaysia is governed by the Fisheries Act 1985.[10] The Act is applicable within 'Malaysian fisheries waters' which includes the internal waters of Malaysia, the territorial sea of Malaysia and the maritime waters comprised in the exclusive economic zone of Malaysia. Prohibition of fishing by a foreign fishing vessel without permit is provided in section 15 of the Fisheries Act.[11] In relations to the extraterritorial application of the law, section 32 of the Act reads: "any offence committed under this Act or any applicable written law *shall be deemed to have been committed in Malaysia*".[12] There is thus no problem with the application of the law or jurisdiction of the courts as far as the IUU fishing is concerned.

3.2 Damage to the marine environment

With regard to the damage to the marine environment, the Environmental Quality Act 1974 governs the marine pollution within the 12 nautical miles territorial sea[13] and the Exclusive Economic Zone Act 1984 takes care of marine pollution within the 200 nautical miles from the baselines.[14] As far as extraterritorial application of the law is concerned, section 10 of the Exclusive Economic Zone Act provides that "any offence committed under this Act or any applicable written law '*shall be deemed to have been committed in Malaysia*'".[15] It can therefore be concluded that there is sufficient domestic laws to deal with marine environmental offences in Malaysia.

3.3 Offences relating to fixed platforms on the continental shelf

'Fixed platform' means an artificial island, installation or structure permanently attached to the seabed in the continental shelf for the purpose of exploitation or exploration of natural resources or for other economic purposes.[16] It includes offshore oil drilling rigs or oil and natural gas extraction structures. The offences against fixed platforms include "seizing or exercising control by force of a fixed platform, acts of violence against a person on a fixed platform, destroying or damaging a fixed platform, placing a device or substance on the fixed platform that is likely to endanger its safety, and injuring or killing a person in connection with the commission of any such acts".[17]

Since fixed platforms are on the continental shelf, the relevant law in Malaysia is the Continental Shelf Act 1964.[18] The Act unequivocally provides that "any fixed platform on the continental shelf and any waters within 500 metres of such fixed platform are *to be deemed as part of Malaysia* and that every act or omission which takes place on or under or above, or in any waters within five hundred metres of any fixed platform in the continental shelf is *to be deemed to take place in Malaysia*".[19] This is a very clear extension of the extraterritorial application of Malaysian laws and extraterritorial jurisdiction of Malaysian courts to the fixed platforms and waters around it on the continental shelf.

However, the Continental Shelf Act 1964 is rather outdated and no specific offences relating to fixed platforms are criminalised. In fact, Malaysia as an oil-producing country with a number of offshore oil drilling rigs and oil and natural gas extraction structures definitely has to accede to the 1988 SUA Protocol and needs to reform its own domestic laws.

3.4 Piracy, armed robbery against ships, and maritime terrorism

Does Malaysia have adequate laws to address piracy, armed robbery against ships, and maritime terrorism or terrorist attacks against fixed platforms? The answer to this question appears to be in the negative for the following reasons:

1 that the Penal Code,[20] Malaysia's principal criminal law, does not specifically criminalise any maritime crime

2 that the territorial application of the Penal Code is limited only to the territorial sea

3 that Malaysia has no piracy statute nor any special law dealing with maritime terrorism or attacks against fixed platforms.

No maritime offences are criminalised in the Penal Code. As a result, the relevant provisions of the *Penal Code* are to be applied to punish those who committed piratical acts (armed robbery) within the territorial sea or internal waters of Malaysia. They are to be taken action in Malaysia under the offences of robbery (section 392), gang-robbery (section 395), and gang-robbery with murder (section 396) under the Penal Code.

A good example is the case of *Muka Bin Musa v Public Prosecutor*,[21] where pirates came by boat to a small village on Pulau Omadal. They were all armed. One of the pirates remained in the boat while the others entered the village, shot dead the Chinese shopkeeper, removed some goods and left in their boat. A British warship seized the boat and arrested the pirates on the high seas. The pirates were convicted in the High Court at Tawau for the offence of gang robbery with murder contrary to section 396 of the Penal Code.

The Malaysian Penal Code is modelled on the Indian Penal Code[22] which was drafted by the first Indian Law Commission of which Lord Macaulay was President. The territorial and extraterritorial application of the Code can be found in its sections 2, 3, and 4. Section 2 of the Penal Code, entitled "*Punishment of offences committed within Malaysia*," provides that:

> "Every person shall be liable to punishment under this Code and not otherwise for every act or omission contrary to the provisions thereof, of which he shall be guilty within Malaysia."[23]

By virtue of the phrase '*within Malaysia,*' if the act or omission is committed outside Malaysia it is not punishable under the Code unless it has been made so by means of special provisions such as sections 3, 4, 108A etc. of the Code.[24] The 'local jurisdiction' in respect of the Malaysian court is demonstrated clearly in section 3 of the Courts of Judicature Act 1964[25] as including the territorial sea of Malaysia. It follows that the territorial application of the Penal Code extends to the 12 nautical miles territorial sea of Malaysia and beyond that the Penal Code is not applicable.

The following is section 3 of the Penal Code, entitled "Punishment of offences committed beyond, but which by law may be tried within Malaysia":

> "Any person liable by law to be tried for an offence committed beyond the limits of Malaysia, shall be dealt with according to the provisions of this Code for any act committed beyond Malaysia, in the same manner as if such act had been committed within Malaysia."[26]

The contents of section 3 of the Malaysian Penal Code are in *pari materia* with section 3 of the Indian Penal Code.[27] However, the judicial interpretations of the two sections by the courts of the two countries are entirely different. From the point of view of the Indian courts, the phrase '*by law*' mainly refers to section 188 of the Indian Criminal Procedure Code which deals with 'Offence committed outside India'.[28] By virtue of this section, an Indian national who committed a crime under the Penal Code in a foreign country (that is, outside India) can be tried and punished by the Indian courts in India as if he committed the crime in India. Thus if an Indian commits an act in England which is not an offence in that country (e.g. adultery) but is punishable under the Penal Code, he may be prosecuted in India.[29]

The interpretation of section 3 by the Malaysian courts are quite strange. As stated by Salleh Abas, the then Lord President of the Supreme Court of Malaysia, in *Public Prosecutor v Rajappan*,[30] "Malaysian criminal law has only a territorial effect", i.e., it is confined to acts committed within the territories of Malaysia.

Section 4 of the Penal Code, the title of which is *Extension of Code to extraterritorial offences*, extends the extraterritorial application of the Code to only three types of offences:

1 offences against the state (Chapter VI)

2 offences relating to terrorism (Chapter VIA)

3 organised crimes (Chapter VIB).

Even in these cases, the nexus with Malaysia is clearly needed for the application of the Penal Code.[31] Apart from these exceptional offences, Malaysia does not claim criminal jurisdiction under the Penal Code for crimes committed outside Malaysia (that is, beyond the 12 nautical miles territorial sea).

It is true that the Court of Judicature Act 1964 extends jurisdiction of the High Court to try any offence committed "by any person on the high seas where the offence is piracy by the law of nations."[32] Despite the fact that the procedural law allows the Malaysian court to exercise 'universal jurisdiction' over piracy by the law of nations committed on the high seas, it is rather strange that there is no substantive piracy law in Malaysia that criminalises it. Due to this situation, Malaysia was impaled on the horns of a legal dilemma in the case of Somali pirates.

The *MT Bunga Laurel* was a chemical tanker, chartered by the Malaysian International Shipping Corporation (MISC), while Somali pirates attempted to hijack it in international waters, east of Oman in the Gulf of Aden on 20 January 2011. Malaysian naval commandos from *Bunga Mas 5*, stormed and foiled the attempted hijacking of the tanker after a shootout.[33]

The Seven Somali pirates were brought to Malaysia. Although it was a laudable achievement by the Malaysian commandos to be able to arrest Somali pirates, the difficult question that remained was under what law they were to be prosecuted.[34] They could not be prosecuted under the Penal Code as it has legal effect only within 12 nautical miles territorial sea of Malaysia. Moreover, there is no specific piracy law in Malaysia. After much deliberation, the Somali pirates were charged under section 3 of the Firearms (Increased Penalties) Act 1971, with discharging firearms with intent to cause death or hurt on the Malaysian soldiers during a robbery onboard *Bunga Laurel* vessel. The charge provides for the death sentence upon conviction.[35] The public prosecutor submitted to the court a certificate signed by the Attorney-General to enable

the case to be tried in Malaysia as the offence was committed against Malaysian citizens on international waters.[36]

However, when the case was fixed for hearing, the prosecution amended the charge. The accused were charged under section 32(1)(a) of the Arms Act 1960, which carries a life imprisonment or for a term not exceeding 14 years. Three Somalia nationals were sentenced to ten years, while four others, who were underage, to eight years' imprisonment by the High Court.[37]

Despite the fact that the Courts of Judicature Act clearly entrusts the High Court of Malaysia with jurisdiction to try piracy under international law which occurs on the high seas, due to lack of piracy law, it was a terrible headache for the Attorney General's Chambers to look for applicable law to try Somali pirates. It is a regret that although the case was clearly piracy committed on the high seas, due to lack of substantive piracy law or maritime crimes law, the public prosecutor had to charge the pirates with a law which had scant relationship with the cause of action.

4 Maritime crimes under international conventions and the practice of selected common law countries

The 1958 Convention on the High Seas[38] is the first international convention, which criminalises the crime of piracy.[39] The United Nations Convention on the Law of the Sea 1982[40] follows almost in its entirety the definition of piracy in the 1958 Convention.[41] Article 101 (a) of the UNCLOS 1982 defines piracy as:

> "any illegal acts 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:
>
> 1 on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;
>
> 2 against a ship, aircraft, persons or property in a place outside the jurisdiction of any State…."[42]

In this way, 'piracy' under international law (piracy *jure gentium*) has become the first ever maritime crime established by a multilateral convention. The definition encompasses the three essential as well as controversial elements of piracy, namely:

1 the piratical attack must occur on the high seas and not within the jurisdiction of any state

2 two ships must be involved to constitute piracy: the pirate ship and the victim ship

3 the attack must be for 'private ends'.[43]

Soon after the adoption of the UNCLOS 1982, its narrow definition of piracy has come under scrutiny as it does not cover many of the violent crimes at sea. According to the data from IMO, most of the piratical attacks occur in the territorial sea or internal waters of a state[44] and the definition effectively excludes them. The two-ship rule also excludes mutiny or terrorist attacks against a ship. Due to the requirement of 'private ends', maritime terrorism obviously does not fall within the definition of piracy as defined under the UNCLOS 1982. Be that as it may, it appears that it would not be possible to revise the definition of piracy under the UNCLOS in the foreseeable future, first because

it is considered to be established as customary international law and secondly because the UNCLOS was adopted as a package deal after almost ten years of painstaking negotiations.

The inadequacy of the definition of piracy under the UNCLOS 1982 was evident when the Italian cruise liner *Achille Lauro*, was hijacked in 1985. The apparent political motivation for the attack, the location of the attack in Egyptian waters, and the attack being originated from the target ship rather than from another ship, placed the attack outside the ambit of the definition of piracy under the UNCLOS.[45] After the *Achille Lauro* incident, the IMO initiated to adopt the Convention for the Suppression of Unlawful Acts against Safety of Maritime Navigation (SUA) 1988,[46] which establishes a legal basis for prosecuting maritime violence that did not fall within the UNCLOS piracy regime.[47]

The SUA Convention does not employ terms such as piracy and maritime terrorism as it is difficult to define them.[48] Instead, the Convention introduces, among others, the following maritime crimes:

a seizure of a ship by use or threat of force (hijacking of ship)

b an act of violence against a person on board a ship, if it is likely to endanger the safe navigation of that ship

c destruction of or damage to a ship or to its cargo, if it is likely to endanger the safe navigation of that ship

d placing a device or substance on a ship that is likely to destroy that ship

e destruction of or serious damage to maritime navigational facilities or seriously interferes with their operation, if it is likely to endanger the safe navigation of a ship.[49]

This is the first time that an international convention emphatically announces a comprehensive list of maritime crimes, which does cover a large number of acts routinely committed by pirates.[50] Most importantly its main purpose is to effectively combat maritime terrorism which has become rampant in these days. It also intends to fill the gap of the UNCLOS regime of piracy in terms of both subject-matter and territorial application.

The Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf (SUA Protocol) 1988[51] was adopted at the same time as the 1988 SUA Convention. It is a supplementary treaty by which States parties agree to prohibit and punish acts which threaten the safety of fixed platforms including oil platforms. Very much like the 1988 SUA Convention, the Protocol introduces the following maritime crimes:

1 seizing control of a fixed platform by force or threat of force

2 committing an act of violence against a person on a fixed platform if it is likely to endanger the safety of the platform

3 destroying a fixed platform or damaging it in such a way that endangers its safety

4 placing or causing to be placed on a fixed platform a device or substance which is likely to destroy or cause damage to the ship or its cargo.[52]

The 2005 Protocol to the SUA Convention[53] has widened the scope of maritime crimes as defined in the 1988 SUA Convention. The 2005 protocol covers not only piratical or terrorist attacks but also the marine transportation of WMDs, especially biological, chemical, nuclear weapons and other nuclear explosive devices (BCN weapons) for the purpose of utilising them in terrorist activity. It is disappointing that until recently only 39 states are parties to the 2005 SUA Protocol[54] and most of the maritime powers are not yet a party. Unlike the new maritime crimes introduced by the 1988 SUA Convention and Protocol, which may well have crystalised into customary international law due to the adoption by the overwhelming majority of States, it is submitted that the new maritime crimes introduced by the 2005 Protocol could not have that status.

All in all, the 1988 SUA Convention and Protocol could be regarded as anti-piracy legal measures complimentary to the UNLCOS 1982. The tripartite nature of the current international legal regime consisting of these three conventions may very well combat the menace of piracy and other maritime crimes.

In combatting maritime crimes, multilateral conventions can very well be supplemented by regional agreements. The Regional Cooperation Agreement on Combatting Piracy and Armed Robbery against Ships in Asia (ReCAAP), 2004[55] is the first regional agreement to promote and enhance cooperation against piracy and armed robbery against ships in Asia. It addresses two types of maritime crimes: piracy on the high seas and armed robbery against ships within a state party's jurisdiction. Its definition of piracy is taken from the definition of UNCLOS 1982. Nonetheless, to remedy the narrowness of the piracy definition, ReCAAP has created a new maritime crime, 'armed robbery against ships' and defines it in line with the IMO's Code of Practice for the Investigation of the Crimes of Piracy and Armed robbery against ships as:

> "(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;…"[56]

ReCAAP's definition of armed robbery against ships does away with the two weaknesses of the UNCLOS's definition of piracy, namely: the two ship-rule and limiting the locus of piracy only to the high seas. As a result of the inspiration of ReCAAP, the Djibouti Code of Conduct[57] similarly defines piracy and armed robbery against ships just like in ReCAAP.

The above are the 'maritime crimes'[58] that are criminalised in key international conventions and regional agreements. To effectively combat these maritime crimes, the first step for States to do is to adopt these international maritime conventions in order to be able to fully utilise collective strength of the international community, which is vital to successful eradication of these crimes. Apart from purely monist States,[59] and in particular for the common law countries that are primarily dualist States, the second crucial step to be taken is to enact necessary national laws to combat these maritime crimes as law enforcement is key to suppressing crimes.

As Dutton has rightly put, "States are not uniform in their domestic legal approaches to piracy."[60] Many States still readily depend on their old penal laws to deal with piracy and modern maritime crimes in spite of the fact that their old laws are rather outdated. There are also a number of States that criminalise piracy according to the 'law of nations' without specifically identifying the elements of the offence.

In this respect, it would be more appropriate to analyse the practice of a few common law jurisdictions in order for Malaysia to be taken as a benchmark. In the Crimes Act of New Zealand, it is provided that "Everyone who does any act amounting to piracy by the law of nations, whether that act is done within or outside New Zealand…."[61]. In the Criminal Code of Canada, under the title 'Piracy by Law of Nations", it is provided that "(1) Every one commits piracy who does any act that, by the law of nations, is piracy. (2) Everyone who commits piracy while in or out of Canada is guilty of an indictable offence and liable to imprisonment for life".[62]

The potential difficulties of such practice can be best illustrated by the judicial interpretation of the law in the USA, which is among countries with a piracy statute that refers only to the law of nations without any specific definition or clarification of the crime of piracy. According to the existing piracy statute of the USA, "Whoever, on the high seas, commits the crime of piracy as defined by the law of nations, and is afterwards brought into or found in the USA, shall be imprisoned for life.[63] In *USA v Smith*,[64] it was held that piracy "is an offense against the law of nations, and that its true definition by that law is robbery upon the sea".

In 2010, however, two piracy cases were brought in the federal court for the Eastern District of Virginia. The two judges hearing the cases interpreted the piracy statute differently. In the first case, *USA v. Said*,[65] the court held that due process considerations did not allow a construction of the piracy statute to include actions other than "robbery or forcible depredations upon the sea", the definition given to "piracy" by the US Supreme Court in Smith, 190 years earlier. In the second case, *USA v. Hassan*,[66] however, the court concluded that "contemporary customary international law does not require an actual robbery on the high seas as a prerequisite for a conviction for piracy under 18 U.S.C. § 1651". In 2012, the Fourth Circuit Court of Appeals resolved their differences. It reviewed the authorities relied on by the district court and concluded that when Congress enacted 18 U.S.C. § 1651 and provided for piracy to be defined by the "law of nations," Congress contemplated the definition of piracy would evolve as the law of nations evolved. The Fourth Circuit also recognised the international definition of piracy has, for decades, encompassed violent conduct on the high seas in addition to robbery. In addition to affirming the convictions of the defendants in Hassan, the Courts of Appeals reversed the dismissal of the piracy count in Said and sent that case back the district court for further proceedings consistent with its holding that the crime of piracy within the meaning of 18 U.S.C. §1651 is not limited to robbery on the high seas.

Among the common law jurisdictions, Singapore and Australia have more comprehensive legislation on maritime crimes. In Singapore, two special provisions are found in Chapter VIA of the Penal Code:

> "Piracy by law of nations
>
> (1) A person commits piracy who does any act that, by the law of nations, is piracy.
>
> (2) Whoever commits piracy shall be punished with imprisonment for life and with caning with not less than 12 strokes, but if while committing or attempting to commit piracy he murders or attempts to murder another person or does any act that is likely to endanger the life of another person he shall be punished with death."[67]

> "Piratical acts
>
> Whoever, while in or out of Singapore
>
> (a) steals a Singapore ship;
>
> (b) steals or without lawful authority throws overboard, damages or destroys anything that is part of the cargo, supplies or fittings in a Singapore ship;
>
> (c) does or attempts to do a mutinous act on a Singapore ship; or
>
> (d) counsels or procures a person to do anything mentioned in paragraph (a), (b) or (c), shall be punished with imprisonment for a term not exceeding 15 years and shall be liable to caning."[68]

The weak part in the Singaporean Penal Code is the traditional use of the phrase 'piracy by law of nations' without specifically identifying the elements. As far as punishment is concerned, the normal imprisonment for life is supplemented by death penalty if murder or attempt to murder is involved.

Apart from piracy provisions in the Penal Code, Singapore also has a special law known as the 'Maritime Offences Act'.[69] The main purpose of the Act is to give legal effect to the provisions of the 1988 SUA Convention.

> "The Act criminalizes and punishes the following maritime offences:
>
> 1 Hijacking of ships (that is, any person who unlawfully, by the use of force or by threats of any kind, seizes a ship or exercises control of a ship shall be guilty of an offence, whatever his nationality or citizenship, whatever the state in which the ship is registered and whether the ship is in Singapore or elsewhere);[70]
>
> 2 Destroying or damaging ships, etc. (that is, any person who unlawfully and intentionally
>
> (a) destroying a ship;
>
> (b) damaging a ship or its cargo so as to endanger, or to be likely to endanger, the safe navigation of the ship; or
>
> (c) committing on board a ship an act of violence which is likely to endanger the safe navigation of the ship)."[71]

The Parliament of Singapore is in the process of adopting the Maritime Offences (Amendment) Act 2015 to give legal effect to the provisions of the 1988 SUA Protocol.[72] According to the new amendments, four new sections are added to the principal statute and new section 7A provides for "hijacking of fixed platforms" and new section 7B deals with "destroying and damaging fixed platforms", the detailed provisions being in tandem with the provisions relating to ships stated above.[73]

Australia in the first place has a 'Crimes Act', which is similar to the Penal Code in South East Asian common law countries. According to section 51 of the Crimes Act, 'act of piracy' means an act of violence, detention or depredation committed for private ends by the crew or passengers of a private ship or aircraft and directed:

a if the act is done on the high seas or in *the coastal sea of Australia* – against another ship or aircraft or against persons or property on board another ship or aircraft

b if the act is done in a place beyond the jurisdiction of any country – against a ship, aircraft, persons or property.[74]

The 'coastal sea of Australia' means:

a the territorial sea of Australia

b the sea on the landward side of the territorial sea of Australia.[75]

The Australian statute "essentially mirrors UNCLOS save that it extends the offence of piracy to the territorial seas of Australia and removes that troubling word 'illegal' from the substantive definition of the offence".[76] The Crimes Act criminalises piracy in section 52: "A person must not perform an act of piracy and penalty is imprisonment for life".[77]

Apart from the Crimes Act, Australia also has a very comprehensive special law dealing with maritime offences, namely: crimes (ships and fixed platforms) act, 1992,[78] which gives legal effect to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA Convention) and the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (SUA Protocol). In respect of the extraterritorial application, section 5 of the Act provides that it extends:

a to acts, matters and things outside Australia

b to all persons, whatever their nationality or citizenship.

The first type of maritime offences under the Act are

> "Offences in relation to ships and these include:
>
> 1 Seizing a ship (taking possession of, or taking or exercising control over, a private ship by the threat or use of force or by any other kind of intimidation;
>
> 2 Acts of violence against a person on board a ship knowing that the act is likely to endanger the safe navigation of the ship;
>
> 3 Destroying or damaging a ship;
>
> 4 Placing destructive devices on a ship; and
>
> 5 Destroying or damaging navigational facilities."[79]

The second type of maritime offences under the Act are "Offences in relation to fixed platforms" and these are similar to the first four offences stated above, namely: seizing a fixed platform, acts of violence against a person on a fixed platform, destroying or damaging a fixed platform, and placing destructive devices on a fixed platform.[80]

It is clear that the national laws of Singapore and Australia more or less reflect the international conventions they have adopted. Apart from a few limitations, these can be taken as good models for other common law countries to be considered in enacting national laws on maritime crimes.

5 Suggestions for a law reform in Malaysia

As has stated earlier, there are serious and real maritime security threats to Malaysia being a maritime nation. While piracy and armed robbery against ships are two major maritime crimes that need to be taken great care of, there are still other potential maritime crimes such as maritime terrorism and seizing, destroying or damaging of ship or fixed platform, in respect of which to lay the ground work for a systematic legal framework is

imperative and an urgent need. It is unfortunate that Malaysia does not have adequate criminal laws to address these maritime crimes. The following are recommendations to the Government of Malaysia for consideration in conducting the necessary law reform.

First of all, Malaysia should accede to the 1988 SUA Convention and Protocol as soon as possible. These two international conventions have been adopted by the overwhelming majority of States around the world[81] and they obviously strengthen close cooperation in particular among neighbouring states in combatting piracy, maritime terrorism and other maritime crimes without which effective maritime law enforcement is not possible.

What would be the best solution for Malaysia to effectively resolve the question of having a legal vacuum in its laws in combatting maritime crimes? There are obviously two options. The first one is to amend the Penal Code by inserting a new chapter, say for example, Chapter VIC, whose title should be 'Maritime Crimes'. The second is to adopt a new special criminal law entitled: 'Maritime Crimes Act'. Due to the facts that maritime crimes are unique and their nature is a bit different from that of other crimes which ordinarily are in the Penal Code and that it would be too bulky to include in a single chapter all the necessary technical provisions relating to boarding, searching and arrest of vessels, jurisdiction and the like, it would be much better to adopt a separate special law by the name of the 'Maritime Crimes Act'.

In the proposed Maritime Crimes Act, the definition of 'piracy' should follow the established definition of piracy as stated in Article 101 of the United Nations Convention on the Law of the Sea 1982.[82] It would be a clear departure from the definition of piracy in the Australian Crimes Act because it is felt that it would be much better to keep intact the definition of piracy under international law (piracy *jure gentium*) as codified in the UNCLOS. The main justification is that though there is universal jurisdiction over piracy under international law (one committed on the high seas) there is no such jurisdiction over piratical attacks against a ship in the territorial sea or internal waters of a State.

Since the definition of international law piracy is limited only to piratical attacks on the high seas (that naturally includes the EEZ),[83] a specific provision for 'armed robbery against ships' to deal with piratical attacks that occur in the territorial sea and internal waters will definitely be needed.[84]

The definition of 'armed robbery against ships' in the Malaysian law should follow the one adopted by the IMO, which reads:

> "'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 and territorial sea;
>
> 2 any act of inciting or of intentionally facilitating an act described above."[85]

Assuming that Malaysia is acceding to the 1988 SUA Convention and the 1988 SUA Protocol, the maritime offences which should be criminalised in the 'Maritime Crimes Act' should follow the offences under the two international conventions. In this respect, the best state practice Malaysia should take lesson from is that of Australia in its Crimes (ships and fixed platforms) Act, 1992, and Singapore in its Maritime Offences Act (recently revised). The offences should be divided into two sub-categories, namely:

1 offences in relation to ships

2 offences in relation to fixed platforms.

In the proposed new law, punishment for piracy should be life imprisonment and penalty for other maritime offences should be proportionate to the severity of the crime, taken into consideration the importance of deterrence to pirate and terrorists.

There should be very clear provisions on 'enforcement of the law' (power of arrest, detention, investigation and prosecution), which is usually a problem in Malaysia due to overlapping and sometimes conflicting or at least controversial powers of the law enforcement agencies. It is crucial, in particular, to make sure that there should be a well-settled allocation of powers between the Malaysian Maritime Enforcement Agency (MMEA) under its statute[86] and those of other law enforcement agencies.[87] The National Security Council (NSC) under the Prime Minister's Department should take the lead to ensure smooth enforcement of the law.

6 Conclusions

Despite the weaknesses of the UNCLOS 1982 to cope effectively with the growing menace of maritime crimes, the 1988 SUA Convention and Protocol very well could supplement it and thereby create an almost complete triangular international legal regime to combat these crimes of concern for the international community. However, the success of the international legal regime depends enormously on the implementation of the international conventions in the domestic sphere of States in the form of national legislation.

In the case of Malaysia, the first step forward is to adopt the 1988 SUA Convention and Protocol and after that prepare a 'Maritime Crimes Act' on the basis of the suggestions given in the present paper. The National Security Council of the Prime Minister's Department should take the lead to draft the proposed new law together with the Attorney General's Chambers and with the support of the MMEA, the Royal Malaysian Navy, the Marine Police and other stake holders. The most important recipe for a successful law reform is to follow the holistic approach rather than the piecemeal approach in the sense that the new law should guarantee well-organised and systematic cooperation of all enforcement agencies and stake holders.

Acknowledgements

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Notes

1 See Sazlan, I. (2006) 'The concept of a Malaysian national maritime security policy', *Maritime Studies*, Vol. 146, pp.15–19.

2 'Hijacked tanker Orkim Harmony released, pirates flee: Malaysia officials', (19 June 2015) *Channel News Asia* [online] http://www.channelnewsasia.com/news/asiapacific/hijacked-tanker-orkim/1926492.html (accessed 7 October 2015).

3 The empirical component of the research is made up of: (1) Roundtable Discussions with Dato' Zuklifli Bin Abu Bakar, the First Admiral and Director of Maritime Criminal Investigation Department, the Malaysian Maritime Enforcement Agency (MMEA) and his team in MMEA Headquarters in Putra Jaya on 25 March 2015; (2) Interview with Rear Admiral Dato' Mior Mohd Jaafar, Assistant Chief of Staff (Operation and Exercises), the Royal Malaysian Navy, in the Royal Malaysian Navy Headquarters in Kuala Lumpur on 8 April 2015, and (3) Interview with ACP Abdul Rahim Bin Abdulla, Deputy Commander of the Marine Police (Operations/ Intelligence), the Royal Malaysian Police, Bukit Aman, Kuala Lumpur, on 28 April 2015.

4 'ICC IMB Piracy and Armed Robbery against Ships', (2013) *IMB Annual Report* [online] http://www.ship.sh/attachment/files/2013_Annual_IMB_Piracy_Report.pdf (accessed 27 November 2015).

5 'ICC IMB Piracy and Armed Robbery against Ships', (2015) *IMB Annual Report* [online] Report for the period of 1 January to 31 December 2015, Table 1, p.5, http://www.ship.sh/attachment/files/2015_Annual_IMB_Piracy_Report.pdf (accessed 1 February 2016).

6 The first attack was against the Product Tanker Ocean Energy on 02-05-2015 around 11 nm SSE of Tanjung Tuan, Malaysia, and the second attack was against Fishing Vessel KHF 1989 around 38 nm West of Pulau Langkawi, Malaysia, in Malacca Straits. See *ibid*. p.31.

7 Roundtable Discussions with Dato' Zuklifli Bin Abu Bakar, the First Admiral and Director of Maritime Criminal Investigation Department, the Malaysian Maritime Enforcement Agency (MMEA) and his team (25 March 2015) (record filed with the research); Interview with Rear Admiral Dato' Mior Mohd Jaafar, Assistant Chief of Staff (Operation and Exercises), the Royal Malaysian Navy (8 April 2015) (record filed with the researcher).

8 Fernando Fong, '121 Oil Pollution Cases Reported between 2009 and 2015', (18 January 2016) *The Rakyat Post*, citing Natural Resources and Environment Minister Datuk Seri Wan Junaidi Tuanku Jaafar who emphatically stated in a Symposium on Marine Environmental Protection and Pollution Control at Shah Alam, Malaysia, on 18 Jan 2016 that "the country is facing the threat of marine pollution, including oil spills. A total of 121 oil pollution cases had been reported between 2009 and December 2015", http://www.therakyatpost.com/news/2016/01/18/oil-spill-poses-threat-to-malaysian-marine-environment/ (accessed 22 January 2016).

9 See 'PETRONAS: Exploration and Production Brochure' (19 November 2013) 10–11 [online] http://www.petronas.com.my/ourbusiness/Upstream/UAG/os/Documents/FA_EP%20BROCHURE_FINAL4.pdf (accessed 21 January 2016).

10 Fisheries Act, 1985, Laws of Malaysia, Act 317, date of coming into operation: 1 January 1986.

11 *Ibid*., section 15.

12 *Ibid*., section 32.

13 Environmental Quality Act 1974, Laws of Malaysia, Act 127, date of coming into operation: 15 April 1975.

14 Exclusive Economic Zone Act 1984, Laws of Malaysia, Act 311, date of coming into operation: 1 May 1985.

15 *Ibid*., section 10(1).

16 The 1988 SUA Protocol, Article 1(3).

17 *Ibid.*, Article 2(1).

18 The Continental Shelf Act 1964, Laws of Malaysia, Act 83, entered into operation on 28 July 1966.

19 *Ibid*., section 5.

20 Penal Code (Revised 1997), Laws of Malaysia, Act 574.

21 *Muka Bin Musa v Public Prosecutor*, [1964] 30 *MLJ* 275. See also *The King v Chia Kuek Chin & Others*, [1915] 13 *S.S.L.R.*, 1.

22 Penal Code, Indian Act XLV of 1860.

23 Penal Code (Malaysia), section 2. This is in *pari materia* with the same section of the Indian Penal Code.

24 Vohrah, K.C. (2006) Vorah and Hamid on Malaysian Penal Code: Commentary, Cases and Sample Charges, p. 7; *Public Prosecutor v Rajappan* [1986] 1 MLJ 152.

25 Courts of Judicature Act 1964, section 3.

26 Penal Code (Malaysia), section 3.

27 Section 3 of the Indian Penal Code reads: "Any person liable, by any [Indian law], to be tried for an offence committed beyond [India] shall be dealt with according to the provisions of this Code for any act committed beyond India] in the same manner as if such act had been committed within [India]".

28 Section 188 of the Indian Criminal Procedure Code 1973 deals with 'Offence committed outside India': "When an offence is committed outside India – (a) by a citizen of India, whether on the high seas or elsewhere; or (b) by a person, not being such citizen, on any ship or aircraft registered in India, he may be dealt with in respect of such offence as if it had been committed at any place within India at which he may be found".

29 Ratanlal Ranchhoddas, (2012) *Ratanlal and Dhirajlal's Law of Crimes: A Commentary on the Indian Penal Code, 1860*, 26th. ed., Bharat Law House, New Delhi, pp. 26-27. See *Sanmukh Singh* (1879) 1 All 218 (FB). See also *Mobarik Ali Ahmed*, AIR 1957 SC 857; 1958 SCR 328; *Central Bank of India Ltd. v Ram Narain*, AIR 1955 SC 36; (1955) 1 SCR 697; *Pheroze v State*, 1964 (2) Cr. L. J. 533.

30 *Public Prosecutor v Rajappan*, [1986] 1 MLJ 152, Supreme Court Kuala Lumpur (Salleh Abas LP, Abdul Hamid CJ (Malaya), Seah, Hashim Yeop A Sani and Abdul Cader JJ).

31 *See* Penal Code, section 4(1).

32 Courts of Judicature Act 1964, section 22(1)(a) (iv).

33 'Malaysian navy thwarts Somali pirate attack on MISC tanker', *The Star Online* (21 January 2011) [online] http://www.thestar.com.my/news/nation/2011/01/21/malaysian-navy-thwarts-somali-pirate-attack-on-misc-tanker/ (accessed 23 January 2016).

34 'Under what Malaysian law will Somali pirates be prosecuted?' *The Star Online* (25 January 2011) [online] http://www.thestar.com.my/news/nation/2011/01/25/under-what-malaysian-law-will-somali-pirates-be-prosecuted/ (accessed 23 January 2016).

35 'Somalia pirates charged in Malaysia', *BBC News, Asia Pacific* (11 February 2011) [online] http://www.bbc.com/news/world-asia-pacific-12430671; 'Malaysia court charges suspected Somali pirates', *Jurist* (Friday, 11 February 2011) [online] http://jurist.org/paperchase/2011/02/malaysia-court-charges-suspected-somali-pirates.php (accessed 23 January 2016); 'Malaysia is Asia's 1st to charge Somali pirates', *The Hindu* (11 Feb. 2011) [online] http://www.thehindu.com/news/international/malaysia-is-asias-1st-to-charge-somali-pirates/article1411508.ece (accessed 23 January 2016).

36 Datuk Seri Mohamed Nazri Abdul Aziz, Minister in the Prime Minister's Department of Malaysia, in his written reply to a question in the Parliament, referred to section 127A of the Criminal Procedure Code under which AG could decide that any offence that affected national security could be handled like it had happened in the country. He argued that it was due to the fact that Somali pirates attacked the Malaysian naval personnel. See *The Star*, N 24 (Friday, 11 March 2011).

37 'Somalia nationals jailed for firing at Malaysian soldiers', *Bernama* (September 2, 2013).

38 Convention on the High Seas (Geneva, 29 April 1958, in force 30 September 1962) 450 *UNTS*, 11 (63 States Parties).

39 For the definition of 'piracy', see *ibid*., Article 15.

40 United Nations Convention on the Law of the Sea (Montego Bay, 10 December 1982, in force 16 November 1994) 1833 UNTS 397 (hereinafter UNCLOS 1982). There are 167 parties to the Convention. See *UN Treaty Collection, Status of multilateral conventions deposited with the SG of the UN*, available at https://treaties.un.org/Pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXI6&chapter=21&Temp=mtdsg3&lang=eng.

41 Beckman, R.C. (2012) 'The piracy regime under UNCLOS: problems and prospects for cooperation', in Robert C. Beckman and J.A. Roach (Eds.): *Piracy and International Maritime crimes in ASEAN: Prospects for Cooperation*, Edward Elgar Publishing Ltd, UK, pp.17–37, at 17.

42 UNCLOS 1982, Art. 101.

43 Menefee, S.P. (1999) 'Anti-piracy law in the year of the ocean: problem and opportunity', *ILSA Journal Of International and Comparative Law*, Vol. 5, p.309.

44 In June 2015, for example, there were altogether 34 reported piratical attacks of which only 2 were in international waters (which can properly be identified as piracy under the UNCLOS 1982) and the remaining 32 attacks occurred in territorial waters (18) and in port areas (14). The IMO identifies such attacks as "armed robbery against ships." See International Maritime Organization (IMO), *Reports on Piracy and Armed Robbery against Ships, Issued Monthly: Acts Reported During June 2015*, available at http://www.imo.org/en/OurWork/Security/PiracyArmedRobbery/Reports/Documents/225-June-2015.pdf. See also Beckman, R.C. (2002) 'Combatting piracy and armed robbery against ships in Southeast Asia: the way forward', 33 *Ocean Dev. & Int'l L.* 317, at 328 (stating that none of the attacks in the Straits of Malacca and Singapore constituted piracy under the UNCLOS as they took place in territorial waters).

45 Hamid, A.G., Sein, K.M., Win, K.H. and Ahmed, M.H. (2012) 'Assessing the viability of the 2005 protocol to the convention for the suppression of unlawful acts against the safety of maritime navigation', *Australian Journal of Basic and Applied Sciences*, Vol. 6, No. 11, pp.137–144, at p.138.

46 Convention for the Suppression of Unlawful Acts against Safety of Maritime Navigation (Rome, 10 March 1988, in force 1 March 1992) 1678 UNTS 222 (hereinafter 1988 SUA Convention). There are 166 parties to the Convention, representing 94.45% of the gross tonnage of world's merchant fleet [except Indonesia, Malaysia and Thailand, all ASEAN members are parties]. See *International Maritime Organization, Status of Conventions*, http://www.imo.org/en/About/Conventions/StatusOfConventions/Pages/Default.aspx.

47 Halberstam, M. (1988) 'Terrorism on the high seas: the *Achille Lauro*, Piracy and the IMO convention on the maritime safety', *AJIL*, Vol. 82, pp.269–310; see also Abhyankar, J. (2006) 'Piracy, armed robbery and terrorism at sea: a global and regional outlook', in Graham Gerard Ong-Webb (Ed.): *Piracy, Maritime Terrorism and Securing the Malacca Straits*, (The International Institute for Asian Studies [IIAS], the Netherlands and the Institute of Southeast Asian Studies (ISEAS), Singapore, 2006), Vol. 1, pp.1–22.

48 Ansari, A.H. (2002) 'Terrorism, national integrity and human rights: a critical appraisal', *Malayan Law Journal*, Vol. 2, i-xxxvii.

49 The 1988 SUA Convention, Article 3(1).

50 See Hodgkinson, S.L. (2015) 'The governing international law on maritime piracy', in Michael P. Scharf, Michael A. Newton and Milena Sterio (Eds.): *Prosecuting Maritime Piracy: Domestic Solutions to International Crimes*, Cambridge University Press, New York, 2015, pp.13–31, at p.26.

51 Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, (Rome, 10 March 1988, in force 1 March 1992) 1678 UNTS 304 (hereinafter 1988 SUA Protocol). As of 28 Dec 2015, there are 155 parties to the Protocol, representing 94.13% of the world gross tonnage of merchant fleet [except Indonesia, Malaysia and Thailand, all ASEAN members are parties]. See *International Maritime Organization, Status of Conventions*, http://www.imo.org/en/About/Conventions/StatusOfConventions/Pages/Default.aspx.

52 *Ibid*., Article 2(1).

53 Protocol of 2005 to the Convention for the Suppression of Unlawful Acts against Safety of Maritime Navigation, (London, UK, 14 October 2005, in force 28 July 2010) IMO Doc. LEG/CONF.15/21, (hereinafter 2005 SUA Protocol). As of 4 January 2016, there are 39 Contracting States. [None of the 10 ASEAN member states are yet a party to the Protocol]. See *International Maritime Organization, Status of Conventions*, http://www.imo.org/en/About/Conventions/StatusOfConventions/Pages/Default.aspx.

54 See *International Maritime Organization, Status of Conventions*, http://www.imo.org/en/About/Conventions/StatusOfConventions/Pages/Default.aspx.

55 ReCAAP was adopted on 11 November 2004 and entered into force on 4 September 2006. To date, there are 20 Contracting Parties: Australia, Bangladesh, Brunei, Cambodia, China, Denmark, India, Japan, Korea, Lao, Myanmar, the Netherlands, Norway, the Philippines, Singapore, Sri Lanka, Thailand, the UK, the USA and Viet Nam.

56 ReCAAP, art 1(2).

57 The Code of Conduct concerning the Repression of Piracy and Armed Robbery against Ships in the Western Indian Ocean and the Gulf of Aden was signed on 29 January 2009 by the representatives of: Djibouti, Ethiopia, Kenya, Madagascar, Maldives, Seychelles, Somalia, the United Republic of Tanzania and Yemen. Comoros, Egypt, Eritrea, Jordan, Mauritius, Mozambique, Oman, Saudi Arabia, South Africa, Sudan and the United Arab Emirates have since signed bringing the total to 20 countries from the 21 eligible to sign.

58 See 'Cooperation for Law and Order at Sea' *Memorandum 5, Council for Security Cooperation in the Asia-Pacific (CSCAP)*, http://www.cscap.org/uploads/docs/Memorandums/CSCAP%20Memorandum%20No%205%20--%20Cooperation%20for%20Law%20and%20Order%20at%20Sea.pdf (accessed 24 January 2016), where 'maritime crime' is defined as a 'criminal offence connected to the sea or to ships'.

59 According to the monist theory, a treaty as such is automatically part of the law of the country and has direct legal effect without the necessity of any domestic enabling statute; see Morgenstern, F. (1950) 'Judicial Practice and the Supremacy of International Law' 27 *British Yearbook of International Law* 42, at 50; Shaw, M.N. (2008) International Law, 6th ed, Cambridge University Press, Cambridge, 129.

60 Dutton, Y.M. (2012) 'Maritime piracy and the impunity gap: insufficient national laws or a lack of political will?', *Tulane Law Review*, Vol. 86, pp.1111–1162, at 1151.

61 The Crimes Act, 1961 (New Zealand), Section 92 [online] http://www.legislation.govt.nz (accessed 26 February 2016). See also *Database of the UN DOALS* [online] http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/NZN_crimes_act_1961.pdf (accessed 26 February 2016).

62 Criminal Code (Canada), R.S.C. 1985 c. C-46, Section 74, available at http://www.canlii.org/en/ca/laws/stat/rsc-1985-c-c-46/latest/rsc-1985-c-c-46.html (accessed 25 February 2016).

63 18 U.S. Code § 1651 - Piracy under law of nations.

64 18 US (Wheat) 153 (1820).

65 57 F.Supp.2d 554 (E.D.Va. 2010).

66 747 F.Supp.2d 599 (2010).

67 Penal Code (Singapore, CAP 224, Chapter VIA "Piracy") section 130B.

68 *Ibid*., section 130C.

69 Maritime Offences Act (Original Enactment, Act 23 of 2003, Singapore, revised on 3 May 2004) to give effect to the provisions of the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, SUA, 1988), CHAPTER 170B, 2004 [online] http://www.odinwestpac.org/doc/law/08.pdf (accessed 25 February 2016).

70 *Ibid*., section 3.

71 *Ibid*., section 4.

72 Maritime Offences (Amendment) Bill, Bill No. 19/2015, Parliament of Singapore, (Read the first time on May 2015); an Act to amend the Maritime Offences Act (Chapter 170B of 2004 Revised Edition) [online] https://www.parliament.gov.sg/sites/default/files/Maritime%20Offences%20(Amendment)%20Bill%2019-2015.pdf (accessed 25 February).

73 *Ibid*.

74 Crimes Act 1914 (Australia), section 51 [emphasis added].

75 *Ibid*.

76 Ussher B., (2011) 'Maritime Piracy: The Australian Jurisdiction', in Andrew Forbes (ed.) *Australia's Response to Piracy: A Legal Perspective*, Papers in Australia's Maritime Affairs, No. 31, Commonwealth of Australia, Canberra. See also Ussher B., (2010) 'Maritime Piracy: The Australian Jurisdiction', 4 (5) *Goorangai: Occasional Papers of the Royal Australian Naval Reserve Professional Studies Programme* [online] http://www.navy.gov.au/sites/default/files/documents/Goorangai_2010_Vol4_No5.pdf (accessed 23 February 2016).

77 Crimes Act 1914 (Australia), section 52.

78 Crimes (Ships and Fixed Platforms) Act 1992, Australia Act No. 173 of 1992 as amended in 2001.

79 *Ibid*., sections 8–12.

80 *Ibid*., sections 21–24.

81 As of 28 Dec 2015, there are 166 States parties to the 1988 SUA Convention and 155 States parties to the 1988 SUA Protocol. Except Indonesia, Malaysia and Thailand, all ASEAN members are parties. See *International Maritime Organization, Status of Conventions* [online] http://www.imo.org/en/About/Conventions/StatusOfConventions/Pages/Default.aspx (accessed 23 January 2016).

82 The UNCLOS 1982, Article 101.

83 See above n. 46.

84 According to data from IMO, most of the piratical attacks occur in the territorial sea or internal waters of a State. In June 2015, for example, there were altogether 34 reported piratical attacks of which only 2 were in international waters (which can properly be identified as piracy under the UNCLOS 1982) and the remaining 32 attacks occurred in territorial waters (18) and in port areas (14). The IMO identifies such attacks as 'armed robbery against ships'. See International Maritime Organization (IMO), *Reports on Piracy and Armed Robbery against Ships, Issued Monthly: Acts Reported During June 2015* [online] http://www.imo.org/en/OurWork/Security/PiracyArmedRobbery/Reports/Documents/225-June-2015.pdf (accessed 24 January 2016). See also Beckman R.C., (2002) 'Combatting Piracy and Armed Robbery Against Ships in Southeast Asia: The Way Forward', 33 *Ocean Development and International Law*, 317, at 328 (stating that none of the attacks in the Straits of Malacca and Singapore constituted piracy under the UNCLOS as they took place in territorial waters); Hendun Abd Rahman Shah (2014) 'Malaysian Experience in Combatting Piracy and Armed Robbery in the Straits of Malacca: Some Recommendations', 2:1 *Journal of International Relations and Foreign Policy*, pp.43–54, at 53.

85 See IMO Resolution A.1025 (26) 'Code of Practice for the Investigation of Crimes of Piracy and Armed Robbery against Ships.' This definition is also in tandem with the definition of 'armed robbery against ships" in Art. 1(2) of the Regional Cooperation Agreement on Combatting Piracy and Armed Robbery against Ships in Asia (ReCAAP), the first regional government-to-government agreement to which the following 20 States are parties: Australia, Bangladesh, Brunei Darussalam, Cambodia, China, Denmark, India, Japan, the Republic of Korea, Laos, Myanmar, the Netherlands, Norway, the Philippines, Singapore, Sri Lanka, Thailand, the UK, the USA and Viet Nam. See ReCAAP Information Sharing Centre (ISC), Singapore [online] http://www.recaap.org/AboutReCAAPISC.aspx (accessed 21 January 2016).

86 Malaysian Maritime Enforcement Agency Act 2004, Laws of Malaysia, Act 633, date of coming into operation: 15 February 2005.

87 Other agencies which are involved in maritime law enforcement in Malaysia are: Royal Malaysian Navy, Marine Police, Department of Environment, Department of Fisheries, Marine Department, Department of Immigration, and Royal Malaysian Customs Department.