

Introduction

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Over the past four years, attacks against vessels by Somali pirates have captured the world's attention. The sheer audacity of the attacks, the number of attacks and the amount of ransom being paid to Somali pirates, have transformed Somali piracy into an unprecedented and extremely serious threat to the safety of seafarers and international shipping.¹ In 2010, there were 219 attacks (actual and attempted) committed by Somali pirates in the Gulf of Aden, the Red Sea, the Arabian Sea and the Indian Ocean² and this increased to 237 (actual and attempted) attacks in 2011.³ Such attacks constitute the majority of attacks worldwide and Somali piracy continues to be a problem that confounds the international community.

The ramifications of Somali piracy are wide-ranging. Not only does such piracy cause immediate risk to seafarers, cargo and vessels; it also 'endangers sea lines of communication, interferes with freedom of navigation and the free flow of commerce and undermines regional stability'.⁴ Indeed, it has been estimated that in 2011, Somali piracy cost the world economy almost US\$7 billion dollars, with the bulk of this consisting of the cost of protecting ships traversing the Horn of Africa.⁵

¹ James Kraska and Brian Wilson, 'The Pirates of the Gulf of Aden: The Coalition is the Strategy' (2009) 45 *Stanford Journal of International Law* 243 at 244–245 (Kraska and Wilson).

² International Maritime Bureau (IMB), *2010 Annual Report on Piracy and Armed Robbery Against Ships* (2010 Annual IMB Report) at 5–6.

³ IMB, *2011 Annual Report on Piracy and Armed Robbery Against Ships* (2011 Annual IMB Report) at 5–6.

⁴ Kraska and Wilson, *supra* note 1 at 251.

⁵ These costs include the cost of fuel that ship owners paid to run at high speed in the high-risk areas, the cost of security equipment and armed guards, the cost of insurance, the cost of re-routing vessels along the Western Indian coast and additional compensation to seafarers operating in high risk areas: see Robert Wright, 'Somali Piracy Costs \$7bn despite hijacks falling', *The Financial Times* (8 February 2012), online: *The Financial Times*, <http://www.ft.com/intl/cms/s/0/97ec548e-524a-11e1-9f55-00144feabdc0.html#axzz1mtu54tLm>.

While the international community has taken several steps to attempt to combat Somali piracy, the details of which have been examined by Dr. Marie Jacobsson in Chapter 4, one of the major challenges is the lack of an effective legal system to ensure the arrest, prosecution and punishment of Somali pirates. Despite various efforts by the international community to establish such a legal framework from 2008 to date,⁶ there still remains an absence of effective and meaningful legal sanctions against Somali pirates. In May 2010, it was estimated that nine out of ten captured pirates had not been prosecuted.⁷ Even as recently as November 2011, the Security Council Resolution on Somalia acknowledged its concern ‘over a large number of persons suspected of piracy having to be released without facing justice’.⁸ It also recognized that ‘the failure to prosecute persons responsible for acts of piracy and armed robbery at sea off the coast of Somalia undermines anti-piracy efforts of the international community’.⁹

The release of captured pirates by navies patrolling the Horn of Africa, a policy which has been criticized as ‘catch and release’,¹⁰ can be attributed to several factors. First, many states do not have adequate national legislation in place to prosecute Somali pirates effectively, which means that even if they are captured, a successful legal outcome is not always assured.¹¹ This is especially so if states believe that the evidence would be insufficient for a successful conviction under their national laws and/or that their national legislation is inadequate to cover acts which occur outside their territory.¹² Second, there is a general reluctance to prosecute Somali pirates by both arresting states and other states who should have an interest in prosecuting Somali pirates (on the basis that the attack was against a vessel flying their flag or the crew members on the vessel which was attacked were their nationals). This is because the pre-trial incarceration,

⁶ This is described by Marie Jacobsson in Chapter 4, ‘International Legal Cooperation to Combat Piracy in the Horn of Africa’.

⁷ Report of the Special Adviser to the Secretary-General on Legal Issues Related to Piracy off the Coast of Somalia, UN Doc. S/2011/30 (2011) at 21 (Special Adviser’s Report).

⁸ UN SCOR, 66th Year, 6663d Mtg., UN Doc. S/RES/2020 (2011), online: http://www.un.org/Docs/sc/unsc_resolutions11.htm.

⁹ *Ibid.*

¹⁰ James Kraska, ‘Coalition Strategy and the Pirates of the Gulf of Aden and the Red Sea’ (2009) 28 *Comparative Strategy* 197 at 203.

¹¹ John I. Winn and Kevin H. Govern, ‘Maritime Pirates, Sea Robbers and Terrorists: New Approaches to Emerging Threats’ (2008) 2 *Homeland Security Review* 131 at 141.

¹² Special Adviser’s Report, *supra* note 7 at 21–22.

trial and post-trial incarceration of Somali pirates ‘involve significant political and resource commitments’.¹³

PIRACY AND OTHER MARITIME CRIMES IN SOUTHEAST ASIA: LESSONS LEARNED FROM SOMALI PIRACY

It is appropriate at this point to ask how Somali piracy is relevant to Southeast Asia and the member states of the Association of Southeast Asian Nations (ASEAN).

It is generally thought that attacks against vessels in Southeast Asia are unlikely to reach the scale and severity of the attacks against vessels in the Horn of Africa.¹⁴ Indeed, the waters of Southeast Asia¹⁵ saw 119 attacks against vessels (actual and attempted) in 2010,¹⁶ as compared to the 219 attacks (actual and attempted) in the Horn of Africa in the same year. Further, the tactics employed by Somali pirates and Southeast Asian pirates are vastly different. Somali pirates typically engage in kidnap of crew and ship hijacking for relatively large amounts of ransom, requiring a high level of organization.¹⁷ In contrast, attacks in Southeast Asia consist primarily of opportunistic hit and run attacks of robbery, of the ship’s cash, valuables, stores, cargo and/or equipment usually while vessels are anchored or berthed.¹⁸ There have been, however, incidents of both kidnap of crew for ransom and hijacking of vessels for sale, believed to have been carried out by organized criminal syndicates.¹⁹ The geopolitical conditions in Somalia also differ widely from those existing in

¹³ Winn and Govern, *supra* note 11 at 141. See also Jon D. Pepetti, ‘Building the Global Maritime Security Network: A multinational legal structure to combat transnational threats’ (2008) 55 *Naval Law Review* 73 at 111.

¹⁴ This has been concluded by Karsten von Hoesslin in Chapter 5, ‘Piracy and Armed Robbery against Ships in the ASEAN Region: Incidents and Trends’.

¹⁵ See Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP) Information Sharing Centre, 2010 Annual Report (2010 ReCAAP ISC Annual Report), online: ReCAAP ISC, <http://www.recaap.org/>. (This consists of waters in the Gulf of Thailand, Indonesia, Malaysia, Myanmar, Philippines, Singapore, South China Sea, Straits of Malacca and Singapore, Thailand and Vietnam, based on the classification adopted in the 2010 ReCAAP ISC Annual Report).

¹⁶ *Ibid.*, at 12.

¹⁷ Kraska and Wilson, *supra* note 1 at 250.

¹⁸ *Ibid.*

¹⁹ See Hoesslin, *supra* note 14.

Southeast Asia. Somalia is a 'failed state' (and has been so since 1991),²⁰ and is divided into three purportedly autonomous regions (Somaliland, Puntland and Southwestern State of Somalia) with no effective central government.²¹ The lack of an effective law enforcement regime and the absence of a functioning economy have allowed Somali piracy to flourish. In addition, the Somali pirates have the support of some of the coastal communities in Somalia. In contrast, all the states bordering Southeast Asian waters²² have functioning governments, effective law enforcement regimes and legal systems.

Notwithstanding the above, the problems in suppressing Somali piracy have highlighted an important lesson for Southeast Asia. They have illustrated the necessity of having an effective legal framework in place to combat maritime crime. An effective legal framework is particularly critical to Southeast Asia for several reasons.

First, Southeast Asia is a 'distinctively maritime region'²³ and 'it sits aside key choke points for shipping between the Indian and Pacific Oceans, which are economically and strategically important to the economies of Northeast Asia, the United States and the emerging maritime powers of Asia'.²⁴ Further, the majority of seafarers traversing the waters in Southeast Asia are from ASEAN states, primarily from Indonesia and the Philippines. The safety and security of shipping is therefore essential, and an effective legal framework to combat maritime crime is an important component in ensuring such safety and security.

Second, as has been highlighted by Karsten von Hoesslin in Chapter 5, while the most common type of attack against vessels in Southeast Asia is the opportunistic hit and run attacks of robbery while vessels are anchored or berthed, there are two discernible trends in attacks in Southeast Asia which underscore the need for an effective legal framework. Firstly, Mr.

²⁰ General Siad Barre's regime was overthrown in 1991, after which Somalia was plunged into civil war where warlords ruled over parcels of individual land: see 'Country Profile: Somalia', *BBC News* (10 February 2012), online: BBC News Africa, <http://www.bbc.co.uk/news/world-africa-14094503>.

²¹ Alex Kingsbury, 'Under President Obama, will failed states like Somalia merit new attention?', *US News & World Report* (14 January 2009).

²² These consist of Brunei, Cambodia, Indonesia, Malaysia, Philippines, Singapore, Thailand, Vietnam, Myanmar and China and Taiwan.

²³ Sam Bateman, Joshua Ho and Jane Chan, *Good Order at Sea in Southeast Asia* at 4, online: S. Rajaratnam School of International Studies, Policy Papers, http://www.rsis.edu.sg/publications/policy_papers/RSIS_Policy%20Paper%20-%20Good%20Order%20at%20Sea_270409.pdf.

²⁴ *Ibid.*

Hoesslin draws attention to the fact that since 2008 a sophisticated campaign of piracy and armed robbery at sea has been waged off the Anambas Islands of Indonesia, orchestrated by experienced criminal syndicates in what he describes as 'cluster piracy'.²⁵ The second disturbing trend is the increased number of ship hijackings of tugboats in Southeast Asia for the purposes of resale to pre-arranged buyers, also allegedly committed by organized criminal syndicates.²⁶ These attacks against vessels require some degree of organization and resources and involve several jurisdictions. Therefore, a legal framework that enables states in the region to cooperate to combat such crimes is critical.

Third, a further reason for ensuring that there is an effective legal framework to combat maritime crimes in Southeast Asia is simply the fact that it is not possible to exclude the possibility of the Somali 'business model' being adopted in Southeast Asia. Certain aspects of the Somali business model, particularly those which do not require a large degree of organization or resources, such as the kidnapping of crew for ransom, may well be considered to be lucrative and sufficiently low risk by Southeast Asian pirates. ASEAN states should heed the lessons of Somali piracy and not wait until such an incident happens before an effective legal framework is in place.

Fourth, Somali piracy is no longer just an issue occurring hundreds of miles away with no direct impact on ASEAN states. Vessels registered in ASEAN states or owned by companies from ASEAN states as well as seafarers from ASEAN states frequently travel through the Horn of Africa and are exposed to the risk of a Somali pirate attack. It is imperative that the navies of ASEAN states are able to interdict such attacks and that national courts of ASEAN states are able to effectively prosecute the perpetrators of such attacks. This is aptly illustrated by the *MT Bunga Laurel* incident, which involved the capture of Somali pirates by the Royal Malaysian Navy in the Gulf of Aden in January 2011. At the time of capture, Malaysia had no provision in its Penal Code making piracy an offense so it could not charge them accordingly. Consequently, the pirates had to be charged for offenses relating to the use of firearms against the Malaysian armed forces.²⁷

²⁵ See Hoesslin, *supra* note 14.

²⁶ *Ibid.*

²⁷ 'Somali "Pirates" Charged in Malaysia', *BBC News* (11 February 2011), online: BBC News Asia-Pacific, <http://www.bbc.co.uk/news/world-asia-pacific-12430671>.

ESTABLISHING AN EFFECTIVE LEGAL FRAMEWORK TO COMBAT PIRACY AND OTHER MARITIME CRIMES IN SOUTHEAST ASIA

The critical question is *how* ASEAN states can create such a legal framework. The book will demonstrate that there is an array of global and regional instruments which, if ratified and effectively implemented by ASEAN states, can provide the foundation for an effective legal framework to combat piracy and other maritime crimes.

The first and arguably most important global convention is the 1982 United Nations Convention on the Law of the Sea (UNCLOS).²⁸ UNCLOS, regarded as the 'constitution for the oceans',²⁹ sets out the applicable legal regime governing acts of piracy³⁰ and this will be examined in depth by Robert Beckman in Chapter 1. The key provisions on piracy in UNCLOS can be found in article 101, which sets out the definition of piracy, and article 105, which gives all states universal jurisdiction to arrest vessels for acts of piracy on the high seas and the right to prosecute acts of piracy.³¹ There is no right under UNCLOS to board a foreign pirate ship outside the territorial sea of any state and arrest the persons on board unless it is for the offense of piracy. It is therefore critical for any legal framework aimed at combating maritime crimes for states to have piracy as defined under UNCLOS as an offense under their national laws. It is equally important that their law enforcement authorities and national courts have the jurisdiction to arrest pirates and try acts of piracy committed outside the territorial sovereignty of any state as provided in UNCLOS.

However, as demonstrated by Mr. Beckman in Chapter 1, UNCLOS has several limitations. For present purposes, five brief points will suffice. First, UNCLOS does not oblige state parties to enact national legislation making piracy as defined in UNCLOS a criminal offense with appropriate penalties. As has been illustrated by Somali piracy, many states do not have national piracy legislation. Second, the definition of piracy only applies

²⁸ United Nations Convention on the Law of the Sea, 10 December 1982, 1833 U.N.T.S. 397, 21 I.L.M. 1261 (entered into force 16 November 1994; adopted and opened for signature in Montego Bay, Jamaica), online: United Nations, http://www.un.org/Depts/los/convention_agreements/texts/unclos/unclos_e.pdf.

²⁹ Tommy Koh, 'A Constitution for the Oceans', online: United Nations Division for Ocean Affairs and the Law of the Sea, http://www.un.org/depts/los/convention_agreements/texts/koh_english.pdf.

³⁰ See UNCLOS, *supra* note 28, articles 100–107.

³¹ This would include acts of piracy which take place in the EEZ: see UNCLOS, *supra* note 28, article 58(2).

to attacks which take place on the high seas and in the EEZ. A particular difficulty in Southeast Asia is that most attacks against ships take place in maritime zones subject to the sovereignty of coastal states where the piracy rules of UNCLOS do not apply. These are classified as 'armed robbery against ships'. The only state with the authority to board a foreign pirate ship in these areas is the coastal state. Further, even if the pirates enter the territory of another state, that state would normally have no authority to arrest them. Third, while UNCLOS gives all states the power to arrest pirates and prosecute pirates, it does not oblige them to do so, leaving it to the discretion of the states concerned who often do not have the political will to do so. Fourth, UNCLOS does not deal with the organization of attacks that occur on shore including the planning and financing of acts of piracy, nor does it address the persons or groups who are laundering and profiting from the proceeds derived from acts of piracy. Fifth, while UNCLOS provides for a general duty to cooperate to the fullest possible extent in the repression of piracy,³² it does not impose any specific mechanisms for legal cooperation such as extradition and mutual legal assistance.

While UNCLOS will always be the basic framework governing piracy, there are other conventions complementary and supplementary to UNCLOS which can be used to address its limitations and therefore effectively combat both piracy and armed robbery against ships.

The first two of these conventions are the 1979 International Convention Against the Taking of Hostages (1979 Hostages Convention),³³ and the 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (the 1988 SUA Convention).³⁴ These conventions will be dealt with by J. Ashley Roach in Chapter 2. Both are characterized as 'counter-terrorism' conventions (or 'terrorism conventions' in short), but they do not require any terrorist motive. The 1988 SUA Convention covers a range of acts against vessels which endanger the safety of international navigation, including ship hijacking and acts of violence against persons on board the ship. Similarly, the 1979 Hostages Convention covers acts of kidnap or hostage taking of crew.

³² UNCLOS, *supra* note 28, article 100.

³³ International Convention against the Taking of Hostages, 17 December 1979, 1316 U.N.T.S. 206, 18 I.L.M. 1456 (entered into force 3 June 1983), online: United Nations Treaty Collection, <http://treaties.un.org/doc/db/Terrorism/english-18-5.pdf> (1979 Hostages Convention).

³⁴ Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 10 March 1988, 1678 U.N.T.S. 222, 27 I.L.M. 668 (entered into force 1 March 1992), online: United Nations Treaty Collection, <http://treaties.un.org/doc/db/Terrorism/Conv8-english.pdf> (1988 SUA Convention).

These two terrorism conventions supplement the piracy provisions of UNCLOS as well as the general principles of international law governing armed robbery against ships. First, in contrast to the piracy provisions of UNCLOS, they oblige states to criminalize ship hijacking and hostage taking of crew under their national legislation. Second, they expand the traditional bases of jurisdiction that can be exercised by states and oblige state parties to exercise jurisdiction over acts occurring outside their territory. Critically, they oblige state parties to establish jurisdiction over the offenses set forth in the conventions in cases where the alleged offenders are present in their territory and they decide not to extradite them to any of the state parties (this jurisdiction is known as 'jurisdiction based on the presence of the offender' or 'quasi-universal jurisdiction'). Also, if the alleged offenders are present in their territory, state parties are obliged to either extradite them or submit the case to the authorities for the purpose of prosecution. This is known as the obligation to 'extradite or prosecute', or the principle of *aut dedere aut judicare*. Lastly, both conventions provide mechanisms for international cooperation such as extradition and mutual legal assistance among state parties for the investigation and prosecution of prescribed offenses.

In contrast to UNCLOS, the 1988 SUA Convention and the 1979 Hostages Convention would also address maritime crimes that take place in maritime zones under the territorial sovereignty of states. For example, the 1988 SUA Convention would apply to more serious types of attacks on ships within the territorial sovereignty of a state, that is, those which involve the hijacking of the ship or the use of violence on board the ship which endangers the safety of navigation. Similarly, the 1979 Hostages Convention would apply to armed robbery against ships if the incident involves the taking of a crew member hostage.

However, it should be noted that even when attacks on ships constitute offenses under these conventions, the rules of international law governing the boarding of foreign ships remain unchanged. The coastal state has the exclusive right to arrest a foreign pirate ship within its territorial sea or archipelagic waters. A foreign warship may not board a foreign pirate ship and arrest the pirates unless the attack took place outside the territorial sea of any state and the pirate ship is outside the territorial sea of any state.

Attacks against vessels involving ship hijacking or hostage taking of crew members are not stand-alone events, but are part of a chain of criminal events. Before the commission of any act against a vessel, there are persons who have organized, financed and assisted in facilitating the commission of the offense. Similarly, the proceeds of crime, if any, will inevitably be utilized in one way or another after the commission of the offense. Accordingly, ensuring that persons involved in the facilitation of

attacks against vessels are held accountable is a critical aspect of any legal framework established to combat maritime crimes.³⁵

In this regard, there are three global conventions which provide useful tools against these aspects of maritime crime, which will be examined by Dr. Nikos Passas and Anamika Twyman-Ghoshal in Chapter 3. The 1999 International Convention for the Suppression of the Financing of Terrorism (1999 Financing of Terrorism Convention)³⁶ can be used to arrest and prosecute persons who finance the hijacking of a ship or the taking of crew members hostage for ransom. This is because the 1999 Financing of Terrorism Convention makes the financing of any offense under the 1988 SUA Convention and the 1979 Hostages Convention an offense regardless of terrorist motive. Similarly, the 2000 United Nations Convention on Transnational Organized Crime (UNTOC)³⁷ and 2003 Convention against Corruption Convention (UNCAC)³⁸ can be used to pursue persons, including public officials, or criminal groups who are involved in the planning, organizing or financing of maritime crimes as well as the persons or groups who are laundering and profiting from the ransom payments and other proceeds of crimes. They also contain similar provisions to the 1988 SUA Convention and 1979 Hostages Convention on the obligation of state parties to make such acts crimes under their national laws, to establish jurisdiction over these offenses if they occur outside their territory, including jurisdiction based on the presence of the offender and the 'extradite or prosecute' obligation. Further, these conventions provide mechanisms for international cooperation such as

³⁵ This has also been consistently reiterated in the Security Council Resolutions on Somali Piracy – see for example, Security Council Resolution 2020, adopted on 22 November 2011, *supra* note 8, which recognizes the need to investigate and prosecute not only suspects captured at sea but also anyone who incites or intentionally facilitates piracy operations including key figures of criminal networks involved in piracy who illicitly plan, organize, facilitate or finance and profit from such attacks.

³⁶ International Convention for the Suppression of the Financing of Terrorism, 9 December 1999, 2178 U.N.T.S. 197 (entered into force 10 April 2002; all ASEAN countries are parties), online: United Nations Treaty Collection, <http://treaties.un.org/doc/db/Terrorism/english-18-11.pdf> (1999 Financing of Terrorism Convention).

³⁷ United Nations Convention against Transnational Organized Crime, 15 November 2000, 2225 U.N.T.S. 209, 40 I.L.M. 335 (entered into force 29 September 2003) (2000 UNTOC).

³⁸ United Nations Convention against Corruption, 9 December 2003, 2349 U.N.T.S. 41, 43 I.L.M. 37 (2004) (entered into force 14 December 2005), online: United Nations Office on Drugs and Crime, http://www.unodc.org/pdf/crime/convention_corruption/signing/Convention-e.pdf (2003 UNCAC).

extradition and mutual legal assistance among state parties for the investigation and prosecution of prescribed offenses.

Lastly, the discussion would not be complete without reference to regional instruments relevant to ASEAN such as the 2004 Treaty on Mutual Legal Assistance in Criminal Matters (2004 MLAT)³⁹ adopted by ASEAN member states and the 2007 ASEAN Convention on Counter-Terrorism (2007 ACCT).⁴⁰ The 2007 ACCT reinforces the obligations of ASEAN states under the international terrorism conventions mentioned above, such as the 1979 Hostages Convention, the 1988 SUA Convention and the 1999 Financing of Terrorism Convention. Under the 2004 MLAT, nine ASEAN member state parties have agreed to 'render to one another the widest possible measure of mutual legal assistance in criminal matters, namely investigations, prosecutions and resulting proceedings'.⁴¹ These instruments will be examined by Termsak Chalermpananupap and Mayla Ibañez in Chapter 6 and by Cheah Wui Ling in Chapter 8.

The above mentioned global and regional instruments are complementary and supplementary to one another. In totality, they form an effective legal framework or legal toolbox that all states could use to combat piracy and other maritime crimes. This is because:

- 1) UNCLOS is the only global convention which gives *all states* the right to arrest vessels for acts of piracy in areas outside the territorial sovereignty of states. It is therefore critical for states to implement UNCLOS provisions on piracy in their national laws.

³⁹ 2004 Treaty on Mutual Legal Assistance in Criminal Matters (adopted on 29 November 2004 in Kuala Lumpur, Malaysia, entered into force 1 June 2005), online: CIL Documents Database, <http://cil.nus.edu.sg/2004/2004-treaty-on-mutual-legal-assistance-in-criminal-matters-signed-on-29-november-2004-in-kuala-lumpur-malaysia/>; MLAT Secretariat, http://www.agc.gov.my/index.php?option=com_content&view=article&id=260&Itemid=225&lang=en (2004 MLAT).

⁴⁰ 2007 ASEAN Convention on Counter Terrorism, 13 January 2007 (adopted in Cebu, Philippines by ASEAN States), online: CIL Documents Database <http://cil.nus.edu.sg/2007/2007-asean-convention-on-counter-terrorism-signed-on-13-january-2007-in-cebu-philippines-by-the-heads-of-stategovernment/>; ASEAN Secretariat, <http://www.aseansec.org/19250.htm> (2007 ACCT) (see Appendix: the 2007 ACCT entered into force on 29 May 2011 (CIL-calculated) after it was ratified by six countries: Singapore, Thailand, the Philippines, Cambodia, Vietnam and Brunei).

⁴¹ Technically, the 2004 MLAT is not an ASEAN treaty but a treaty among ASEAN member states.

- 2) UNCLOS and the other global conventions cover a wide range of offenses which can be used to address piracy and other maritime crimes. These include persons who plan, organize, facilitate, finance or profit from such attacks.
- 3) All the global conventions (with the exception of UNCLOS) require state parties to adopt national legislation making the offenses defined in the conventions crimes under national legislation.
- 4) The global conventions (with the exception of UNCLOS) also have mechanisms that require state parties to establish jurisdiction over offenses which occur outside their territory.⁴² This is critically important for piracy and other maritime crimes because they often have a transnational element and can involve several jurisdictions.
- 5) The global conventions (with the exception of UNCLOS) also place an obligation on states either to initiate prosecution or extradite offenders found in their territory. This minimizes opportunities for offenders to find 'places of refuge'.
- 6) The global conventions establish a framework of international legal cooperation, including extradition arrangements, under which state parties are able to extradite alleged offenders to states that are able and willing to prosecute them, and mutual legal assistance arrangements, which facilitate such assistance between state parties in investigations and prosecutions.

The above-mentioned conventions will only be able to establish a legal framework to combat piracy and other maritime crimes if ASEAN member states ratify and effectively implement them. To this end, the second half of the book addresses the issues and problems faced by ASEAN as an organization and ASEAN member states in establishing an effective legal framework to combat piracy and other maritime crime. First, in Chapter 6, Termsak Chalermphanupap and Mayla Ibañez provide an overview of the measures that ASEAN as a regional organization has taken to combat piracy and other maritime crimes and also highlight the limitations and deficiencies in ASEAN's current approach to maritime security. In Chapter 7, Robert Beckman provides an in-depth

⁴² UNCLOS, for example, gives states the right to exercise universal jurisdiction over acts of piracy which occur outside its territory. The counter-terrorism conventions, on the other hand, oblige states to establish jurisdiction over offenses which occur outside their territory in certain circumstances. This will be further elaborated on in Chapter 2, 'Global conventions on piracy, ship hijacking, hostage taking and maritime terrorism' by J. Ashley Roach.

examination of the problems and issues faced by ASEAN member states in the ratification and implementation of global conventions.

Regional implementation of legal cooperation mechanisms provided for in both the global and regional conventions, such as the extradition and mutual legal assistance arrangements, are a critical component of any legal framework combating piracy and other maritime crimes. To this end, in Chapter 8, Cheah Wui Ling gives an overview and analysis of the extradition provisions in the global and regional conventions, and discusses the interplay between the global and regional conventions and how they can be used to combat international maritime crimes more effectively. In the final chapter of the book, the editors provide detailed recommendations on the steps that ASEAN member states can take, both on an individual basis and on a collective basis through ASEAN, in order to establish an effective legal framework to combat piracy and other maritime crimes.

A more detailed summary of each Chapter can be found below.

SUMMARY OF CHAPTERS

As mentioned above, the ultimate objective of this book is to demonstrate that ASEAN states can establish an effective legal framework to combat piracy and other maritime crimes by ratifying and effectively implementing the above-mentioned global and regional instruments.

Part I, *Global perspectives on international maritime crimes* gives an overview of the global conventions that can be used to combat piracy and other maritime crimes. In **Chapter 1**, 'The piracy regime under UNCLOS: problems and prospects for cooperation', Robert Beckman gives an overview of the legal regime governing piracy under UNCLOS. He provides the historical context relating to the provisions in UNCLOS and examines the extent to which it is relevant to the treaty's contemporary interpretation. He also describes the weaknesses in the UNCLOS piracy regime including the lack of implementation of UNCLOS provisions in national piracy legislation. He concludes by examining the prospects for cooperation to deal with piracy in the ASEAN region.

In **Chapter 2**, 'Global conventions on piracy, ship-hijacking, hostage-taking and maritime terrorism', J. Ashley Roach describes other global conventions that can be used to combat piracy, ship hijacking, hostage taking and maritime terrorism including the 1979 Hostages Convention and the 1988 SUA Convention. He highlights the importance of the provisions in these conventions in combating maritime crimes, including the provisions which oblige state parties to criminalize relevant offenses, to establish jurisdiction over them in certain circumstances even when the

offenses have occurred outside the territory of the state party and the obligation to 'extradite or submit the case for prosecution'. He concludes that it is in the interests of all ASEAN states to ratify these conventions to ensure maritime security in the region.

Next, Nikos Passas and Anamika Twyman-Ghoshal explore the utility of global conventions applicable to organizers, financiers, accomplices and even corrupt officials in **Chapter 3**, 'Controlling piracy in Southeast Asia – thinking outside the box'. In addition to briefly discussing UNCLOS and the 1988 SUA Convention, the authors examine the 1999 Financing of Terrorism Convention, the 2000 UNTOC and the 2003 UNCAC to determine the extent these conventions can be used against maritime crimes as well as problems in implementation and enforcement. In addition, the authors discuss states' feedback on what is needed to combat international maritime crimes more effectively, including implementation of the 2000 UNTOC.

In **Chapter 4**, 'International legal cooperation to combat piracy in the Horn of Africa', Marie Jacobsson completes the discussion on *Global perspectives on international maritime crimes* by examining the international efforts to combat piracy in the Horn of Africa since 2009. Her chapter looks into the additional challenges posed by modern piracy, from human rights law to enforcement issues, and how global and regional institutions have responded.

Part II of the book, *Regional and national perspectives on international maritime crimes* explores the issues faced by the region as a whole and individual ASEAN states in establishing an effective legal framework to combat piracy and other maritime crimes.

In **Chapter 5**, 'Piracy and armed robbery against ships in the ASEAN region: incidents and trends', Karsten von Hoesslin describes the incidents and trends in acts of piracy and armed robbery at sea in the ASEAN region from 2008 to spring 2011. He gives an operational overview of the syndicates conducting such activities in waters under national sovereignty and on the high seas in the ASEAN region. He identifies two trends which are prevalent in Southeast Asia, including 'cluster piracy' and tug hijackings for purposes of reselling the vessel. He also does a comparative study of the tactics employed by Southeast Asian pirates and Somali pirates and offers some conclusions on the likelihood of the Somali piracy 'business model' being adopted by organized criminal syndicates in Southeast Asia.

Next, Termsak Chalermpanupap and Mayla Ibañez provide an overview of the measures that ASEAN as a regional organization has taken to combat piracy and other maritime crimes in **Chapter 6**, 'ASEAN measures in combating piracy and other maritime crimes'. They trace the developments of various ASEAN security instruments and ASEAN institutional

mechanisms which increasingly place emphasis on maritime security. The authors then carry out a brief study of the utility of regional conventions, notably the 2004 MLAT and 2007 ACCT, in supporting efforts to promote maritime security. They conclude that while ASEAN has a fairly comprehensive regional plan to deal with piracy and other maritime crimes in the region, it remains to be seen whether ASEAN will be able to implement the plans and programmes it has set out for maritime security cooperation. Cooperation has been limited thus far to operational or functional cooperation, such as information sharing and capacity building. Even this has been uneven and has not reached the stage of being institutionalized within ASEAN. Accordingly, the authors argue that more can be done to foster further regional cooperation between ASEAN member states.

Robert Beckman's **Chapter 7**, 'Ratification and implementation of global conventions on piracy and maritime crimes' provides an in-depth examination of some of the common problems ASEAN states face in ratifying and implementing the global conventions and regional conventions applicable to maritime crimes. By studying the ratification and implementation practices of six ASEAN states and seven states from outside the region, the author gives an insight into the issues faced by common law, civil law and hybrid jurisdictions. He argues that at the national level, there are jurisdictional and legislative gaps and a lack of political will to tackle piracy and other international maritime crimes. He maintains that regardless of the relevant state's legal system, a failure to specifically criminalize, prosecute and punish maritime crimes and have extraterritorial legislation in place pursuant to these global conventions could result in loopholes which alleged offenders may exploit. Further, he argues that regional action is necessary so that all states concerned are 'on board' by ensuring that they have effectively implemented the global conventions so as to ensure that there are no safe havens for offenders.

In **Chapter 8**, 'Maritime crime and the problem of cross-border enforcement: making the most of existing multilateral instruments', Cheah Wui Ling provides a comprehensive overview and analysis of the extradition provisions in the global and regional conventions, including the unique characteristics and advantages they offer. She then presents a nuanced discussion of how these conventions provide for jurisdiction and inter-state cooperation. Importantly, she discusses the interplay between the global and regional conventions and how they can be used to combat international maritime crimes more effectively.

Finally, **Chapter 9**, 'The way forward: enhancing legal cooperation between ASEAN member states' contains key conclusions and recommendations on how ASEAN states can enhance legal cooperation between themselves in order to effectively combat maritime crimes.