The Anti-Maritime Piracy Law in India and Malaysia: An Analytical Study

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ABSTRACT

Sea piracy is one of the greatest threats to trade and commerce on high seas. According to the annual report 2020 of the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP), a total of 97 incidents (comprising 95 actual incidents and two attempted incidents) of piracy and armed robbery against ships were reported in Asia in 2020. The number of incidents was just double the last year’s 2019 sea piracy cases. The incident of piratical attacks affected Asian Countries and particularly Southern Asia and Southeast Asia is the most affected area. Southeast Asia covered 41 percent of total pirate attacks during 1995-2013. Although India and Malaysia are geographically differently located both are mostly affected by these incidents of sea piracy and it has a long-standing history to fight against piracy. India has proposed the Anti-Maritime Piracy Bill, 2019 to curb this menace in tune with the United Nations Convention on the Law of Seas (UNCLOS), 1982, and Malaysia has the Malaysian Maritime Enforcement Act, 2004. The present study analyses the concept of piracy in Asian countries and its international and national legal framework to deal with piratical attacks. It is found that Southern Asia and particularly Southeast Asia is one of the most affected areas in piratical attacks. Further, there is no specific legislation to deal with piracy in India and Malaysia. Therefore, India and Malaysia should have strong domestic legislations for the apprehension and prosecution of pirates.

INTRODUCTION

During the period from 2004 to 2009, more than 40% of all coastal countries experienced at least one piracy incident (Coggins 2012). Such incidents have been shown to increase trade costs and reduce the volume of traded goods (Bensassi and Martinez-Zarzoso 2012). Recently, on December 3, 2019, 18 Indians aboard a crude oil carrier were kidnapped off the coast of Nigeria and released after negotiation (19 Indians kidnapped by pirates near Nigerian Coast Released, 2020). This widespread occurrence is seen as a major threat to international trade since more than 80% of all traded goods are transported through the sea (Carr and Stone 2017). On the other hand, the rise of piracy in Somalia and frequent attacks in the Gulf of Aden forced various international communities to make some laws to combat piracy and India was one of them (Ahmad 2020). In the present scenario, sea piracy is affecting human life and the free voyage of trade and business on high seas. The definition of piracy and international laws relating to piracy and its implementation is not clear about jurisdiction. Therefore, India has now introduced the Anti-Maritime Piracy Bill, 2019 in the Lower House of Parliament in December 2019. This research is to focus on Anti-Maritime Piracy Bill, 2019 provisions and the United Nations Convention on Law of Sea, 1982 (UNCLOS). State’s jurisdiction on issues relating to piracy on the high sea is not definite under UNCLOS as the provisions are enabling one and it requires coordination with State’s for its implementation. Further India has ratified the UNCLOS in 1995 and the Anti-Maritime Piracy Bill, 2019 is an outcome of that commitment. International law has emerged as a guardian of human rights after the Second World War. International law considers piracy on the high sea as “hostishumani generis,” i.e., the enemy of all mankind (Bubner 1990). However, the International Court of Justice has no jurisdiction to try and punish pirates. The piracy on high seas affect the export and import in the Gulf of Aden, the Straits of Malacca, South China Sea, South African & the Caribbean; the Indian Ocean, West and East Africa, etc., and other coastal countries where crude oil and consumer goods have been ransacked by the few members of pirates ships (Hodgkinson, 2015).

Malaysia is home to one of the world’s busiest maritime channels which are the Straits of Malacca. With two important Malaysian ports located near the Straits of Malacca, namely Port Klang and Port of Tanjung Pelepas, the maritime violence issue will have a detrimental effect on the promotion of these two ports worldwide transshipment centres for container traffic (JN Mak, 2006). The Straits of Malacca have long been recognized as one of the world’s most vital and busiest shipping lanes and can legitimately be claimed to be one of the most valuable and critical.
commercial routes in the world, not just for maritime nations and international users, but also for the littoral governments that surround it. Southeast Asian countries rely greatly on the Malacca Strait, and if it were to close, it would jeopardize the countries and regional economic progress. However, the continued increase in the number of vessels transiting the Straits daily may exacerbate the Straits’ susceptibility and risks. The expected and actual danger does not stop with the Straits’ environmental component; it also includes the Straits’ safety and security from marine crime such as piracy, armed robbery, and maritime terrorism. While Malaysia recognizes the Straits as a strait used for international navigation in which transit passage is permitted, it also requires the cooperation of the Straits’ user states to maintain the Straits’ continued usage for the benefit of all. In light of this, Malaysia and Indonesia have proposed broadening the scope of burden-sharing under Article 43 of the 1982 Convention to include costs associated with the administration of security in the Straits (Y. Song, 2007). The Malacca Strait has historically been a hotspot of transnational crime, most notably piracy (Adam J & Mark J, 2003). Maritime terrorism, along with piracy, is a topic that is constantly brought up about the strait’s safety, even though no incidences of maritime terrorism are known to have happened. Despite this, maritime terrorism is a possibility in the Strait of Malacca, and there are terrorist groups with known maritime capabilities that intend to exploit the Strait of Malacca as a target. Maritime terrorist acts may have a variety of purposes and “may seek to cause human casualties, economic losses, environmental damage, or other undesirable consequences, alone or in combination, of minor or major magnitude,” (Paul W & John F, 2007).

Many countries plagued with piracy are rich with resources but they cannot do anything and still facing the problem of piracy. Many ships carry incredibly dangerous material like million of tons of oil, warheads, and nuclear items also. Moreover, economic hardship is another issue because 80% of shipping trade plays a pivotal role in the export-import of oil & other consumer goods (Ruhal 2013). The UNCLOS doesn’t counter piracy at the threshold and there are contradictions to General Principles of International Law and security measures adopted by the Sovereign member States. Whereas, India has clearly stated its jurisdictional extent in case of piracy on high seas in the present Bill to counter and combat piracy. However, there is scope to have research on piracy on high seas and solutions to end the menace of piracy under the present Bill and UNCLOS. Around the World 1/3rd of ships pass through the Gulf of Aden (Marsden 2017). This is one of the busiest routes of the sea where Somalia is a failed state (Brophy 2014). There is no government and since 1991 and there is TFG (Transitional Federal Government) which is not able to handle the issue of Piracy. Poverty, starvation, and other things show that Somalia does not satisfy their need. There is no economic gain for countries like the USA, UK to intervene like in the case of Iraqi oil. Therefore, very less humanitarian help has been provided. So far in 2009 and it is increasing, pirates have attacked 66 ships in the waters off Somalia and the Gulf of Aden. About 20,000 ships a year pass through the Gulf, a direct route to the Suez Canal (Papadopoulos 2019). Even the economic sanctions imposed by UNSC would not affect it as virtually there is no government in Somalia (Peksen 2019). In Asia, Malaysia and India are affected by the sea-piracy and there are many issues for the jurisdictions, national laws to combat sea piracy. Although pirates may change their target areas according to the time but there are many issues for the jurisdictions, national laws to combat sea piracy in the Southern Asian and Southeast Asia. Therefore, the present study is focused on India, and Malaysia to discuss the issues and challenges relating to sea piracy.

Maritime Piracy and the Indian Ocean

The Indian Ocean covers a water surface area of some 73,600,000 km with a coastline of 66,526 km. The Indian Ocean plays a vital role in the world’s oil production and global maritime trade.

During 2015–16 India’s 95 percent trade by volume and 68 percent trade by value come via the Indian Ocean and 80 percent of India’s crude oil imported by sea via the Indian Ocean (Jaishankar 2018). Fishing in the Indian Ocean accounts for almost 15% of the world’s total, aquaculture in the region has also grown 12-fold since 1980. Mineral resources such as nodule containing nickel, cobalt, and iron, and massive sulphide deposits of manganese, copper, iron, zinc, silver, and gold present in sizeable quantities on the sea bed. Indian Ocean coastal sediments are also important sources of titanium, zirconium, tin, zinc, copper and various rare earth elements are also present. Further, particularly in some sub-regions of the Indian Ocean, it is highly insecure and unstable due to pirates, smugglers, and terrorists. The elements of a maritime security regime are international peace and security; sovereignty/territorial integrity/political independence; protection from crimes at sea; resource security; environmental security; and security of seafarers and fishermen (Hong 2012). Taking into account India’s offshore oil production and petroleum exports, India’s sea dependence on oil is about 93 percent, according to the Indian Navy (Mann 2017). India is also the fourth-largest importer of liquefied natural gas (LNG), with about 45 percent coming by sea (India Environment Portal Knowledge for change, 2014-15).

Although India does not have any specific law upon piracy, the present statute are not exhaustive to curb and combat the maritime piracy as they are old enough and various in number though they are inadequate in the current scenario. The existing legislations are deals with and includes, ship financing, maritime liens, carriage of goods by sea; marine insurance; laws of ownership and
registration of ships; ship sale and building contracts, limitation of liability, ship mortgages; manning of ships; the law of collisions, salvage, towage, and pilotage; claims and priority of the same; the law of marine pollution, as well as the Customs and Port laws.

**International Law on Piracy and Indian Response**

Initially, it has been thought that International law is the only instrument that can curb this menace. United Nations Convention on Law of The Sea, 1982, provides the legal framework for setting out a formula where states have jurisdiction over illegal activities at sea, and the states in the Gulf of Aden region are parties to the UNCLOS including Somalia, Yemen, and Kenya. It is very well defined that all states with warships in the area are parties to the convention, except the US. Piracy provisions under UNCLOS are identical to those in the 1958 Geneva Convention on the High Seas. The USA is not a party to this convention but when it comes to themselves in matters like terrorism; it started actively lobbying for international cooperation. Out of 159 original UNCLOS signatories, 29 have yet to ratify, certain coastal states have not yet expressed their consent to be bound by the convention. The following states are not parties to the convention (Hodgkinson, 2015).

(1) 5 in Africa (Republic of the Congo, Eritrea, Liberia, Libyan Arab Jamahiriya, and Morocco)
(2) 10 in Asia (Cambodia, Democratic People’s Republic of Korea, Iran the Islamic Republic of, Israel, Niue, Syrian Arab Republic, Thailand, Timor-Leste, Turkey, and UAE)
(3) 6 in Latin America and the Caribbean (Colombia, Dominican Republic, Ecuador, El Salvador, Peru, and Venezuela).

Article 100 of the UNCLOS confers power and also imposes a duty upon states, states duty to cooperate in the repression of piracy on high seas i.e., all states shall cooperate to the fullest possible extent in the repression of piracy on the High Seas or in any other place outside the jurisdiction of any state. This duty is also applied to piracy in Exclusive Economic Zone because of Art.58 of the Convention which provides that all states, whether coastal or land-locked enjoy EEZ subject to relevant provisions of UNCLOS, 1982. But the hard reality is that there is no cooperation between member states because of some political conflict amongst the various states.

Generally, it is said that in the case of piracy all states have jurisdiction over who captures the pirates. It is given under customary international law that pirates were considered “hostium humani generis” or “the enemy of mankind” and any country could arrest and try them under their jurisdiction (Eugene Kontorovich 2012). UNCLOS also provides for Universal Jurisdiction, which means any Warship or Ship authorized in this regard by any state can arrest pirates and try them. Moreover, UNCLOS provides for extended jurisdiction up to EEZ in matters like piracy. But states lack the political will to fight pirates and also economic considerations drive states to shy away from fighting piracy. It is because of pirates are considered to be stateless persons and if any country catches them then it is the responsibility of the state to give them natural justice and appropriate treatment? (Burgess 2020) In one case of the UK after capturing pirates, they released them because of the fear that they would ask for asylum after completion of the punishment (Middleton 2009).

Although Article 105 provides the jurisdiction to try pirates to the arresting states and there are often problems in prosecuting pirates because of a lack of evidence; witnesses etc., that they committed an act of piracy. UNCLOS does not require states to extradite or prosecute pirates present in their territory. There are other legal barriers in prosecuting pirates in international waters, for example, in India’s Indian Penal Code, 1860 provides for prosecution of foreigners within its territorial limits only – Sec-2, IPC. Dutch is using the age-old law (17th century) against “sea-robbery” to prosecute. Warships that capture pirates have no jurisdiction to try them. NATO being a regional organization has a no-detention policy in place either they will kill or release. Prosecutors have a hard time gathering witnesses, finding translators. Pirates have to be taken to the courts of the state which captures the pirates they have to be given a fair trial. Even if charges are proved the states are reluctant to imprison pirates, as they would be saddled with them upon their release. (Mostly pirates happen to be “State-less persons”). India has ratified UNCLOS in 1995 and in response to its commitment it has also brought the Anti-Piracy Bill, 2019.

**Role of International Organizations and Sea Piracy**

International laws and organizations play a very important role to protect and preserve human rights, the environment, international trade, security, and peace, etc globally. Some of such international organizations are UNSC, Interpol, International Criminal Court, International Court of Justice, International Maritime Bureau dealing with piracy have been discussed below. United Nations Security Council (UNSC) is the most important organ of the UN which is meant for international peace and security of all the nations. Does it work in curbing current issues like piracy? If we look into the resolutions passed by the UNSC, it will give sufficient information regarding piracy but what is required is has not been done by the UNSC. The resolutions passed by the UNSC will give sufficient information regarding piracy but it is not working for the resolutions of these issues.

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1The Indian Penal Code, 1860.
relating to piracy. Interpol is a central repository for professional and technical expertise on transnational organized crime and as a clearinghouse for the collection, collation, analysis, and dissemination of information relating to organized crime and criminal organizations. It also monitors the organized crime situation on a global basis and coordinates international investigations. Interpol’s mission in this regard is to enhance cooperation among member countries and stimulate the exchange of information between all national and international enforcement bodies concerned with countering organized crime groups and related corruption. Interpol serves as a forum for sharing information about the crimes between the states and it does not have power beyond that so, the question is come up whether Interpol was not able to share information about piracy. International Criminal Court is an international criminal tribunal that sits in Hague, Netherland. The ICC has jurisdiction to prosecute individuals for the international crimes of genocide, crimes against humanity, war crimes, and the crime of aggression. Although the United States, in the past, has agreed with the ad hoc tribunals such as Nuremberg, Japan, Rwanda, and Yugoslavia, and has consistently agreed that a need for permanent international criminal court exits, there has been much resistance to the current International Criminal Court but despite that opposition International criminal court has always been at the top. And After World War II, the United States, the United Kingdom, the Union of Soviet Socialist Republics (USSR) (Russia), and France, under a Charter drafted in London along with other Allies formed an International Military Tribunal (IMT) to prosecute German war criminals (Hafner-Burton 2012). However, Art.5 of ICC Statute (Rome) gives jurisdiction to ICC to try cases of “Crimes against humanity.” It includes all the offenses which are against humanity and Art.7 gives the list of Crimes against humanity but Piracy is not included in it. And this is bizarre in the Rome statute. The international court of Justice (ICJ) has no jurisdiction in piracy matters; it acts as a world court and it has dual jurisdiction i.e., Disputes of a legal nature that are submitted to it by States i.e., contentious jurisdiction and Advisory opinions on legal questions at the request of the organs of the United Nations or specialized agencies authorized to make such a request i.e., advisory jurisdiction. The ICJ does not have jurisdiction. Because Piracy essentially being an issue between individual and state and doesn’t fall under the ICJ jurisdiction. International Maritime Bureau is one of the effective organization which is working efficiently as compare to other organizations. In 1992 – The international chamber of commerce’s IMB proposes to set up a Piracy Reporting Centre the Object of International Commercial Crime services is to combat all forms of Commercial crime. The main aim of the piracy reporting center is to raise awareness within the shipping industry, which includes the shipmaster, ship-owner, insurance companies, traders, etc, of the areas of the high risk associated with piratical attacks or specific ports and anchorages associated with armed robberies onboard ships. The Intentional Maritime Organisation has live reports about piracy and produces a monthly report on actual attacks and attempted attacks of piracy at high seas. Another organization is the International Maritime Bureau a specialized department of the International Chamber of Commerce that provides information about piracy at high seas. It disseminates information about piracy but doesn’t fight pirates because it is a private body and as such, they have certain limitations because only warships and authorized government ships can fight against pirates.

**Anti-Maritime Piracy Bill, 2019 and UNCLOS**

The Anti-Maritime Piracy Bill, 2019 was introduced in Lok Sabha by the Ministry of External Affairs, Mr. Subrahmanyan Jaishankar in December 2019. The reason behind introducing this bill is the growing concern for the maritime piracy. (The Anti-Maritime Piracy Bill, 2019). The Gulf of Aden, which separates Somalia and Yemen and connects the Arabian Sea to the Red Sea and through the Suez Canal to the Mediterranean Sea, has seen a major spurt in attacks by pirates operating from Somalia since 2008. This route is used by about 2000 ships each month for trade between Asia and Europe and the East coast of Africa. With the enhanced naval presence in the Gulf of Aden, pirates shifted their area of operations eastwards and southwards. This led to a flurry of piracy incidents towards the western coast of India as well. India does not have separate domestic legislation on piracy. The provisions of the Indian Penal Code about an armed robbery and the Admiralty jurisdiction of certain courts have been invoked in the past to prosecute pirates apprehended by the Indian Navy and the Coast Guard but in the absence of any specific law relating to the offense of maritime piracy in India, problems are being faced in ensuring effective prosecution of the pirates. With the increasing incidences of piracy, including within India’s Exclusive Economic Zone, and the increasing number of pirates apprehended by the Indian Naval forces, the need is felt for comprehensive domestic legislation on piracy, which is an outcome of the commitment made by India by signing the United Nations Convention on the Law of the Sea (UNCLOS) in the year 1982 and ratified in the year 1995.

Because of the above, it has been decided to bring about domestic anti-piracy legislation for the prosecution of persons for piracy-related crimes and to promote the safety and security of India’s maritime trade including the safety of our vessels and crew members (The Anti-Maritime Piracy Bill 2019).

The Bill seeks to achieve the following objective;

(a) to make the provisions of the proposed legislation applies to all parts of the sea adjacent to and beyond the limits of the Exclusive Economic Zone of India;
(b) to make the act of piracy on high seas an offense punishable with imprisonment for life or with death;
(c) to provide for punishment for attempt to commit an offense of piracy or being an accessory to the commission of an offense;
(d) to provide for the presumption of guilt in case certain conditions are satisfied;
(e) to make the offense extraditable;
(f) to enable the Central Government, in consultation with the Chief Justice of the concerned High Court, to specify certain courts as Designated Courts for speedy trial of offenses of piracy under the proposed legislation.

The United Nations Convention on Law of the Sea, 1982 is the only international law that provides the provision to curb piracy relating to issues on high seas also known as the law of the sea. Though the provisions of the convention are not exhaustive in the matters of States jurisdiction on high seas, and there is no uniform law has been established to deal with the pirates and piracy specifically. UNCLOS provides that the arresting State's municipal law would apply upon the pirates as well as it confers power and also imposes a duty upon states, states duty to cooperate in the repression of piracy on high seas, i.e., all states shall cooperate to the fullest possible extent in the repression of piracy on the High Seas or in any other place outside the jurisdiction of any state.

**Extent and Jurisdiction**

Piracy is robbery on the high seas outside the 12 nm from the land of any state for private ends. If armed robbery, murder, and abduction are committed or attempted within 12 nm of land then it will be dealt with by the municipal law of the state under whose territorial waters it is committed. Whereas, a combined reading of Art.57, Art.58 (2), and Art.105 manifest that State territorial jurisdiction extends up to Exclusive Economic Zone in matters of Piracy.2

Even every state has no specific municipal laws relating to piracy because the international law kept it open to the states to deal with the piracy as per their convenience.3 The problems in implementing the laws relating to non-state actors are difficult because pirates are considered to be non-state actors as they don’t belong to any nation. Then either the prosecuting state has to punish the pirates or to keep them in their state till the prosecution is over and after that also have to bear the burden of pirates. This was the big time dilemma for prosecuting states to how to deal with the piracy issues. The Bill of 2019 provides that the jurisdictional extent of the provisions of this Bill shall apply to all parts of the sea adjacent to and beyond the limits of the Exclusive Economic Zone of India.

**The Concept of Sea Piracy and definition under the Anti-Maritime Piracy Bill, 2019**

The definition of piracy and laws relating to piracy are ambiguous therefore there is difficulty in implementing international law, whereas; India has also borrowed the definition of piracy under the present Bill, 2019 from the UNCLOS. Also, international organizations merely emerged as a failure to deal with piracy. This research carries out the need to review the Anti-Maritime Piracy Bill, 2019, and its commitment towards the UNCLOS because the incidents of piracy are increasing day by day and there is no proper mechanism to deal with piracy under international law. Does the Anti-Maritime Piracy Bill, 2019 would fulfill its core objective? Do the contradictions present under the UNCLOS is the background before the draft of the present Bill? Does the present Bill is exhaustive to counter and combat piracy on high seas? These are the above-mentioned questions regarding law and piracy which should be discussed in the light of the Anti-Maritime Bill, 2019 and UNCLOS. The UNCLOS doesn’t counter piracy at the threshold and there are contradictions to General Principles of International Law and security measures adopted by the Sovereign member States. Therefore there is a need to have depth research on piracy on high seas and solutions to end the menace of piracy.

In the case of R v. Dawson,4 it was held by the Privy Council that “the earliest element in the definition of piracy was Animus Furandi, which means the intention to rob a vessel on high seas is considered to be piracy in any waters within the jurisdiction of UK admiralty (Charles 1935). This was the first definition of piracy pronounced by the Privy Council.

The most interesting case was of Re Piracy Jure Gentium,” the Privy Council held that actual robbery was not an essential element, as a frustrated attempt to commit piratical robbery is equally piracy Jure Gentium (piracy under international law) (Bantekas and Nash 2007). Issues relating to piracy have been started for discussion over the periods.

The convention on High Sea, 1958, the first time mentioned piracy on High Seas, and the Art.101 of the United Nations Convention on Law of Sea (UNCLOS) defines piracy. Further India has introduced the Anti-Maritime Piracy Bill, 2019 and borrowed the definition of piracy from the UNCLOS,

Section 2(1)(f) defines piracy as;
“piracy” means –

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1United Nation Convention on Law of the Sea 1982.
2United Nation Convention on Law of the Sea 1982, art.105.
3(1696) 13 ST TR 451.
4(1934) AC 856.
(i) any illegal act of violence or detention or any act of depredation committed for private ends by the crew or any passenger of a private ship or a private aircraft and directed –

(A) on the high seas against another ship or aircraft or person or property on board such ship or aircraft;

(B) against a ship, aircraft, person, or property in a place outside the jurisdiction of India;

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

(iii) any act of inciting or of intentionally facilitating an act described in sub-clause (i) or sub-clause (ii); or

(iv) any act which is deemed piratical under the international law including customary international law;

The definition of piracy under this bill is just a copy of the definition of piracy under Article 101 of the UNCLOS. As per the definition, piracy involves acts of violence on the high seas. Instances of crew killing, crew injuring, kidnapping, taking hostages, crew threatening and crew assaulting. etc. This definition does not consider maritime terrorism which is another growing issue.

**Offences and Punishment under the Bill**

The Bill provides provisions for the punishment of piracy, as well as attempts to commit piracy and organizing and directing others in an act of piracy.

Section 3 of the Bill states that whoever commits any act of piracy shall be punished with imprisonment of life; or with death if such person in committing the act of piracy causes death or an attempt thereof and also shall be subject to restitution or forfeiture of property involved in the commission of such offense.

Section 4 of the Bill provides punishment for an attempt to commit piracy, it states that whoever attempts to commit the offense of piracy or aids or abets or counsels or procures for the commission of such offense shall be punished with imprisonment for a term which may extend to 14 years and shall also be liable to fine.

Section 5 of the Bill provides punishment for organizing and directing others in act of piracy, it states that whoever participates or organizes or directs other people to participate in an act of piracy shall be punished with imprisonment for a term which may extend to 14 years and shall also be liable to fine.

**The procedure of arrest and seizure before and after the Bill, 2019**

Section 6 of the Bill provides provision for the conferment of power of arrest and investigation upon the Central Government, who by notification, confer the powers of arrest, investigation, and prosecution of any person exercisable by a police officer under the Code on any of its Gazetted officer or such officer of a State Government. Section 7 of the Bill provides provision for the arrest and seizure and the procedure for such arrest and seizure to be carried out. It states that on the high seas or any place outside the jurisdiction of India, a pirate ship or aircraft or any other ship or aircraft taken for piracy and under the control of pirates may be seized and the person on board may be arrested and the property on board may be liable to be seized. A seizure on account of piracy may be carried out only by warships or military aircraft of the Indian Navy or the ships or aircraft of the Indian Coast Guard or other ships or aircraft marked and identifiable as being on government service and authorized for such purpose.

Article 105 of the UNCLOS provides that on the high seas, or any place outside the jurisdiction of any state every state may seize pirate ship or aircraft, or a ship or aircraft have taken under the control of pirates and arrest the person or seize the property on board

**Designated Court and its Jurisdiction**

Section 8 provides provision for the designated court for speedy trial of offenses under this code, whereas Section 9 provides provision for the jurisdiction of the designated court.

Section 8 states that the Central Government shall, after consulting the Chief Justice of the concerned High Court, by notification, specify –

(i) one or more Courts of Sessions in a State, to be the Designated Court for this Act; and

(ii) the territorial jurisdiction of each such court.

Section 9 states that the Designated Court shall have jurisdiction to try an offense punishable under this Act where such offense is committed –

(i) by a person who is apprehended by, or is in the custody of, the Indian Navy or the Indian Coast Guard, regardless of the nationality or citizenship of such person;

(ii) by a person who is a citizen of India or a resident foreign national in India or any stateless person:

Further, the Court may try a person even if the person is not physically present in the Court. The Court will not have jurisdiction over offenses committed on a foreign ship unless an intervention is requested by:

(a) the country of origin of the ship,

(b) the ship-owner, or

(c) Any other person on the ship.

Warships and government ships employed for non-commercial purposes will not be under the jurisdiction of the Court. Article 105 of the UNCLOS states that the courts of the State which carried out the seizure may decide upon the penalties to be imposed, and may also determine the action to be taken about the ships, aircraft, or property, subject to the rights of third parties acting in good faith.
The provision relating to the protection of action taken in good faith has also been provided under Section 15 of the Bill, 2019.

**Presumption of guilt**

Section 11 of the Bill provides provision for the presumption of guilt where a person is accused of having committed an offense punishable under this Act, the presumption of guilt will be on the accused if: (i) the accused is in possession of arms, explosives and other equipment which were used or intended for use in committing the offense, (ii) there is evidence of the use of force against the ship’s crew or passengers, and (iii) there is evidence of the intended use of bombs and arms against the crew, passengers or cargo of a ship.

**The dynamics of the concept of extradition**

Extradition is an act where one jurisdiction delivers a person accused or convicted of committing a crime in another jurisdiction, over to their law enforcement. It is a cooperative law enforcement process between the two jurisdictions and depends on the engagements made between them.

The provision under the Bill provides the offenses under this Act shall be deemed to have been included as extraditable offenses and enabling in all the extradition treaties made by India with the Convention States (The Anti-Maritime Piracy Bill 2019). The provisions relating to extradition were not found in the UNCLOS, but India has drafted the provision of extradition in the Bill to meet the current scenario and to uphold international law principles. As we have discussed above various issues regarding piracy and obstacles are magnificient in curbing the menace. Here it would not be possible to curb piracy at all if the following measures have not been taken into consideration.

That maritime terrorism must be included in the Anti-Maritime Piracy Bill, 2019 as maritime terrorism is the new facet of piracy. Unauthorized broadcasting from the high seas should also be included under the Bill, 2019 as the provision for the same has been dealt with under Article 109 of the UNCLOS.

There should be a separate international police force which would solely deal with the piracy or in the alternative, individual states or group of states may be obligated, under the auspices of UNSC, to patrol certain given international sea routes mandatorily. Though today most of the states do the patrolling it is not mandatory. All the UN members should be made to contribute both in money and men (Contribution in par with the volume of international trade). There should be compulsory membership for all the UN members without any reservations in case of piracy.

Piracy should be brought under the definition of piracy and the Jurisdiction may be given to the ICC, either by amending Article 7 of the Rome Statute or by amending UNCLOS. And also it can be brought under the definition “Crime against Humanity.” General Assembly, considering the urgency and magnitude of the issue, should pass a Resolution, “Seeking all the member nations to Cooperate in curbing piracy.” The international community could, for example, set itself the long-term objective of creating an international court of justice to deal solely with acts of piracy. Also, it could set up courts with regional jurisdiction. The latter would deal with acts of piracy perpetrated in international water or intervene if national courts declare.

Though recently on 29 January 2009, 20 governments of the Western Indian Ocean and the Gulf of Aden, adopted the Djibouti code of conduct modeled on The Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (RECAAP) agreement but covers more matters it is not a formal agreement. Purpose to repress piracy and ARAS by

1. Information sharing (with national focal points)
2. Interpolating ships suspected of engaging in piracy
3. Ensuring appreciation and prosecution of pirates
4. Uniform reporting criteria for incidents

Multiple states with legitimate interests should liaise and coordinate to facilitate rescue, interdiction, investigation and prosecution.

**Anti-Maritime Piracy Law – Malaysian Perspective**

**Background: Maritime Security in South East Asia**

The shift in the maritime security environment in South East Asia (SEA) is indisputable. It has moved from the common non-traditional concerns of maritime piracy and armed robbery to the threat of maritime terrorism and other transnational issues, namely concerning the protection of the marine environment, and the use of the maritime domain for smuggling activities (Sumanthy 2014). Generally, piracy in Southeast Asia has changed in nature from piracy in the late 1990s to the mid-2000s. Significant changes include shifted location for piracy hotspots and waves of attacks on specific types of vessels, such as tugs and barges. The most significant period between the mid-2000s and the present is the decline of reported attacks in the Malacca Strait and the shift of pirate activity into the Singapore Strait and the South China Sea and the re-emergence of Indonesia as the most pirate-prone country in the world (Caroli 2014).

Several SEA countries are involved in disputes with one another. This includes Thailand’s tense relationship with Myanmar, the Philippines, and Malaysia over the state of Sabah, the multiplicity of claims in the South China Sea by Philippines, Malaysia, Vietnam, and Brunei, territorial disputes between Malaysia and Indonesia and Malaysia and
Thailand, and tensions between Singapore and Malaysia over the delimitation of maritime boundaries around Pedra Branca, Middle Rocks and South Ledge. Since the maritime boundaries are not established, the large sea areas in Southeast Asia are highly contested (Sumanthy 2014). Southeast Asian governance beyond the nation-state is fundamentally influenced by the “ASEAN Way.” Thus, regional regimes in Southeast Asia are rather informal, process-based structures without any binding qualities. This specific form of cooperation allows nation-states to further their interests collectively without surrendering parts of their national sovereignty. As effective cooperation cannot be measured through formal patterns or traditional output scores, informal mechanisms, such as confidence-building measures (CBM) gain importance. From this perspective, ASEAN can be understood as a regional confidence-building mechanism that enhances peace and security by reducing uncertainty among its member’s Boundary demarcation and delimitation and disparities in national interests among the member countries of ASEAN are clear examples of the fragility of the region’s CBM. These pose serious impediments to the expanded intra-ASEAN defense cooperation that narrows down to naval cooperation. The current status of regional maritime security scenario revolves around the issues of maritime security and cooperation in ASEAN and also among the countries in the Asia Pacific, such as maintaining freedom and safety of navigation, addressing piracy and sea robberies, non-traditional threats, and boundary delimitation among the claimants in the South China Sea. In the regional context, maritime security and cooperation are important as they contribute to the pillars of ASEAN community building (Lowen 2014).

**Malaysia**

Located smack in the middle of key trade and shipping routes in Southeast Asia, Malaysia is highly dependent on the sea to generate economic activities. Trade amounted to 126 percent of Malaysia’s gross domestic product and a good portion of that came from maritime trade. The often-quoted figure is that around 80–95 percent of all Malaysian annual trade is seaborne-dependent at some stage. Bordered by Thailand, Indonesia, Singapore, and Brunei, and situated along one of the most strategically significant waterways in the world – the Straits of Malacca–Malaysia’s geography is dominated by its two coastlines 4,675 kilometers. This waterway is an economic artery not only for Malaysia, but the rest of the world as well. More than 70,000 vessels carrying one-third of the world’s commerce and half of its energy needs transit through the narrow corridor each year (Simon 2010). Forced by geographic constraints to transit the most congested waterway in the world at slow speeds, hundreds of vessels making their way through this “Dark Passage” (Gwin 2007) daily are exposed and vulnerable. Given these facts, it is not difficult to understand why the Malacca Straits have continued to be an attractive target for maritime pirates and terrorists (Cronou 2012). Malaysia is bounded by the Straits of Malacca, South China Sea, Andaman Sea, Sulu Sulawesi Sea, and the Indian Ocean and faces many issues and challenges in safeguarding her maritime zone. Malaysia’s maritime areas cover the internal waters, territorial seas, continental shelves, exclusive economic zone, and air space over the zones. Malaysia’s economy is strongly dependent on offshore natural resources of petroleum and gas and her maritime domain features busy shipping sea lanes of communication (SLOCs), i.e., Strait of Malacca and the South China Sea, and the Indian Ocean, which act as gateways for the nation’s trade. The SLOCs that link Europe, West Asia, and South Asia with East Asia straddle the Straits of Malacca and the South China Sea. Hence the seas play a vital role in the nation’s life. (P. Sumathy, 2014)

**Issues and challenges in Malaysia’s Maritime Security**

There are both traditional and non-traditional maritime security threats to Malaysia. Primarily, the traditional treats concern on the issues of geopolitics and external power relations, maritime boundary delimitation, securing SLOCs, military activities at sea, and the implication of arms/ naval build-up by navies in the region. While the non-traditional threats in Malaysia are divided into three categories, i.e., transnational crimes including smuggling, piracy, slave trading, and illegal logging; illegal seaborne including illegal immigration and criminals and terrorist movement across borders and environmental and economic issues, which includes accidental spill, illegal dumping, or illegal fishing. There are multiple agencies involved in maritime security in Malaysia, all according to their own significant function table 1 below shows the agencies involved in Malaysian maritime security.

| Function                  | Agency                                      |
|---------------------------|---------------------------------------------|
| Policy Formulation        | Cabinet and Prime Minister’s (PM) Department|
| Foreign Relations         | Ministry of Foreign Affairs                 |
| Management/Planning       | Ministry of Defence (Policy Division), PM’s Department |
| Coordination               | National Security Council, Malaysia         |
| Enforcement               | Royal Malaysian Navy (RMN), Malaysian Maritime Enforcement Agency (MMEA), Marine Operation Forces (MOP) |
| Research                  | Maritime Institute of Malaysia, MIDAS, Universities |
| Education and Training    | Universities, MMEA, RMN                     |

One of the serious threats which Malaysia has to face is contemporary maritime piracy. Among maritime security threats, those posed by pirates or sea
robbers attract particular international interest. Sea piracy mushroomed enormously after the end of the Cold War, and waters close to Malaysian territory (the Strait of Malacca, the South China Sea, the Sulu Sea) are affected by maritime piracy. According to the International Maritime Bureau, the number of actual and attempted piracy attacks in Malaysia, the Malacca Strait, and the South China Sea is significant, compared to the whole SEA region (Lukasz 2018).

As for Malaysia, Malaysia does not have a specific law on anti-piracy. The Penal Code of Malaysia has thus become the principal law to prosecute pirates for the crimes of maritime piracy. Major offenses such as robbery, murder, causing hurt, death or threat of causing hurt or death, hostage-taking, and extortion are defined and criminalized by the Penal Code of Malaysia. Hence, there is a wide selection of laws to apprehend, prosecute and punish the pirates for the crimes of piracy in Malaysia. Among the statutes that can be used for this purpose would include the Penal Code [Act 574], Court of Judicature Act 1964 [Act 91], Criminal Procedure Code [Act 593], Malaysian Maritime Enforcement Agency Act 2004 [Act 633], Arms Act 1960 [Act 206], Firearms (Increased Penalty) Act 1971 [Act 37], Police Act 1967 [Act 344], Dangerous Drug Act 1952 [Act 234], Explosives Act 1957 [Act 207], Corrosive and Explosive Substances and Offensive Weapons Act 1958 [Act 357], Kidnapping Act 1961 [Act 365], Prevention of Crime Act 1959 [Act 297], Security Offences (Special Measures) Act 2012 [Act 747], Prevention of Terrorism Act 2015 [Act 769], Special Measures Against Terrorism in Foreign Countries Act 2015 [Act 770], National Security Council Act 2016 [Act 776], Customs Act 1967 [Act 235], Immigration Act 1959 [Act 155], Fisheries Act 1985 [Act 317], Exclusive Economic Zone Act 1984 [Act 317], Continental Shelf Act 1966 [Act 83] and Environmental Quality Act 1974 [Act 127] (Adibah et al. 2020).

**Legal Response to Maritime Piracy: Malaysian Maritime Enforcement Agency (MMEA) Act 2004**

The formation of the Malaysian Maritime Enforcement Agency (MMEA) in 2005 heralded the beginning of the transformation and consolidation of Malaysia’s maritime security framework and approach.

The MMEA and the Royal Malaysian Navy (RMN) have been actively involved in counter-piracy/counter-sea robbery operations since 2005 and have had a tremendous impact in securing the straits since the Straits of Malacca was listed by the Joint War Committee as a War Risk Zone from 2005 to 2006. Regional co-operation to counter maritime security incidents remains very active and overall threats to the shipping community continue to decrease. Best management practices continue to be the best form of implementation by the shipping community to counter unauthorized access to vessels, be it for piracy/armed robbery, smuggling, stowaway movements, or cargo theft (Sumathy, 2014).

The Malaysian Maritime Enforcement Agency Act, 2004 is relatively concise, comprising a mere 19 sections when compared to other major shipping legislation such as the Merchant Shipping Ordinance 1952 (Malaysia) (MSO 1952). From a prima facie examination, it is clear that the MMEA 2004 is not exhaustive. References are made to numerous other domestic statutes such as the Emergency (Essential Powers) Ordinance, No. 7 1969 (Malaysia), the Continental Shelf Act 1966 (Malaysia), the Fisheries Act 1985 (Malaysia), the Exclusive Economic Zone Act 1984 (Malaysia), the Police Act 1967 (Malaysia), the Customs Act 1967 (Malaysia), the Criminal Procedure Code (Malaysia) and the Mutual Assistance in Criminal Matters Act 2002 (Malaysia). Therefore, to understand the MMEA in its entirety, the mere reference to the 2004 Act itself is not sufficient. In addition to using the legislative aid to interpretation in the Section 2, the MMEA 2004 must also be read and construed in the light of these other statutes (Irwin 2007).

The lead agencies now are the MMEA, which serves as the lead maritime law enforcement agency, the Royal Malaysian Navy (RMN) as the lead maritime defense agency, closely supported by the Royal Malaysian Air Force (RMAF), which conducts maritime air-patrols of its own, the Department of Fisheries and the Royal Malaysian Police’s (RMP) marine police, formally known as the Marine Operations Force. These agencies will have to deal with the three main thrusts of Malaysian maritime security: maritime crime, environmental protection, and upholding the sovereignty of Malaysia’s waters. Maritime crime, which includes robbery at sea and piracy, has been a longstanding problem for Malaysia and one that various agencies in the country continue to grapple with. While most domestically-based syndicates and gangs have been disrupted, incidents of such crime occurring both in Malaysian waters and close to it are still rampant, especially by those criminal organizations operating out of Indonesian waters. Malaysian security operators are often frank in their assessments that there is little they can do, even with a substantial increase in assets and presence, without the cooperation of neighboring countries (Thomas 2018).

**Analysis of Malaysian Sea-Piracy Laws**

The MMEA Act, 2004 was enacted more than 10 years ago to ensure that the management of maritime security is properly streamlined between agencies involved. Nevertheless, it is high time now to evaluate the act on its effectiveness. Malaysia, as discussed above faced grave threats to piracy. The MMEA does not specifically focus on piracy matters, but it is listed under the responsibility of MMEA. Section 6(3) (c) of the MMEA Act 2004 makes it the
The responsibility of MMEA to prevent and suppress piracy on the high seas. Since piracy has generally been accepted as a crime against humankind and is subject to universal jurisdiction, this section is in line with the 1982 Convention. MMEA also gained the right to exercise hot pursuit, as prescribed in Article 111 of the 1982 Convention, under Section 7 of the 2004 Act. Thus Malaysia, in response to frequent incidents of piracy worldwide, is moving positively to provide an effective domestic law enforcement agency, namely the MMEA, to ensure the safety and security of navigation (Hendun 2013).

In discussing this matter, it is relevant to refer to states which have a specific law on Piracy. Some states have developed and adopted relevant national legislation based on Article 101 of UNCLOS, along with prescribed punishment. For example, the United States’ national legislation on piracy not only describes the offense of piracy but also makes piracy punishable by life imprisonment (Kontorovich 2009; Samuel and Menée 1990; Rubin 1990). On the other hand, many states do not have piracy-related national legislation (Ahmad 2020). Perhaps according to the situation of Malaysia, a specific act on Piracy may not be necessary as the MMEA is relevant enough, provided with efforts to strengthen the application and implementation. The definition of piracy is also an important aspect, as any contradiction will contribute to the variation of offenses and also prosecution based on national legislation discussed above. Also, regional cooperation is imperative. Positioned surrounded by neighbouring countries in South East Asia making it impossible for Malaysia to work alone in combatting piracy.

Piracy at the high seas as defined by UNCLOS 1982 is a crime under Malaysian law. Although admittedly the country does not have a single and unified anti-piracy law, piracy has been introduced into the law of the land-primarily through Court of Judicature Act 1964 (CJA), Criminal Procedure Code (CPC), and Penal Code. Section 22(1)(a) of CJA stipulates that the High Court of Malaya shall have the power to try all offences committed on the high seas including the offence of piracy as defined by the international law. Furthermore, S. 22(1)(b) of CJA and section. 127A(1) of CPC provides that Malaysian authority shall have the necessary power to apprehend and prosecute almost all cases of piracy at the high seas provided that the AG can satisfy the court that the alleged offence being committed has in any manner affected the security of the state. Penal Code is the principal Act used to try offences committed within and beyond the territorial jurisdiction of the state. Piracy is not excluded from section. 3 of the Penal Code for the fact that it is an offence which by law may be tried within Malaysia. All other activities often committed during criminal enterprise including the use of criminal force, voluntary causing injury or grievous injury, causing death, robbery, extortion, wrongful detention, or wrongful confinement are all covered under the Penal Code. The Code and many more Acts that criminalize and punish piratical activities are powerful tools for the law enforcement agency of the country. The authority has a very wide selection of laws applicable for the suppression, prosecution, and punishment of piracy at the high seas.

The Concluding Remarks; The Way Forward

Since the space issue of piracy has a greater concern in international law and there have been very few laws that attract sea piracy in a real manner and there is a need for immediate action by the international and national community for the protection of human rights. India has been one of the rapidly developing countries in the world with estimated trade of around 95% of its international trade through the sea. The introduction of the Anti-Maritime Piracy Bill, 2019 is the big step taken by the Indian Government to curb and combat this menace following the international law on the sea. Although it is very late to introduce this bill in India, it has given a new approach to the world. The Bill, 2019 has made many things clear regarding jurisdictional extent, arrest and seizure, punishment and penalties, designated courts for the trial about human rights aspect, and also with provision for extradition, etc. Many countries including India are facing the same menace and every sovereign country should adopt and enact municipal lawson piracy like India is doing with this Anti-Maritime Piracy Bill, 2019.

Therefore, to deal with issues relating to pirates and other criminal activity on high seas it should be regulated by the one code of conduct. Lastly, India could be an example for other countries to make such laws to deal with sea piracy. Apart from that, the establishment of the Malaysian Maritime Enforcement Agency (MMEA) in 2005 marked the beginning of Malaysia’s maritime security framework and strategy being transformed and consolidated. MMEA has set a goal of becoming one of the world’s largest maritime enforcement organizations and has detailed various expedient and integrated strategies to accomplish this aim. These methods and techniques were developed considering the current situation. Along with strengthening security and enforcement capacities, the MMEA will track and investigate the movement of boats and other vessels regardless of their time or place. Additionally, the MMEA has acquired sea, air, radar, and human capital assets to bolster the enforcement system’s capabilities. MMEA Act, 2004 plays a critical part in Malaysia’s fight against piracy. It is attempting to resolve maritime piracy-related issues. At a glance, it
is obvious that the MMEA Act 2004 is note xhaustive. Numerous other domestic statutes are referred to. Despite lackluster legislative framework, the MMEA Act, 2004 has the authority to carryout its tasks as a coastguard and play a critical role in the battle against maritime piracy. The MMEA Act 2004 clearly defines the MMEA’s functions and backs them up with the award of statutory enforcement powers in Malaysian maritime zones. Any legislative change should not be limited to the MMEA Act 2004. In Malaysia’s situation, the MMEA, the Malaysian coastguard, is still struggling to realize its primary purpose of establishing a unified maritime law enforcement organization with several maritime law enforcement functions under one roof. The primary issue appears to be a covert competition between the MMEA and other law enforcement agencies that have jurisdiction over maritime territory under different federal statutes. The MMEA Act should be revised to explicitly vest the MMEA with maritime law enforcement authority in Malaysian maritime zones. Besides that, the Government’s unwavering support is also essential. Simply amending the legislation will not establish the MMEA as a reliable source of maritime policy legislation. If the Malaysian government intends to establish the MMEA as the sole maritime law enforcement agency, this goal will require the engagement and help of multiple governments. Additionally, budgetary and labor aspects should be considered, the MMEA is supposed to receive a military budget to acquire cutting-edge assets such as vessels, aircraft, helicopters, and other technological devices to become an efficient coast guard protecting Malaysia’s maritime security.

A part from the above, multilateral efforts are being made through regional mechanisms such as ASEAN, ARAS, and ReCAAP, as well as bilateral defence cooperation, which is widely regarded as the most effective method of avoiding conflicts between states and enhancing mutual trust and maritime security. Because maritime piracy is not a domestic issue that can be addressed by a single state, it is an international issue that jeopardises international peace and security. It is a menace to global commerce and business. Apart from domestic legislation, there should be a powerful universal mechanism that can attempt to punish pirates through some international court, regardless of whether they have been arrested by any state or individual. It should be taken before an international court for trial, prosecution, and punishment and the arresting state should shoulder the criminal’s burden for the sake of international peace and security.

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