Maritime Security Challenges in Southeast Asia

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Abstract:

Maritime domain has become important since over 90 per cent of world's trade is carried by sea. However, while traditional security threats have witnessed a decline, non-traditional security challenges have emerged and gone beyond the full control of nation-states. Sea Lines of Communication (SLOCs) in Southeast Asia which account for about 15 per cent of the total volume of world trade transits have been facing with security challenges. Those challenges have significantly impacted on maritime security, maritime safety, and international relations in the region. Piracy and armed robbery at sea in Southeast Asian region has been named more common than in any other location worldwide. Illegal, unreported and unregulated (IUU) fishing is a perennial problem which has impinged on relations between littoral states in the region. To date, although there are cooperation mechanisms at different levels built, the effectiveness of them are being questioned.

This chapter will clarify two major maritime security challenges in Southeast Asia namely piracy and armed robbery at sea, and IUU fishing. The effectiveness of Southeast Asian Fisheries Development Center (SEAFDEC) in dealing with IUU fishing and Malacca Straits Patrol (MSP), and the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP) will be examined. The chapter also initiates some implications in dealing with maritime security challenges in the region.

IUU Fishing and Piracy and Armed Robbery against Ships in Southeast Asia

IUU Fishing

In Southeast Asia, countries namely Indonesia, the Philippines, Thailand and Vietnam accounted for 15 per cent (14.32 million tons) of the total world marine capture fish production of 96.43 million tons in 2018.[1] Six nations - Indonesia, Vietnam, the Philippines, Malaysia, Thailand and Myanmar – are among the world's top 20 marine-capture fisheries countries, accounting for nearly one-fifth of total catch.[2] The four countries are also among the world's largest fish producers. The IUU Fishing Index 2019, initiated by The Global Initiative Against Transnational Organized Crime, named all ASEAN member states (except for Laos PDR, a landlocked country) as worst-performing countries by indicator performing IUU fishing.[3]

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[1] Food and Agriculture Organization of the United Nations (FAO). FAO. 2020. The State of World Fisheries and Aquaculture 2020. Sustainability in action. Rome. p.166. http://www.fao.org/3/ca9229en/ca9229en.pdf

[2] Emmy Sasipornkarn. 2019. Thai fishing industry makes headway, but challenges remain. DW, November 13, https://www.dw.com/en/thai-fishing-industry-makes-headway-but-challenges-remain/a-51223387

[3] The Global Initiative Against Transnational Organized Crime. 2019. *The Illegal, Unreported and Unregulated Fishing Index*. January. https://globalinitiative.net/wp-content/uploads/2019/02/IUU-Fishing-Index-Report-web-version.pdf

Illegal, Unreported and Unregulated Fishing (IUU Fishing) is a terminology coined by the Food and Agriculture Organization of the United Nations (FAO) in 2001 and widely used until now. *Illegal fishing* refers to fishing activities: (1) conducted by national or foreign vessels in waters under the jurisdiction of a State, without the permission of that State, or in contravention of its laws and regulations; (2) conducted by vessels flying the flag of States that are parties to a relevant regional fisheries management organization but operate in contravention of the conservation and management measures adopted by that organization and by which the States are bound, or relevant provisions of the applicable international law; or (3) in violation of national laws or international obligations, including those undertaken by cooperating States to a relevant regional fisheries management organization.

Unreported fishing refers to fishing activities: (1) which have not been reported, or have been misreported, to the relevant national authority, in contravention of national laws and regulations; or (2) undertaken in the area of competence of a relevant regional fisheries management organization which have not been reported or have been misreported, in contravention of the reporting procedures of that organization.

Unregulated fishing refers to fishing activities: (1) in the area of application of a relevant regional fisheries management organization that are conducted by vessels without nationality, or by those flying the flag of a State not party to that organization, or by a fishing entity, in a manner that is not consistent with or contravenes the conservation and management measures of that organization; or (2) in areas or for fish stocks in relation to which there are no applicable conservation or management measures and where such fishing activities are conducted in a manner inconsistent with State responsibilities for the conservation of living marine resources under international law.[4]

IUU fishing activities in Southeast Asia happens in mostly in Exclusive Economic Zones (EEZs) of littoral countries because the majority of the sea area in the has come under national jurisdiction rather than being international waters.[5] IUU fishing has occurs in forms of overfishing, destructive fishing, foreign vessels' illegal fishing in EEZs of other countries. Disputed resource rights in the Spratly and Paracel Islands in the South China Sea have led to even more unregulated fishing.[6] IUU fishing catches in Southeast Asia account over one third of reported catches (compared to just 9 per cent in the north-west Atlantic) and there is a little sign of improvement over the past two decades.[7]

A research document released by Asia-Pacific Economic Cooperation Fisheries Working Group pointed out the main drivers for IUU fishing in the Asia-Pacific, including Southeast Asia, are: (i). the lack of domestic management of marine resources and fishing capacity and consequent overfishing of those resources in many economies; (ii). a lack of capacity to enforce fisheries management measures and protect borders;

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[4] FAO Fisheries Department. 2002. Implementation of the *International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing*.Rome, FAO. pp.4-5.

[5] Gary Morgan, Derek Staples and Simon Funge-Smith. 2007. *Fishing capacity management and IUU fishing in Asia*. RAP Publication 2007/16, p.23.

[6] Kim J. DeRidder, Santi Nindang. 2018. Southeast Asia's Fisheries Near Collapse from Overfishing. The Asia Foundation. March 28. https://asiafoundation.org/2018/03/28/southeast-asias-fisheries-near-collapse-overfishing/ (Accessed October 22, 2020).

[7] Martin Russel. 2016. Illegal fishing in south-east Asia. European Parliamentary Research Service. December. https://www.europarl.europa.eu/RegData/etudes/ATAG/2016/595839/EPRS_ATA(2016)595839_EN.pdf (Accessed October 22, 2020).

(iii). Failure to control the operations of vessels operating outside their EEZs; (iv). a lack of alternative employment opportunities for those displaced from fishing; (v). undelimited or disputed boundaries; and (vi). Generally buoyant market conditions for seafood products.[8] International Monitoring, Control and Surveillance (MCS) Network for Fisheries-related Activities further explained that 'as world populations continue to soar, the demand for seafood, an attainable protein resource, increases, and fisheries stocks are harvested beyond their ability to sustainably reproduce'.[9] The demand for fish protein continues to increase leads to the depletion of a large number of the world's fish stocks, including those in Southeast Asia.[10] Somboon added that, the declining fisheries resources in terms of both demersal and pelagic fishes in the coastal and offshore in the context of a quick growth of the fishing industries has pushed a large numbers of fishing vessels to perform illegal fishing outside their national jurisdiction or in the exclusive economic zones (EEZs) of other countries and even in the high seas.[11] Rather than that, huge economic benefits gained and different levels of regulatory enforcement among countries and groupings have made the IUU fishing activities become popular. 'When the risk of getting caught is low, and the proceeds from the crime exceed the consequence of the unlawful act (i.e. sanction), the offender is more likely to engage in non-compliant behavior'.[12] Further, 'Too many poor fishers in ASEAN contribute to the fishers committing IUU fishing to obtain income for their livelihood'.[13]

IUU fishing impacts on economic security, environment, and synergies crimes, and create tension between states. In terms of economy, according to Havocscope (2019), only six out of ten littoral countries in Southeast Asia, namely Brunei Darussalam, Cambodia, Indonesia, Malaysia, the Philippines, Thailand, and Vietnam experienced more than US$ 6 billion loss caused by IUU fishing, accounted more than one fourth of world wide's loss. Indonesia and Vietnam were recorded as two largest victims with the damage of US$ 3 billion and US$ 1.6 billion[14] respectively. From 1990 to 2015, fish stocks in the South China Sea have declined anywhere from 6 to 33 percent, with some falling as much as 40 percent since 2010.[15] There is a warning that, as the competition for remaining fish stocks grows fiercer, the region's entire fisheries

[8] Asia-Pacific Economic Cooperation Fisheries Working Group. 2008. *Assessment of Impacts of Illegal, Unreported and Unregulated (IUU) Fishing in the Asia-Pacific*. APEC Secretariat, p.iv. https://www.apec.org/Publications/2008/11/Assessment-of-Impacts-of-Illegal-Unreported-and-Unregulated-IUU-Fishing-in-the-AsiaPacific (Accessed October 19, 2020).

[9] International Monitoring, Control and Surveillance (MCS) Network for Fisheries-related Activities. *What is IUU Fishing?* https://imcsnet.org/resources/iuu/ (Accessed October 19, 2020).

[10] Magnus Torell, Siri Ekmaharaj, Somboon Siriraksophon, and Worawit Wanchana. 2010. *Strategies to Combat Illegal Fishing and Manage Fishing Capacity: Southeast Asian Perspective. Fish for the People*. Vol.8, No.1, p.11.

[11] Somboon Siriraksophon. 2010. Enhancing the Fisheries Resources in Southeast Asia: Recommended Approaches. *Fish for the People*. Vol. 8 No. 1. p.8.

[12] Directorate General for Internal Policies (European Parliament). 2014. *Illegal, Unreported and Unregulate Fishing: Sanctions in the EU*, July, p.24.

[13] Wen Chiat Lee and K Kuperan Viswanathan. 2020. Framework for Managing Illegal, Unreported and Unregulated Fishing in ASEAN. *Asian Fisheries Science*, Vol.33, Issue.1, p.66.

[14] Havocscope. 2019. *Global black market information, illegal fishing*. https://www.havocscope.com/illegal-fishing/ (Accessed November 1, 2020)

[15] Blake Herzinger. 2017. Assessment of the Threat to Southeast Asia Posed by Illegal, Unregulated and Unreported Fishing. *Divergent Options*. November 27, https://divergentoptions.org/2017/11/27/assessment-of-the-threat-to-southeast-asia-posed-by-illegal-unregulated-and-unreported-fishing/

industry will soon collapse unless all countries fishing in the region cease all destructive fishing practices and reduce harvest by nearly 50 per cent.[16]

IUU fishing has also affected the seafood export activities of the countries in the region due to the regulations related to IUU. By the beginning of 2016, several ASEAN member countries were imposed various sanctions by the European Union (EU). Cambodia was fined a yellow card in November 15, 2012 and a red card in March 24, 2014). The Philippines received a yellow card in June 10, 2014 and a green card in April 29, 2015. Thailand was fined a yellow card in April 21, 2015.[17]

IUU fishing poses a serious threat for marine ecosystems in the region. Thailand's underwater grass system has been severely degraded by that type of bottom trawling, threatening the habitat of some 149 fish species.[18] The damage to coral reefs in Indonesia, caused by the employment of dynamite and/or cyanide to flush out fish, has reached 70 percent.[19] In June 2020, Indonesian government planned to lift a ban on the use of seine and trawl nets to boost catches and thereby attract greater investment in the fisheries sector while marine conservationists and scientists have blamed for overfishing and damage to coastal reef ecosystems.[20] In Vietnam, trawl fisheries play an important role in marine capture fishery in terms of total number of fishing effort and in catch volume.[21] Notably, most of trawls use a "soft ground rope" which could directly contacts the bottom and fish cannot escape because of the ground rope.[22] Therefore, trawls in this case include the bottom trawls which are banned by Vietnamese government. However, bottom trawling is now still at a staggering rate.[23] As a result, the ecosystem along the sea floor is irreparably damaged.[24]

IUU fishing has also synergized crimes, including human trafficking and slave labour. Thailand's seafood sector employs around 800,000 people, roughly 90 per cent of them are migrants from neighboring states and a very large number of these people were trafficked into Thailand.[25] Abused and slave labors in Thai fishing boats have been

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[16] Kim J. DeRidder, Santi Nindang. 2018. Southeast Asia's Fisheries Near Collapse from Overfishing, *The Asia Foundation*, March 28, https://asiafoundation.org/2018/03/28/southeast-asias-fisheries-near-collapse-overfishing/#:~:text=As%20competition%20for%20remaining%20fish,harvest%20by%20onearly%2050%20percent.

[17] Gilles Hosch. 2016. Trade Measures to Combat IUU Fishing: Comparative Analysis of Unilateral and Multilateral Approaches. ITCSD Issue Paper, October, p.35.

[18] Peter Chalk. 2017. Illegal fishing in Southeast Asia: a multibillion-dollar trade with catastrophic consequences. *The Strategist*. 17 July, https://www.aspistrategist.org.au/illegal-fishing-southeast-asia-multibillion-dollar-trade-catastrophic-consequences/

[19] Hanuring Ayu. 2018. Government Policy Directions on Illegal Unreported Unregulated (IUU) Fishing in Indonesia. Proceedings of International Conference "*Internationalization of Islamic Higher Education Institutions Toward Global Competitiveness*", Semarang, Indonesia, September 20th - 21th, p.107.

[20] Basten Gokkon. 2020. *Indonesia to allow back destructive seine and trawl nets in its waters*. Mongabay, 12 June, https://news.mongabay.com/2020/06/indonesia-to-allow-back-destructive-seine-and-trawl-nets-in-its-waters/

[21] Nguyen Ba Thong, 2013. A brief introduction to trawl fishery and management issues in Vietnam. Paper presented at the APFIC Regional Expert Workshop on Tropical Trawl Fishery Management, 30th September - 4th October Phuket, Thailand, http://www.fao.org/3/a-b0083e.pdf

[22] SEAFDEC. *Trawl Fishing*. http://map.seafdec.org/Monograph/Monograph_vietnam/trawl.php

[23] Saigoneer. 2018. Bottom Trawling, Fine-Mesh Fishing Are Wiping out Vietnam's Fish Supplies. 26 December, https://saigoneer.com/vietnam-news/15350-bottom-trawling,-fine-mesh-fishing-are-wiping-out-vietnam-s-fish-supplies

[24] Bottom trawling a threat to the ocean, fishermen. *Viet Nam News*. May 15, 2017. https://vietnamnews.vn/society/376315/bottom-trawling-a-threat-to-the-ocean-fishermen.html

[25] EBCD. 2017. *Combating Transnational Organised Crime in the fishing industry: Global Challenges and International Cooperation*, November 23, https://ebcd.org/event/combating-transnational-organised-crime-fishing-industry-global-challenges-international-cooperation/

found from non-payment and excessive overtime to verbal and physical abuse.[26] Most of the victims come from Cambodia, Laos and Myanmar.[27]

IUU fishing has also complicated straining relations between neighboring states in the region, especially since there are now disputed waters due to the territorial overlapping claims by littoral states surrounding the South China Sea. Therefore, IUU fishing is not merely an economic challenge but a sovereignty issue among countries in Southeast Asia.[28]

The relations between Indonesia with some Southeast Asian countries and China have been negatively affected since Indonesia has sunk dozens of ships from the Philippines, Malaysia, Vietnam, Thailand, Papua New Guinea, and China that have been accused of conducted IUU fishing in Indonesia's Exclusive Economic Zone. Indonesia's move has attracted the objections from those countries.[29] Vietnam and Malaysia diplomatic exchanges were heated up over IUU fishing in recent years.[30] Vietnam asked Thailand to launch an investigation into an attached by Thai Naval forces on Vietnamese fishing boats killing two men and sank two boats in July 2016.[31] Chinese fishing boats which travel too far from their own waters to the Southern part of South China Sea claimed by other claimants have heightened the risk of interstate conflict in Southeast Asia. Notably, Chinese IUU fishing is considered to have helped by generous subsidies on fuel and shipbuilding from Beijing.[32]

Piracy and Armed Robbery against Ships

Piracy and armed robbery against ships are two terminologies, defined by the United Nations Convention on the Law of the Sea (UNCLOS) and the International Maritime Organization (IMO) respectively. Accordance to Article 101 of the UNCLOS, "Piracy" means any of the following acts:

> (a) any illegal act of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:
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> (i) on the high seas, against another ship, or against persons or property on board such ship;

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[26] Nanchanok Wongsamuth. 2020. Exclusive: Thailand found failing to log fishermen's complaints of abuse and slavery. *Reuters*, May 28, https://www.reuters.com/article/us-thailand-workers-slavery-trfn-idUSKBN23405D

[27] EJF. 2013. *Sold to the Sea – Human Trafficking in Thailand's Fishing Industry*, http://un-act.org/publication/view/sold-sea-human-trafficking-thailands-fishing-industry/

[28] Mansur Juned, Galby Rifqi Samhudi, and Rahmat Aming Lasim. 2019. The Impact Indonesia's Sinking of Illegal Fishing Ships on Major Southeast Asia Countries. *International Journal of Multicultural and Multireligious Understanding*, Vol.6, No.2.

[29] Mansur Juned, Galby Rifqi Samhudi, and Rahmat Aming Lasim. 2019. The Impact Indonesia's Sinking of Illegal Fishing Ships on Major Southeast Asia Countries. *International Journal of Multicultural and Multireligious Understanding*, Vol.6, No.2.

[30] VGP. 2020. *Malaysia requested to investigate Vietnamese fisherman's death*, August 18, http://news.chinhphu.vn/Home/Malaysia-requested-to-investigate-Vietnamese-fishermans-death/20208/41249.vgp; Ministry of Foreign Affairs Malaysia. 2019. *Ambassador of Vietnam Summoned to the Ministry of Foreign Affairs*, May 8, https://www.kln.gov.my/web/guest/-/press-release-ambassador-of-vietnam-summoned-to-the-ministry-of-foreign-affairs

[31] Viet Anh. 2016. Thailand urged to account for shooting at Vietnamese boats. *Vnexpress*, July 12, https://e.vnexpress.net/news/news/thailand-urged-to-account-for-shooting-at-vietnamese-boats-3434875.html

[32] Peter Chalk. 2017. Illegal fishing in Southeast Asia: a multibillion-dollar trade with catastrophic consequences. *The Strategist*. 17 July, https://www.aspistrategist.org.au/illegal-fishing-southeast-asia-multibillion-dollar-trade-catastrophic-consequences/

(ii) against a ship, persons or property in a place outside the jurisdiction of any State;

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

(c) any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b).

According to the Code of Practice for the Investigation of Crimes of Piracy and Armed Robbery against Ships of the International Maritime Organization (IMO) Assembly Resolution A.1025(26), "Armed robbery against ships" means:

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

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

Applying the above definitions in Southeast Asia where overlapping jurisdictional and sovereignty claims leads to the fact that very few acts could not be seen as piracy because all of them have occurred in claimants' internal waters, archipelagic waters or territorial seas. Adam Young and Mark Valencia even argued that most sea robberies occur within the 12-mile limit so such incidents are not legally considered piracy.[33] In this chapter the 'piracy and sea robbery' will therefore generally use to describe the activities.

Because of complicated topography, cultural traditions, sovereign and jurisdiction disputes at sea, bad governance capacity at sea, the development of information technology and strong regional and international integration, Southeast Asia has become a hotspot of piracy and sea robbery activities. According to International Maritime Organization (IMO), there were few piracy and sea robbery incidents before 1990s. However, from 1991 to 2019, in the Strait of Malacca and the South China Sea (IMO divides Southeast Asia into the Strait of Malacca and the South China Sea) there were 3,403 in incidents of sea robbery, accounting for 42.52 per cent of the total incidents taking place worldwide, of which 872 incidents in the Strait of Malacca and 2,531 incidents in the South China Sea. The Malacca Straits and the South China Sea are among seas experiencing sea robbery at a large scale.[34] According to ICC-International Maritime Bureau (IMB), from 1993 to 2020, there were 4,827 incidents (including actual and attempted attacks) occurred in Southeast Asia seas, accounting for 63.11% of the 7,648 incidents occurring worldwide.[35] Among Southeast Asian countries, Indonesia, Malaysia and the Philippines witnessed most of incidents. From 1993 to 2020, there were 1,747 cases occurring in Indonesia, accounting for 22.84 per cent and 16.19 per cent of those taking place in Southeast Asia and worldwide respectively. Malaysia and the Philippines have experienced 294 cases and 256 cases respectively. The Straits of Malacca was the location where 236 incidents occurred from 1993 to 2015.[36] IMB has not listed sea robbery incidents from 2016 in the Straits of Malacca.[37] In Indonesia where sea robbery incidents occur the most in the world, apart

[33] Adam Young and Mark Valencia. 2003. Piracy, Terrorism Threats Overlap. *The Washington Times*, July 6, http://www.washingtontimes.com/news/2003/jul/6/20030706-104801-9949r/

[34] Calculated from the data of IMO. 2020. *Reports on Acts of Piracy and Armed Robbery Against Ships: Annual Report - 2016*, MSC.4/Circ.264, Annex 4, page 1, 27 April.

[35] Calculated from ICC-International Maritime Bureau's annual reports.

[36] Calculated from ICC-International Maritime Bureau's annual reports.

[37] Calculated from ICC-International Maritime Bureau's annual reports.

from sovereign concerns[38] leading to low efficiency in international cooperation on counter-piracy, the world's largest archipelago with no coast guard[39] have made the counter-piracy effect low.

According to IMO statistics, from 2008 to 2016, there were 200 crews were taken as hostages and most of them must have paid the ransom at a large amount. Loss of goods and machinery damage caused by piracy are significant. There are no detailed statistics on the specific economic damage caused by the activities; however, the following figures show a significant consequence of this form of crime. Brahma 12 had to spend US$ 1 million for Abu Sayyaf Group (ASG) in exchange for the freedom of 10 crew members in May 2016. In the same month, ASG attacked the tug boat Henry and took four Indonesian crew members hostage. Four members of the Henry were released a week later though it is unclear if a ransom was paid.[40] In addition, concerns about security when navigating through Southeast Asian waters also partially limit the movement of goods across the region.

According to safety4sea, although the number of piracy has decreased significantly, the value of the ship's equipment, the property of the crew and the cargo has been stolen (usually occurring while the vessel is anchored) or robbed (attacked) is still high. In Asia where Southeast Asia accounted a large proportion of piracy incidents, the total worth of goods stolen in Asia at $6.3 billion, up from $4.5 million in 2016.[41]

> "To help protect ships transiting the Moro Gulf, the Philippine Coast Guard deployed 16 sea marshals in Central Visayas to escort six commercial ships each month between Mindanao and Cebu. The average cost per embarkation for a four-day round-trip in the Philippines is between $13,000 and $15,000, with an added $400-$500 for every additional day that the transit takes".[42] (in 2017, *author added*).

Anti-piracy efforts could also increase tensions among states due to sovereign concerns. Once being chased, the pirates could move to the seas belonging to the other's sovereignty. In addition, in the disputed waters with territorial overlapping claims by littoral states surrounding the South China Sea, the cooperation in efforts to against piracy is a big challenge.

IUU fishing in Southeast Asia Combat Mechanisms: SEAFDEC

To date, all ASEAN member states (AMSs) are members of the Code of Conduct for Responsible Fisheries (CCRF) whose certain parts are based on relevant rules of international law, including those reflected in the United Nations Convention on the

[38] John F. Bradford. 2008. Shifting the Tides against Piracy in Southeast Asian Waters. *Asian Survey*, Vol. 48, No. 3, p.489.

[39] John J. Brandon. 2009. Reducing Piracy in Southeast Asia. *The Asia Foundation*, August 5, https://asiafoundation.org/2009/08/05/reducing-piracy-in-southeast-asia/

[40] Ian Storey. 2016. Addressing the Persistent Problem of Piracy and Sea Robbery in Southeast Asia. *ISEAS-Yusof Ishak Institute Perspective*, Issue 2016, No.30, p.7.

[41] Safety4sea. The economic cost of piracy through 2017, https://safety4sea.com/the-economic-cost-of-piracy-through-2017/

[42] Safety4sea. "The economic cost of piracy through 2017", https://safety4sea.com/the-economic-cost-of-piracy-through-2017/

Law of the Sea.[43] However, "the Code is voluntary"[44] and as the Regional Guidelines for Responsible Fisheries Management in Southeast Asia pointed out,

> "...The different fishing scenarios and issues that exist within the region, especially those relating to the multi-species coastal and small-scale fisheries which are rather dominant but unfortunately only superficially covered by the global Code, need to be firmly addressed".

In that context, the Southeast Asian Fisheries Development Center (SEAFDEC) comprising ten ASEAN member states and Japan aiming at promoting and facilitate concerted actions among the member countries to ensure the sustainability of fisheries and aquaculture in Southeast Asia[45] has become an important mechanism that has promoted efforts to challenge the IUU fishing although it was considered as a technical organization mandated to develop the fisheries potential of the Southeast Asian region with no management authority.[46]

From the policy documents, there are resolutions and plans of action on sustainable fisheries for food security released by ASEAN-SEAFDEC which laid out ASEAN's countries viewpoints on dealing with IUU fishing. In 2001, ASEAN-SEAFDEC released the Resolution and Plan of Action on Sustainable Fisheries for Food Security in the New Millennium. The Resolution began to deal with IUU fishing issue by recognizing 'the need to progressively replace "open access" to fisheries resources with "limited access regimes" through the introduction of rights-based fisheries which may also facilitate the management of fishing capacity and promote the use of responsible fishing gears and practices'.[47] In the Plan of Action, ASEAN countries also agreed to take measures to prevent unauthorized fishing and eliminate the use of illegal and destructive fishing gears by...enforcing regulations and encouraging alternative means of livelihood.[48] In the 2011 Resolution on Sustainable Fisheries for Food Security for the ASEAN Region Towards 2020, member parties agreed to foster cooperation among ASEAN member countries and with international and regional organizations in combating IUU fishing.[49] This spirit was reflected in the Resolution on Sustainable Fisheries for Food Security for the ASEAN Region Towards 2030. Joint ASEAN-SEAFDEC Declaration on Regional Cooperation for Combating IUU Fishing and Enhancing the Competitiveness of ASEAN Fish and Fishery Products released in 2016 is a commitment and a direction of ASEAN countries and Japan in cooperating to combat IUU fishing in the Southeast Asian region and enhance the competitiveness of ASEAN fish and fishery products.

The results of above policy and direction documents of SEAFDEC countries in dealing with IUU fishing are the births of frameworks as management tools for combating IUU fishing, comprising Regional Fishing Vessels Records (RFVR) for 24

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[43] FAO. 1995. *"Code of Conduct for Responsible Fisheries"*, Rome, p.1.

[44] FAO. 1995. *"Code of Conduct for Responsible Fisheries"*, Rome, p.1.

[45] SEAFDEC. "About SEAFDEC", http://www.seafdec.org/about/

[46] FAO. 2020. "Report on work in the Fight against Illegal, Unreported and Unregulated Fishing in Asia and the Pacific". *FAO Regional Conference for Asia and the Pacific*, Thimphu, Bhutan, 17-20 February, p.4 http://www.fao.org/3/nb845en/nb845en.pdf

[47] ASEAN-SEAFDEC. 2001. "Resolution on Sustainable Fisheries for Food Security for the ASEAN Region", Bangkok, November 24, http://repository.seafdec.org/bitstream/handle/20.500.12066/1281/ResPoA2001.pdf?sequence=1&isAllowed=y

[48] ASEAN-SEAFDEC. 2001. "Plan of Action on Sustainable Fisheries for Food Security for the ASEAN Region", Bangkok, November 24, http://repository.seafdec.org/bitstream/handle/20.500.12066/1281/ResPoA2001.pdf?sequence=1&isAllowed=y

[49] ASEAN-SEAFDEC. 2011. "Resolution on Sustainable Fisheries for Food Security for the ASEAN Region Towards 2020". Southeast Asian Fisheries Development Center.

meters in length and over (2014), and ASEAN Guidelines for Preventing the Entry of Fish and Fishery Products from IUU Fishing Activities into the Supply Chain (2015). RFVR has been considered as a management tool for combating IUU fishing thanks to its database (RFRV Database), an online system. RFVR Database aims at supporting the fishing vessel inspection to reduce the IUU fishing vessels, working as a practical tool for related authorities of the ASEAN member states in checking and taking corrective actions against inappropriate behavior of its fishing vessels, thereby supporting the elimination of IUU fishing in the Southeast Asian Region. Through the RFVR database, ASEAN member states can take appropriate actions against "Stateless Vessels, IUU fishing vessels, pouching" by sharing information on fishing vessels, which is updated time to time, and identifying problematic vessels.[50] Therefore, the RFVR was described as a shared tool for AMSs to reduce IUU fishing.[51] AMSs are expected to make full use of the RFVR Database to reduce IUU fishing activities in the region.[52]

Besides RFRV Database serving as an important information source on fishing vessels, ASEAN Guidelines for Preventing the Entry of Fish and Fishery Products from IUU Fishing Activities into the Supply Chain (2003 & 2015) also provide necessary management tools for cooperation among AMSs to combat IUU fishing. The 2015 Guidelines provides tools for the AMSs to ensure that fish and fishery products from the region entering the global supply chain do not come from IUU fishing activities[53] through guidelines of managing fishing activities within AMSs, regulating transshipment and landing of fish/catch across borders, preventing poaching in the EEZs of AMSs, controlling illegal fishing and trading practices of live reef food fish, reef based ornamentals and endangered aquatic species, and strengthening the management of fishing in the high seas and Regional Fisheries Management Organization (RFMO) areas.[54] However, all measures provided in the Guidelines are voluntary-based since AMSs 'are encouraged'[55] to take those measures.

In addition to the SEAFDEC and ASEAN-SEAFDEC joint tools, ASEAN itself has also made efforts to establish framwork to combat IUU fishing. At the 42nd ASEAN Ministers on Agriculture and Forestry (AMAF) held in October 2020, AMSs adopted the Cooperation Framework on ASEAN Network for Combating Illegal, Unreported, Unregulated (IUU) Fishing. The Framework aims at facilitating and providing a cooperation framework among AMS, and between AMS and relevant Dialogue Partners, and other regional or international organizations as mutually agreed by AMS on: i) the shared use of the Monitoring, Control and Surveillance (MCS)

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[50] SEAFDEC. "Regional Fishing Vessels Record: A primary tool to reduce the IUU fishing in Southeast Asian Region", http://www.seafdec.or.th/home/phocadownload/FisheryKnowledge/IUU/RFVR.pdf

[51] Kongpathai Saraphaivanich et al. 2014. "Regional Fishing Vessels Record: A Management Tool for Combating IUU Fishing in Southeast Asia". *Fish for the People*, Vol.14, No.2, p.14.

[52] Kongpathai Saraphaivanich et al. 2014. "Regional Fishing Vessels Record: A Management Tool for Combating IUU Fishing in Southeast Asia". *Fish for the People*, Vol.14, No.2, p.17.

[53] FAO. 2020. "Report on work in the Fight against Illegal, Unreported and Unregulated Fishing in Asia and the Pacific". *FAO Regional Conference for Asia and the Pacific*. Thimphu, Bhutan, February 17-20, http://www.fao.org/3/nb845en/nb845en.pdf

[54] ASEAN-SEAFDEC. 2015. "*ASEAN Guidelines for Preventing the Entry of Fish and Fishery Products from IUU Fishing Activities into the Supply Chain*". Endorsed by the SSOM-36th AMAF and Revision by 24th August 2015, https://www.asean.org/wp-content/uploads/images/2015/November/AMAF/App%209%20-%20ASEAN%20Guidelines%20IUU%20SSOM36th%20AMAF%20final.pdf

[55] ASEAN-SEAFDEC. 2015. "*ASEAN Guidelines for Preventing the Entry of Fish and Fishery Products from IUU Fishing Activities into the Supply Chain*". Endorsed by the SSOM-36th AMAF and Revision by 24th August 2015, https://www.asean.org/wp-content/uploads/images/2015/November/AMAF/App%209%20-%20ASEAN%20Guidelines%20IUU%20SSOM36th%20AMAF%20final.pdf

information; ii) capacity and capability building on MCSs; and iii) dissemination of best practices, especially on maritime domain surveillance and investigation activities and experiences of the Network among AMSs.[56] FAO expected that the framework established could enhance regional cooperation by setting up a practical and operational tool to exchange information and intelligence in real time among AMSs.[57] However, similar to ASEAN Guidelines for Preventing the Entry of Fish and Fishery Products from IUU Fishing Activities into the Supply Chain, the Cooperation Framework on ASEAN Network for Combating Illegal, Unreported, Unregulated (IUU) Fishing is also a voluntary-based since the network is not a legally binding instrument.[58]

In short, cooperation in combating IUU fishing in Southeast Asia is voluntary-based. RFVR Database has served as a data collection center where AMSs registered information on fishing vessels 24 meters in length and over. It is obviously that RFVR is only a practical tool rather than cooperative activities on the field in dealing with, among other, IUU fishing by checking and taking corrective actions against inappropriate behavior of its fishing vessels. Other documents examined above are just shared agreements of AMSs in dealing with IUU fishing in terms of voluntary-based principles. That is why to date, there are no mechanisms where AMSs conducts cooperative activities to combat IUU fishing.

Counter-Piracy and Sea Robbery: MSP and ReCAAP

Malacca Straits Patrol

From economic and strategic perspective, the Straits of Malacca is one of the most important shipping lanes in the world, the equivalent of the Suez Canal or Panama Canal.[59] Dealing with the challenge, Singapore, Indonesia and Malaysia launched the Malacca Straits Patrol (MSP) in July 2004 aiming at undertaking practical co-operative measures undertaken to ensure the security of the Straits of Malacca and Singapore (SOMS).[60] In 2005, the initiative of Eyes-in-the-Sky to combine air and sea patrol was officially implemented. In 2006, Thailand became an observer and officially became a full member of the program in 2008. In 2006, MSP countries signed the Joint Co-coordinating Committee Terms of Reference and Standard Operating Procedures. The Intelligence Exchange Group launched in 2016 by 2008 MSP Information System (MSP-IS) was built. Therefore, MSP comprises the Malacca Straits Sea Patrol (MSSP), the "Eyes-in-the-Sky" (EiS) Combined Maritime Air Patrols, and the Intelligence Exchange Group (IEG). Inaugural Malacca Straits Patrol Information Sharing Exercise launched in 2008 and the first MSP Exercise took place in 2011. There was no exercise in 2012. From 2013

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[56] *"Cooperation Framework on ASEAN Network for Combating Illegal, Unreported, Unregulated (IUU) Fishing"*, Adopted by the 42nd AMAF, 21 October 2020, https://asean.org/storage/16.-Final-draft-CFTORROPANIUU-28ASWGFi.pdf

[57] FAO. 2020. "Report on work in the Fight against Illegal, Unreported and Unregulated Fishing in Asia and the Pacific". *FAO Regional Conference for Asia and the Pacific.* Thimphu, Bhutan, February 17-20, http://www.fao.org/3/nb845en/nb845en.pdf

[58] *"Cooperation Framework on ASEAN Network for Combating Illegal, Unreported, Unregulated (IUU) Fishing"* (Anex 1), Adopted by the 42nd AMAF, 21 October 2020, https://asean.org/storage/16.-Final-draft-CFTORROPANIUU-28ASWGFi.pdf

[59] Yann-huei Song, *Security in the Strait of Malacca and the Regional Maritime Security Initiative: Responses to the US Proposal*, In Global legal challenges: command of the commons, strategic communications, and natural disasters," International Law Studies, Vol.83, 2009, p.97.

[60] MINDEF Singapore. 2015. *"Fact Sheet: The Malacca Straits Patrol"*, April 21, https://www.mindef.gov.sg/web/portal/mindef/news-and-events/latest-releases/article-detail/2016/april/2016apr21-news-releases-00134/

to 2016, there were for exercises taking place. There was no information on the MSP Exercise since then. However, MSP Joint Coordinating Committee has met regularly to deal with maritime security challenges in the Malacca and Singapore Straits.[61]

Under the agreement signed between these Indonesia, Malaysia, Singapore and Thailand, the member navies hold regular meetings to enhance coordination and review the conduct of operations, and also engage in intelligence exchange and real-time information-sharing on suspicious contacts or incidents, cueing effective operational responses to maritime threats. Under the MSSP, participating navies conduct co-ordinated sea patrols while facilitating the sharing of information between ships and their naval operational centers. Under the EiS, combined maritime air patrols are conducted over the straits to reinforce sea patrols with air surveillance. The MSP IEG supports the sea and air patrols, leading to the development of an information-sharing platform called the Malacca Straits Patrol Information System (MSP-IS). With the MSP-IS, air and sea assets deployed on scene can quickly pass information of an unfolding incident to all Monitoring and Action Agencies (MAAs) on a real-time basis.[62] Only two years after the launching of MSP, the Joint War Committee of Lloyd's Market Association, a powerful London-based insurance market removed the Malacca Straits from its list of sea lanes with a war risk rating following an improvement in security.[63] Lieutenant John F. Bradford of the U.S. Navy argued that MSP "is the first significantly operationalized multilateral cooperation in Southeast Asia to develop without an extra regional partner".[64]

Some scholars such as Achmad Poernomo and Wen Chiat Lee see MSP as a mechanism which conducts collaborative patrols to combat IUU fishing activities.[65] However, main concern of MSP is to tackle the piracy and sea robbery activities, and maritime terrorism,[66] not IUU fishing. Piracy and sea robbery has always been in the agenda of all program of MSP and the effectiveness of MSP has also been assessed in terms of anti-piracy and sea robbery. Right after the launching of MSP, the piracy and sea robbery activities decreased sharply.

According to the IMO, the number of piracy and sea robbery downed from 52 incidents in 2004 to 18 incidents in 2005, and reach the lowest point in 2008 and 2009 with two incidents each.[67] Data of IMO also shows that from 2011 and 2015, the piracy

[61] MINDEF. 2020. "*Singapore Hosts the 14th Malacca Straits Patrol Joint Coordinating Committee Meeting*", January 15, https://www.mindef.gov.sg/web/portal/mindef/news-and-events/latest-releases/article-detail/2020/January/15jan20_nr2

[62] MINDEF Singapore. 2015. "*Fact Sheet: The Malacca Straits Patrol*", April 21, https://www.mindef.gov.sg/web/portal/mindef/news-and-events/latest-releases/article-detail/2016/april/2016apr21-news-releases-00134/

[63] Insurance Journal. 2006. "*Malacca Straits Removed from War Risk List*", August 9, https://www.insurancejournal.com/news/international/2006/08/09/71308.htm

[64] John F. Bradford. 2005. "The Growing Prospects for Maritime Security Cooperation in Southeast Asia". *Naval College Review*, Vol. 58, No. 3, p.68.

[65] Achmad Poernomo et al. 2011. "Combating Illegal, Unreported and Unregulated (IUU) Fishing to Attain Food Security and Alleviate Poverty: Initiative of Indonesia". *Fish for the People*, Vol.9, No.2, p.79; Wen Chiat Lee. 2020. "Framework for Managing Illegal, Unreported and Unregulated Fishing in ASEAN". *Asian Fisheries Science*, Vol.33, Issue 1, p.67.

[66] MINDEF. 2016. "*Speech by Chief of Defence Force Major-General Perry Lim, at the 10th Anniversary of the Malacca Straits Patrol*", April 21, https://www.mindef.gov.sg/web/portal/mindef/news-and-events/latest-releases/article-detail/2016/april/2016apr21-speeches-00897/

[67] IMO. 2020. *Reports on Acts of Piracy and Armed Robbery Against Ships: Annual Report - 2020*, MSC.4/Circ.264, Annex 4, page 1, 27 April.

and sea robbery activities increased in the Straits of Malacca with 22 incidents in 2011 and reached 134 incidents in 2015. Since 2016, the situation was improved when the piracy and sea robbery incidents were at 21 in 2016 but still high, at 45 in 2019, the highest number among regions categorized by IMO.[68]

Since 2016, the Straits of Malacca experienced no case of piracy and sea robbery and in 2020 ICC-IMB Annual Report, the Straits were not listed, and we only see the Singapore Straits and countries in the region in the report. For its part, IMO has categorized only Malacca Straits in its reports for long. With this situation, the author of this chapter understands that, the Malacca Straits in IMO's reports includes Singapore Straits, and the Singapore Straits in ICC-IMB's reports in 2020 includes Malacca Straits. However, there is a problem arising. The data released by ICC-IMB regarding the Malacca Straits (and Singapore Straits) is different from that of IMO.

Table 1: Piracy and sea robbery in Malacca Straits (and Singapore Straits) categorized by IMO and ICC-IMB

Unit: Incident

		2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
IMO		52	18	19	12	2	2	3	22	24	17	81	134	21	26	8	45
ICC-IMB	Malacca Straits	38	12	11	7	2	2	2	1	2	1	1	5				
	Singapore Straits	8	7	5	3	6	9	3	11	6	9	8	9	2	4	3	12

Source: Various Annual Reports of IMO, and ICC-IMB.

The data in the Table 1 shows that, the piracy and sea robbery incidents in the Malacca Straits and Singapore Straits (the scope within the MSP) combined is much lower than that of IMO. Obviously, there should be an explanation of the phenomenon. Carolin Liss from Peace Research Institute Frankfurt (PRIF) explained:

> "…Noticeable is the drop in reported attacks in the Malacca Strait, which can at least in part be explained by a reluctance of victims to report minor incidents. Ship owners fear higher insurance rates if too many incidents are reported and also believe that local authorities are themselves responsible for attacks in the Malacca Strait and nearby waters. Furthermore, as reflected in the statistics, pirates in the area have moved their operations from the more heavily patrolled Malacca Strait to the Singapore Strait and the southern South China Sea".[69]

Liss' explanation provides a part of real situation of the reported incidents in the Malacca Straits. Unreporting of piracy and sea robbery seems to exist in the Malacca Straits and Singapore Straits. According to ICC-IMB, there was only one incidents occurring in Malacca Straits in 2014. However, Germany DW reported that, only more than three months (April to 11 July), there were at least six oil tankers have been victims of fuel heists.[70]

In order to have a broader view of the effectiveness of anti-piracy mechanisms in Southeast Asia, ReCAAP needs to be examined.

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[68] IMO. 2020. *Reports on Acts of Piracy and Armed Robbery Against Ships: Annual Report - 2020,* MSC.4/Circ.264, Annex 4, page 1, 27 April.

[69] Carolin Liss. 2014. "Assessing Contemporary Maritime Piracy in Southeast Asia: Trends, Hotspots and Responses. *PRIF Report,* No. 125, p.II, https://www.files.ethz.ch/isn/184736/prif125.pdf

[70] DW. 2014. "'Worrying' rise in piracy attacks around Malacca Strait", July 11, https://www.dw.com/en/worrying-rise-in-piracy-attacks-around-malacca-strait/a-17780275

ReCAAP

Launched in 2006, the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP), it formed the crux of Southeast Asian counter-piracy efforts since its inception although maritime piracy and robbery are being addressed within a variety of multilateral forums and organizations.[71] By signing the agreement,[72] contracting parties make every effort to take effective measures in respect of the following:

(a) to prevent and suppress piracy and armed robbery against ships;

(b) to arrest pirates or persons who have committed armed robbery against ships;

(c) to seize ships or aircraft used for committing piracy or armed robbery against ships, to seize ships taken by and under the control of pirates or persons who have committed armed robbery against ships, and to seize the property on board such ships; and

(d) to rescue victim ships and victims of piracy or armed robbery against ships.

From the first year of formation, ReCAAP Information Sharing Center (ReCAAP ISC) has released the first report on piracy and sea robbery in December 2006.[73] To date, ReCAAP has published various types of reports such as weekly reports, monthly reports, quarterly reports, half-yearly reports, annual reports, special reports and other types of reports like Annual conferences and seminars (since 2009) on piracy. In addition, the ReCAAP ISC has also released Warnings, and Incident Alerts to each incidents across the region,[74] with the focus on the Southeast Asian region. ReCAAP ISC is mainly active in three areas, as explained by Executive Director Masafumi Kuroki:

> "The first is the timely and accurate sharing of information among countries that are ReCAAP contracting parties whenever an incident occurs. The second is the improvement of contracting parties' maritime law enforcement capabilities. The third is the engagement with other international organizations and shipping associations to share mutually beneficial expertise and experiences."[75]

In the framework of ReCAAP, Southeast Asian countries apart from sharing information, have received support from partners outside the region. For instance, under the activities designed to improve maritime law enforcement capabilities, officials from ASEAN member states including ReCAAP contracting parties were invited to Singapore and Japan and underwent training there between September and October 2017.[76] ReCAAP ISC has also provided advice of using protection measures against crimes at

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[71] Miha Hribernik. 2013. "Countering Maritime Piracy and Robbery in Southeast Asia The Role of the ReCAAP Agreement". *EIAS Briefing Paper*, No.2, p.4, http://www.eias.org/wp-content/uploads/2016/04/EIAS_Briefing_Paper_2013-2_Hribernik.pdf

[72] Ministry of Foreign Affairs of Japan. 2006. "*Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia*", https://www.mofa.go.jp/mofaj/gaiko/kaiyo/pdfs/kyotei_s.pdf

[73] ReCAAP Information Sharing Centre. 2006. "Report for December 2006", http://www.recaap.org/resources/ck/files/reports/2006/ISCReportforDec06.pdf

[74] http://www.recaap.org/alerts

[75] JapanGov. 2017. "ReCAAP Ensures the Safety of Asian Waters". *Tomodachi.* Autumn/Winter, https://www.japan.go.jp/tomodachi/2017/autumn-winter2017/reaccp_ensures_the_safety.html

[76] JapanGov. 2017. "ReCAAP Ensures the Safety of Asian Waters". *Tomodachi.* Autumn/Winter, https://www.japan.go.jp/tomodachi/2017/autumn-winter2017/reaccp_ensures_the_safety.html

sea such as shielding the vessel with barbed wire to prevent pirates and robbers from climbing on the deck.[77]

Since ReCAAP agreement allows contracting parties to have cooperative agreements such as joint exercises or other forms of cooperation (Article 15),[78] the United States and Japan have been proactive in providing counter-piracy training and equipment countries of Indonesia, Malaysia, Singapore,[79] Philippines and Vietnam.

However, there are challenges affecting the effectiveness of ReCAAP, including its membership, outside region dependency. *Firstly*, ReCAAP was formed in 2006 but three Southeast Asian countries, Indonesia, Malaysia and Timor Leste have not joined so far. Timor Leste's absence can be more easily explained from the country's late birth (2002). Surprisingly, Indonesia, the country with the highest number of piracy in the world, has refused to join quite a few anti-piracy cooperative initiatives. Before refusing to join the ReCAAP, Indonesia and Malaysia declined to join the US' 2004 proposal for the Regional Marine Security Initiative (RMSI). There were concerns that the proposal could interfere with the states' sovereignty and that the presence of the United States' forces in the region would boost Islamic radicalisms.[80] Similarly, while Indonesia's refusal to join on concerns for its sovereignty,[81] Malaysia feels unease since ReCAAP's headquarters located in Singapore as IMB Piracy Reporting Centre is placed in Kuala Lumpur.

Secondly, counter-piracy and sea robbery cooperation in Southeast Asia is highly dependent on supports from outside. ReCAAP is the current leading effective anti-piracy mechanism in the region led by Japan and its effectiveness depends greatly on the support of Japan and the US. For years, the US, Japan and India have contributed significantly to counter-piracy and sea robbery efforts in Southeast Asia. John J. Brandon further added:

> "...Since 2006, the U.S. has provided almost $80 million to Indonesia, Malaysia, and the Philippines under its Global Train and Equip Program to help improve these countries' maritime security and counter-terrorism capabilities. Global Train and Equip has provided Indonesia with 12 coastal surveillance stations (including five along the Malacca Strait), nine radar stations along the Sabah coast in Malaysia, and has helped to strengthen the Philippines armed forces surveillance and interdiction capabilities. This support has not only helped to thwart piracy attacks in Southeast Asian waters, but has also helped to improve security and impede terrorists transiting between the southern Philippines, Malaysia's Sabah, and Indonesia... In addition to the U.S., Japan and India have also worked with Southeast Asia's littoral states in conducting anti-piracy training exercises, providing equipment and other forms of technical assistance".[82]

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[77] JapanGov. 2017. "ReCAAP Ensures the Safety of Asian Waters". *Tomodachi*. Autumn/Winter, https://www.japan.go.jp/tomodachi/2017/autumn-winter2017/reaccp_ensures_the_safety.html

[78] Ministry of Foreign Affairs of Japan. 2006. "*Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia*", https://www.mofa.go.jp/mofaj/gaiko/kaiyo/pdfs/kyotei_s.pdf

[79] Scott Cheney-Peters. 2014. "US, Japan to Boost ASEAN Maritime Security". *The Diplomat*, April 30, https://thediplomat.com/2014/04/us-japan-to-boost-asean-maritime-security/

[80] Sofia Kax. 2012. "Regional cooperation as part of the solution to piracy – the importance of ReCAAP in Southeast Asia". Lund University: *Maritime Law*, Spring, pp.27-28, https://lup.lub.lu.se/luur/download?func=downloadFile&recordOId=2695891&fileOId=2695892

[81] Ankit Panda. 2013. "ReCAAPing Asia's Fight Against Pirates". *The Diplomat*, November 02, https://thediplomat.com/2013/11/recaaping-asias-fight-against-pirates/

[82] John J. Brandon. 2009. "Reducing Piracy in Southeast Asia". *The Asia Foundation*, August 5, https://asiafoundation.org/2009/08/05/reducing-piracy-in-southeast-asia/

Thirdly, mechanistic constraint is also a major problem of ReCAAP. To non-signatory parties of UNCLOS like Cambodia, ReCAAP is important regarding the counter-piracy and sea robbery regional mechanism. However, ReCAAP does not facilitate member states to seize pirate ship in other state's territorial sea. It means that, as a regional measure, ReCAAP does not supersede the enforcement measures of UNCLOS. [83] In other words, ReCAAP could not the limitation of UNCLOS in terms of counter-piracy and sea robbery activity.
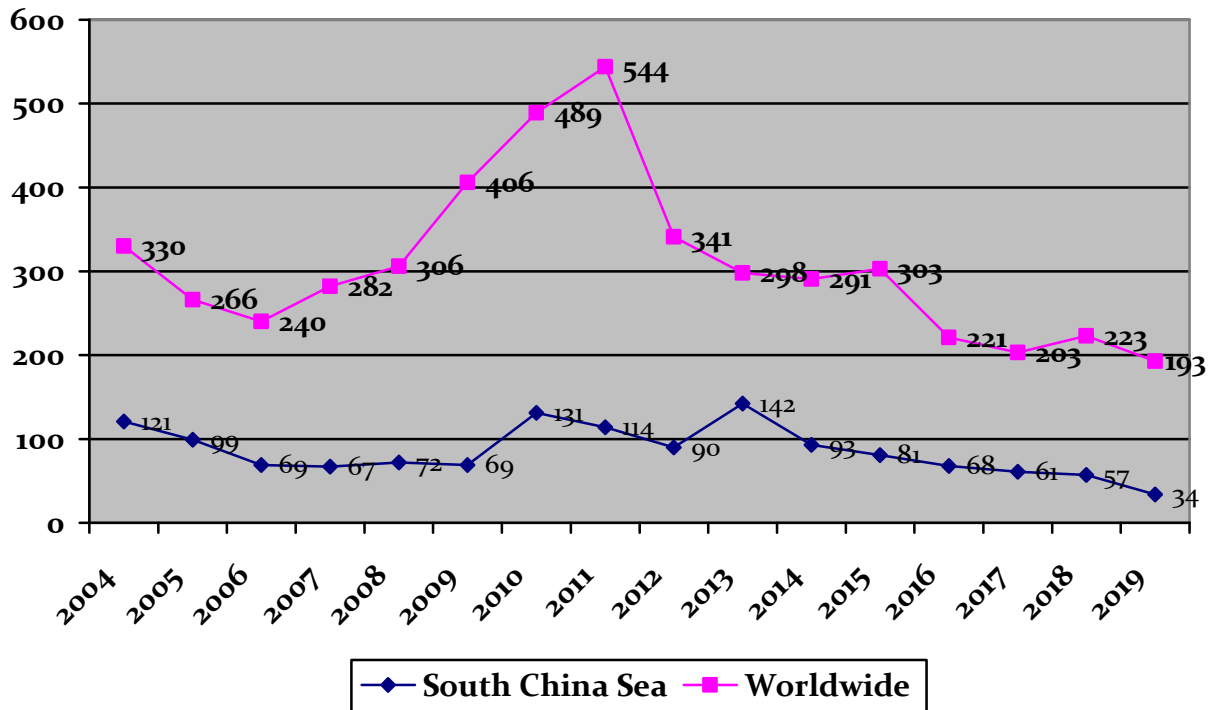
Fourthly, high number of piracy and sea robbery incidents in the South China Sea should be seen as the low effectiveness of ReCAAP. Putting aside the inconsistency of number of piracy and sea robbery incidents reported by IMO and ICC-IMB, in order to examine the real effectiveness of MSP and ReCAAP, the situation the piracy and sea robbery situation in the South China Sea should be mentioned of. Obviously, the scope of MSP is just only in the Malacca Straits and Singapore Straits. Therefore, it does not directly contribute to the efforts dealing with the piracy situation in the South China Sea.

ReCAAP's sphere comprises the entire area of the waters of the its contracting parties and the high seas surrounding. In fact, the South China Sea is within the scope where the ReCAAP can be effective. The data released by the IMO shows that the piracy and sea robbery incidents in the South China Sea decreased from 2005 and increased from 2010 to 2013, and then remained the low number of incidents as it was from 2005 to 2009. However, whether the changes in the up and down of piracy and sea robbery incidents in the South China Sea since 2005 occurred parallels with those worldwide?

Chart 1. Piracy and sea robbery in the South China Sea and Worldwide 2004-2019

Unit: Incident

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[83] Ahmad Amri. 2013. "Combating maritime piracy in Southeast Asia from international and regional legal perspectives: challenges and prospects. University of Wollongong: *Humanities and the Arts - Papers,* https://ro.uow.edu.au/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=2062&context=lhapapers

Source: Chart built from the data of IMO.

The Chart 1 shows that, from 2006 to 2009, while the number of piracy and sea robbery incidents in the whole world increased, that in the South China Sea decreased. From 2014, the decrease in number of piracy and sea robbery incidents happened worldwide, include the South China Sea. Therefore, it is difficult to examine the effectiveness of ReCAAP in dealing with the piracy and sea robbery in the South China Sea. IMO data also shows us an important point needing to think about. Out of 34 piracy and sea robbery incident occuring in the South China Sea in 2019, 35.29 per cent of cases (12 cases) happened in territorial waters, 47.06 per cent (16 cases) took place in port areas, and only 17.65 per cent (6 cases) occured in international waters. At the same time, 95.55 per cent of incidents (43/45 cases) occurring in the Malacca Straits also happened in terrirorial waters and port areas.[84] These indicators reflects the limitted capacity of littoral countries in the region in dealing with the piracy challenge. The situation of territorial overlapping claims by littoral states surrounding the South China Sea could be one the most convincing explainations for high number of sea robbery in this sea due to the fact that, China's claims of more than 80 per cent of the South China Sea and its agressiveness limit other claimants to exercise their sovereign rights, including counter-piracy and sea robbery activities in their territorial waters. Further, ReCAAP's supports have not been enough to arm ships from being invaded by the pirates and robbers.

Some Implications

From an ASEAN perspective, consensus-based cooperation or consultation plays an important role. This remains a cornerstone of the assertion of ASEAN's centrality in the emerging security architecture in the region. Countries with security interests

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[84] IMO. 2020. *Reports on Acts of Piracy and Armed Robbery Against Ships: Annual Report - 2020*, MSC.4/Circ.264, Annex 3, page 1, 27 April.

themselves and a long history of security cooperation with the region such as the US,[85] Japan,[86] China,[87] India,[88] and Australia[89] have all agree with this principle as well as a central role of ASEAAN. Mechanisms to address maritime security challenges such as MSP and ReCAAP are also based on international law, including the 1982 UNCLOS. In turn, the 1982 UNCLOS also states that, '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' (Article 100), not inside the jurisdiction area. Therefore, mechanisms dealing with IUU fishing such as SEAFDEC or piracy and sea robbery such as MSP and ReCAAP operating base on the principle of international law are appropriate. In particular, due to the sensitivity of sovereignty issues in maritime space or territorial disputes between littoral countries in the South China Sea, the principle of voluntary cooperation among Southeast Asian countries is reasonable. In addition, due to the security interests of countries outside the region in maritime domain, including the Straits of Singapore and Malacca, their support for Indonesia, Malaysia, Thailand and Singapore within the framework of the MSP to conduct joint patrols is really necessary.

There is a need for more transparent information about IUU fishing so that countries are homes of IUU fishing vessels take measures to limit the number of illegal vessels fishing in the EEZs of neighboring countries. Countries' reactiveness in providing information to the RFVR Database, and the expansion of information about ships below 24 meters to this data source should be strengthened. On the other hand, from the perspective of nations' control of ships, there is a problem of limited capacity to control ships or the limitation of the maritime enforcement capacity of the littoral Southeast Asian countries. Therefore, the support (technique, patrol boats and finance) from outside is essential. The Japanese technical and financial support for many SEAFDEC projects is really meaningful.

Regarding the information issue, it is essential to unify or synchronize information of piracy and sea robbery incidents. Providing the incidents of piracy and sea robbery in Southeast Asia but the data given by IMO and IMC-ICC are different. Therefore, at least from an input to evaluation perspective, different sources of data will make analysts confused in the choice of data. Therefore, the reliability of the analysis will be significantly limited.

Last but not least, the piracy and sea robbery challenge in Southeast Asia taking place in territorial waters and in port areas are predominantly. In other words, sea robbery, rather than piracy, is popular in Southeast Asian countries. Therefore, the ReCAAP should promote stronger and more emphasis on building capacity for maritime enforcement of littoral Southeast Asian countries.

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[85] The White House Office of the Press Secretary. 2015. "*Fact Sheet: U.S.-ASEAN Relations*", November 21, https://obamawhitehouse.archives.gov/the-press-office/2015/11/21/fact-sheet-us-asean-relations
[86] Ministry of Foreign Affairs of Japan. 2019. "*Diplomatic Bluebook 2019*", https://www.mofa.go.jp/policy/other/bluebook/2019/html/chapter2/c020107.html
[87] Ministry of Foreign Affaris of the People's Republic of China. 2019. "*Five Important Aspects of Consensus Reached at the China-Association of Southeast Asian Nations (ASEAN) Foreign Ministers' Meeting*", July 31, https://www.fmprc.gov.cn/mfa_eng/wjb_663304/zzjg_663340/yzs_663350/xwlb_663352/t1685675.shtml

[88] David Brewster. 2013. "India's Defense Strategy and the India-ASEAN Relationship". *India Review*, Vol.13, Issue 3, pp.151-164.
[89] ASEAN. 2020. "*Plan of Action to Implement the ASEAN-Australia Strategic Partnership (2020-2024)*", https://asean.org/storage/2019/08/ASEAN-Australia-POA-2020-2024-FINAL.pdf