

the

post

Journal of Politics and Development

ISSN 2632-4911

Volume 12 ■ Number 2 ■ Summer 2022

the rest: journal of politics and development

Previously published as Journal of Global Analysis (JGA)

Editors-in-Chief:

Ozgur TUFEKCI, Assoc. Prof. | CESRAN International, UK

Rahman DAG, Assoc. Prof. | CESRAN International, UK

Associate Editors:

Alper Tolga BULUT, Assoc. Prof. | CESRAN International, UK

Alessia CHIRIATTI, Dr | CESRAN International, UK

Assistant Editors:

Ceren Hakyemez | CESRAN International, UK

Ekrem Ok | CESRAN International, UK

Editorial Board

Sener AKTURK, Assoc. Prof. | Koç University, Turkey

Enrique ALBEROLA, Prof. | Banco de España, Spain

Mustafa AYDIN, Prof. | Kadir Has University, Turkey

Ian BACHE, Prof. | University of Sheffield, UK

Kee-Hong BAE, Prof. | York University, Canada

Mark BASSIN, Prof. | Sodertorn University, Sweden

Alexander BELLAMY, Prof. | Uni. of Queensland, Australia

Richard BELLAMY, Prof. | Uni. College London, UK

Andreas BIELER, Prof. | University of Nottingham, UK

Pinar BILGIN, Prof. | Bilkent University, Turkey

Ken BOOTH, Prof. | Aberystwyth University, UK

Stephen CHAN, Prof. | SOAS, University of London, UK

Nazli CHOUCRI, Prof. | MIT, USA

Judith CLIFTON, Prof. | Universidad de Cantabria, Spain

John M. DUNN, Prof. | University of Cambridge, UK

Kevin DUNN, Prof. | Hobart and William Smith Colleges, USA

Can ERBIL, Assoc. Prof. | Boston College, USA

Stephen Van EVERA, Prof. | MIT, USA

Marc FLEURBAEY, Prof. | Princeton University, USA

Bulent GOKAY, Prof. | Keele University, UK

Ayla GOL, Prof. | York St John University, UK

Stefano GUZZINI, Prof. | Uppsala Universitet, Sweden

David HELD, Prof. | London Sch. of Economics, LSE, UK

Tony HERON, Prof. | University of York, UK

Raymond HINNEBUSCH, Prof. | Uni. of St Andrews, UK

John M. HOBSON, Prof. | University of Sheffield, UK

Michael KENNY, Prof. | University of Sheffield, UK

Cécile LABORDE, Prof. | University College London, UK

Scott LUCAS, Prof. | University of Birmingham, UK

Kalypso NICOLAIDIS, Prof. | University of Oxford, UK

Ziya ONIS, Prof. | Koc University, Turkey

Alp OZERDEM, Prof. | George Mason University, USA

Danny QUAH, Prof. | London School of Economics, UK

José Gabriel PALMA, Prof. | Cambridge University, UK

Jenik RADON, Prof. | Columbia University, USA

Oliver RICHMOND, Prof. | University of Manchester, UK

Ibrahim SIRKECI, Prof. | Regent's College London, UK

Ian TAYLOR, Prof. | University of St Andrews, UK

Ali WATSON, Prof. | University of St Andrews, UK

Brian WHITE, Prof. | University of Sheffield, UK

Stefan WOLFF, Prof. | University of Birmingham, UK

Birol YESILADA, Prof. | Portland State University, USA

Hakan YILMAZKUDAY, Assoc. Prof. | Florida International University, USA

The Rest: Journal of Politics and Development is published on behalf of the Centre for Strategic Research and Analysis (CESRAN) as an academic e-journal. The articles are brought into use via the website of the journal (<https://therestjournal.com/>). CESRAN and the Editors of The Rest: Journal of Politics and Development do not expect that readers of the review will sympathise with all the sentiments they find, for some of our writers will flatly disagree with others. It does not accept responsibility for the views expressed in any article, which appears in The Rest: Journal of Politics and Development.

** The surnames are listed in alphabetical order.*

the rest: journal of politics and development

Previously published as Journal of Global Analysis (JGA)

INDEXING & ABSTRACTING

- Academic Index
- Bielefeld Academic Search Engine (BASE)
- Columbia International Affairs Online (CIAO)
- Directory of Open Access Journals (DOAJ)
- EBSCO Publishing Inc.
- EconLit
- EconPapers
- Genamics JournalSeek
- IDEAS
- Index Islamicus
- Infomine
- International Bibliography of Book Reviews of Scholarly Literature in the Humanities and Social Sciences (IBR)
- International Bibliography of Periodical Literature in the Humanities and Social Sciences (IBZ)
- International Bibliography of the Social Sciences (IBSS)
- International Relations and Security Network (ISN)
- Lancaster Index to Defence & International Security Literature
- Peace Palace Library
- Research Papers in Economics (RePEc)
- Social Sciences Information Space (SOCIONET)
- Ulrich's Periodicals Directory

TABLE OF CONTENTS

RESEARCH ARTICLES

103

**Thinking through the Event:
Alain Badiou versus Michael Hardt & Antonio Negri**
By Semra Akay

115

**Return and Recuperation Strategies on Returnees to Nigeria: The Libya
Episode**
By A. J. Aluko & D. O. Apeloko & Bello M. Ayodele

135

**Politico Legal Dynamics of Seaborne Piracy in the Pelagic Waters of South
East Asia**
By Sreemoyee Sarkar

150

**Geopolitical Struggle between Russia and Turkey: The Intersection of
Ukraine and Syrian Crises**
By Rahman Dag

REVIEW ARTICLE

163

Arab Spring in Syria and the Rest
By I. William Zartman

BOOK REVIEWS

172

Adam Goodman
The Deportation Machine. America's Long History of Expelling Immigrants
By Gennaro Errichiello

176

Rachel McCleary and Robert J Barro
The Wealth of Religions: The Political Economy of Believing and Belonging
By Nurbanu Yaşar

180

Joseph Masco
***The Nuclear Borderlands: The Manhattan Project in Post-Cold War New
Mexico***
By Daniyal Talat

184

John G. Matsusaka
Let the People Rule: How Direct Democracy Can Meet the Populist Challenge
By Robert Nyenhuis

187

Catherine E. De Vries and Sara B. Hobolt
Political Entrepreneurs: The Rise of Challenger Parties in Europe
By Meltem Ince-Yenilmez

191

Noah Feldman
The Arab Winter: A Tragedy
By Ramzi Bendebka



International Think-tank www.cesran.org

Consultancy

Research Institute

CESRAN International is headquartered in the UK

CESRAN International is a member of the United Nations Academic Impact (UNAI)

CESRAN International is a think-tank specialising on international relations in general, and global peace, conflict and development related issues and challenges.

The main business objective/function is that we provide expertise at an international level to a wide range of policy making actors such as national governments and international organisations. CESRAN with its provisions of academic and semi-academic publications, journals and a fully-functioning website has already become a focal point of expertise on strategic research and analysis with regards to global security and peace. The Centre is particularly unique in being able to bring together wide variety of expertise from different countries and academic disciplines.

The main activities that CESRAN undertakes are providing consultancy services and advice to public and private enterprises, organising international conferences and publishing academic material.

Some of CESRAN's current publications are:

- THE REST: Journal of Politics and Development (biannual, peer reviewed) www.therestjournal.com
- Journal of Conflict Transformation and Security (biannual, peer reviewed)
- Political Reflection Magazine (quarterly) www.politicalreflectionmagazine.com
- CESRAN Paper Series
- CESRAN Policy Brief
- Turkey Focus Policy Brief

CESRAN International also organises an annual international conference since 2014

International Conference on Eurasian Politics and Society (IEPAS)

www.eurasianpoliticsandsociety.org

- **Ranked among the top 150 International think tanks**

Politico Legal Dynamics of Seaborne Piracy in the Pelagic Waters of South East Asia

the rest:
journal of politics and development
2022 | vol 12(2) | 135-148
www.therestjournal.com

Sreemoyee Sarkar, PhD

* Assistant Professor, Department of International Studies, Political Science and History, School of Social Sciences, Christ (Deemed to be) University, Bangalore, sreemoyee.sarkar@christuniversity.in

KEYWORDS	ABSTRACT
<p>South East Asia, Seaborne Piracy, UNCLOS, Maritime Regime, ASEAN</p> <p>Received 28 February 2022 Revised 04 June 2022 Accepted 23 June 2022</p>	<p><i>Geopolitical location places the seaborne piracy infested pelagic waters of South East Asia (SEA) astride a very different façade of international relations and maritime legal regime of the littoral states disturbing the commercial route and the energy lifelines. The littoral states of the SEA are the immediate stake holders who have a primary role to play in addressing the challenges arising out of this seaborne menace. The present study specifically includes three littoral states of the SEA as representative references, for examination against the backdrop of UNCLOS regime and they are Malaysia, Indonesia, and Thailand. The present work offers a comparative analysis of anti-piracy legal regime of the above selected maritime states who are also the ASEAN states. They all belong to the group of high-income and middle-income developing economies, as categorised by the International Bank for Reconstruction and Development (World Bank). These nation states have maritime, economic and strategic interests in the oceans and seas adjacent to them. Another striking commonality is that, most of them are poised to industrialise their economies, can be observed from the relatively high-average annual growth rate in the industrial sectors vis-a-vis the agricultural sectors of their respective economies, since the 1990s. Hitherto, the issues raised are, what are the stake holds of the concerned states? Is the prevailing legal regime adequate enough to maintain the maritime stake holds? Are the littoral states triggered to 'use of force' law by post-9/11 developments related? It also addresses how regional and national actors are functioning differently within the scope of a discourse of international law and agencies like UN, ASEAN, etc.</i></p>

This paper investigates the existing national mechanism of three littoral states i.e., Malaysia, Indonesia and Thailand, to combat sea-borne piracy in the maritime South East Asia (SEA). Historically, all these states have encountered the politico-economic changes of the Indo-Pacific region in the face of European colonisation, imperialism, and cold-war and post-cold developments of the new world order and effects of globalisation. The root cause of such a mal-development of maritime piracy in the SEA is the socio-economic lacuna created by the severity of under-development in some states vs the impact of development and developing patterns in the maritime states flanking the pelagic waters of SEA. The littorals have continuously worked to eliminate this menace through their anti-piracy national maritime deterrence and domestic laws under the aegis of the UNCLOS-SUA Convention, and IMO-IMB Protocol. Their efforts seemed successful as

occurrences of sea-borne piracy was going down in 2019. But the Covid 19 pandemic prompted this menace to rise again.

Concerned Littorals of Pelagic SEA

To begin with, littorals of maritime SEA always sought regional power centres for assistance in maintaining maritime order, addressing the problem of piracy and coping with natural disasters. International pressure has been exerted on these states, in particular, on Indonesia and Malaysia, because piracy was thought to originate from these two countries (Chew, 2007). Malaysia and Indonesia were reluctant to acknowledge that they had problems with piracy in their waters. Chew has noted that countries with enhanced maritime capabilities like the United States, India, South Africa, and Australia can help by not only cooperating amongst themselves but also by taking other littoral states on board as part of multilateral efforts towards the maintenance of maritime order in the Indian Ocean (2007:11). A joint anti-piracy, anti-narco-terrorism patrolling of the Indian Ocean had been agreed to in principle between Singapore, Australia, Thailand, and the Philippines, to which India was also invited (Gupta, 2004). This effort began in 2000, when piracy attacks peaked in the Malacca Straits and increased even more following the events of 11 September 2001 and the subsequent conclusions drawn about the possible insecurity of the maritime domain. At this time, both Japan and the United States indicated a desire to participate in enhancing security in the waterway (Chew, 2007: 7). However, it was not until 2004 that real steps were taken toward securing the maritime southeast. The problem has led Japan to call for combined action by Asian coastguards and regional governments now recognize the need to cooperate. However, sovereignty disputes and China's opposition to any Japanese involvement in security operations beyond its shores may hinder their efforts (Strategic Comments, 2014). Later, Malaysia, Indonesia, and Singapore have signed an accord to implement anti-piracy patrols in the Malacca Straits, where India was again invited to join at a meeting held in July 2004. – The agreement reached between the Malaysian, Indonesian and Singaporean navies on the conduct of joint anti-piracy patrols in the Malacca Straits with much on-demand aid from India, is a good instance of progress in increasing maritime cooperation (The Strait Times, 29 June 2004).

Furthermore, these states have endeavoured to maintain peace and sustained security through organisations like SAARC, ASEAN, the NAM, and ZOPFAN (Braun, 1983). The ASEAN Regional Forum (ARF) comprising of 10 member states and 17 partner states, offers the principal forum for the security discourse and develops cooperative measures. Though on the security level these states appear to have strong but diverse objectives, however, cooperation concerning counter-terrorism and maritime piracy has improved considerably since 9/11 and the Bali bombings of October 2002. Therefore, maritime security cooperation is high on the agenda of these SEA states and security cooperation within the ARF has certainly been enhanced (Majumdar, 2015). Whereas the Five Power Defence Arrangements (FPDA) offers a defence relationship based on a series of bilateral agreements between the UK, New Zealand, Australia, Malaysia and Singapore dating back to 1971. An Integrated Air Defence System (IADS) for Malaysia and Singapore is based in Malaysia with aircraft and personnel from all five countries being rotated (Bing, 2015).

However, addressing piracy in maritime SEA is complicated. It puts the interests of the user states of regional Sea Lines of Communication (SLOC)—such as Japan, the United States and China — against the interests of the coastal states like Thailand, Malaysia, Indonesia, Philippines and Singapore. Further complicating the matter is that neither user states nor coastal states are united in their preferred approach to the problem. Nevertheless, the national responses of Malaysia, Indonesia and Thailand to the maritime piracy issue in SEA has contributed to the decline in the frequency, severity, and cost of pirate attacks from their peak in the last few years of the twentieth century. – Therefore, what are the stake holds of these concerned states of pelagic SEA? It is

pertinent to evaluate the UNCLOS counter maritime piracy regime vis-à-vis politico-legal status of the afore-mentioned states under the UNCLOS.

Malaysia and UNCLOS

Malaysia is an UNCLOS signatory state who ratified it in its national maritime law. Since 1996, Malaysian national maritime regime addresses the rights of ships and nations in international and territorial waters, covering such diverse topics as economic zones, underwater cables, collisions of ships, and the navigation of submarines (Bing, 2015). Malaysia has accepted UNCLOS recognition of national sovereignty extending up to 12 nautical miles beyond its land territory to encompass its "territorial sea" which includes the pelagic waters, Straits of Malacca and the Gulf of Thailand (Article 100 to 106). As a general rule, ships from all nations may pass through its territorial sea continuously and expeditiously, provided they do not enter a port facility of Malaysia's internal waters without permission, immune by right to "innocent passage" and provided the passage is not "prejudicial to the peace, good order or security of the Coastal state." (UNCLOS, Article 107 to 110). Following this international maritime regime, Malaysia is entitled to seize a pirate ship or a ship that has been captured by pirates and may arrest the pirates and seize their property. A "pirate ship" is defined as any ship, intended by the person controlling the ship, to be used in an act of piracy. The seizure must be carried out by a warship or military aircraft, or by a marked ship or aircraft in government service (UNCLOS, Article 100 to 103). A warship must have reasonable grounds for suspecting a ship is engaged in piracy before boarding that ship. The Malaysian courts may decide how to punish the pirates and how to dispose of their property, subject to the rights of innocent third parties. If a ship is flying a national flag of some country and is seized without adequate cause, the nation of the flagged ship is entitled to pursue the offending nation for damages (UNCLOS, Article 106, 107 and 110). It is note-worthy that the Federal Constitution of Malaysia contains no provision that automatically adopts international law and conventions as the law of Malaysia (HG.org). Malaysian Federal maritime law combines modern legislation, centuries-old Malay doctrines, international treaties, private contracts, and more into a single set of interdependent legal rules. Accordingly, rules or conventions of international law, including the prohibition of piracy in UNCLOS, do not automatically become part of Malaysia's domestic law unless the Malaysian government took action to adopt those laws (HG.org).

Indonesia and UNCLOS

On the other hand, Indonesia is the largest archipelago in the world, with at least 14,000 islands, nearly eight million square kilometres of sea area, and the second-longest coastline in the world is situated at one of the most important maritime crossroads in the Indo-Pacific region. Located between the Pacific and Indian Oceans, Indonesia provides a central conduit for global shipping via the Malacca Straits and is also home to several other key maritime transit points, such as the Makassar, Sunda, and Lombok Straits. Its geographical situation has exposed Indonesia to a wide range of maritime security challenges like unreported smuggling, illegal fishing, unregulated piracy, illegal immigration, and vulnerability to maritime terrorism, risking its national security interests and commercial shipping, and maritime tourism (Morris and Paoli, 2018: 18). Understanding the country's geopolitical position Government of Indonesia has reflected in its maritime strategic thinking, putting regulatory, administrative, legal, and material instruments into place to better manage and govern its vast maritime space. However, Indonesia has been unable to develop effective port infrastructure to aid its coastal development and its ranking remains well below many other countries in Asia in terms of port infrastructure quality. Thus, long-term sustained action plans, sustainable resource management etc. have always remained a key challenge for Indonesian maritime policymakers (Fenton and Chapsos, 2018).

Following UNCLOS, to which Indonesia is a signatory since 1994, apart from an obvious act of war, military exercises, and acts of espionage, prejudicial acts include offloading cargo in violation of customs laws, fishing, survey and research activities, and acts that cause serious pollution, acts of piracy are reasonably deemed prejudicial to a nation's good order (HG.org). Nations have the sovereign authority to police and enforce violations of UNCLOS within their territorial seas and straits. For that reason, international law permits a nation to police piracy within its territorial waters, regardless of the nationality of the pirates or the ownership of the vessel under piracy attack. Indonesia has ratified UNCLOS in 2000 and re-conceptualised its identity as a maritime nation whose livelihood both derives from and depends upon the sea, which is evident from President Joko Widodo's Global Maritime Fulcrum (GMF) in 2014 and Sea Policy proposals (Morris and Paoli, 2018: 17).

Acts of piracy on the high seas are primarily addressed where member states are required *"to 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."* (UNCLOS, Article 110). The *'high seas'*, define all parts of the sea that are not part of a nation's internal or territorial waters, or the archipelagic waters of an archipelagic state, or parts of the sea that fall within an exclusive economic zone, and they are open to all ships of all nations, including landlocked nations. Ships flying any nation's flag are entitled to sail the high seas. Freedom of the high seas, however, is reserved for peaceful purposes (UNCLOS, Article 105, 106, 107 and 110). Hitherto, maritime piracy is well defined under UNCLOS, it does not set out a legal regime for prosecuting pirates, nor does it give guidance on sentencing, or even require states to enact a piracy law (HG.org). This means that it is the prosecuting state's right and responsibility to determine the laws and sentences that apply in cases of piracy brought before its courts. Indonesia does not have a National Anti-Piracy Law, and as a result, pirates prosecuted in Indonesian courts are charged under specific sections of the Criminal Code instead (HG.org).

Thailand and UNCLOS

On the contrary, Thailand has a coastline of 3,219 km, more than 250 islands, and over 4,000 km of inland waterways, a thriving maritime market, that meets most preconditions for maritime piracy threats. Though the Thai maritime sector is relatively small compared to other SEA countries the existing business opportunities, interesting coastal tourism development and multiple strategically located ports and a comparatively good port infrastructure and efficiency make its pelagic waterways an attractive playground for maritime piracy (Thailand Factsheet Maritime Sector, 2018). It is interesting to note that national anti-maritime piracy programmes were seen to be working in Thailand since 1987 (The Journal of Commerce online). During the Cold War period Close to 800,000 people from neighbouring countries fled their homes being affected by the Vietnam War and the consequent fear of totalitarian regime formation and moved into the Thai refugee camps. It is in their narratives where we find their tales of escape which were often coloured by a common thread of horror at sea - brutality at the hands of pirates and smugglers who infest the waters of the Gulf of Thailand. Though Thailand ratified UNCLOS in 2011, it has had its own set of domestic maritime laws combating maritime piracy since 2001.

A Comparative Analysis of Counter-Piracy Maritime Exercises of the Concerned Littorals

Now the question arises that is the prevailing UNCLOS regime adequate enough to maintain the maritime stake holds of the above-mentioned states? Therefore, a comparative observation of the national counter maritime piracy exercises of Malaysia, Indonesia and Thailand ancillary to UNCLOS has been done.

Counter Piracy Maritime Exercises of Malaysia

Piracy is not a specific offence under Malaysian law, although the legislature has considered enacting an anti-piracy law (Bhar, HG.org). Pirates must, therefore, be charged with violating some other substantive criminal provision, such as gang-robbery. If an act is illegal under the Laws of Malaysia, a Malaysian citizen or permanent resident who commits that act on the high seas, or any person who commits that act on the high seas on a ship that is registered in Malaysia, can be punished for that crime by a Malaysian court. (Bhar, HG.org) observes that this extension of “*extraterritorial jurisdiction*” to the high seas permits Malaysian authorities to prosecute pirates who attack a Malaysian ship and commit acts, such as robbery or gang-robbery that would be crimes if committed within the borders of Malaysia. Jurisdiction to try such offences is conferred on the Malaysian Federal High Court by the Courts of Judicature Act 1964, as amended. That Act also gives the Malaysian Federal High Court jurisdiction to try offences committed “*by any person on the high seas where the offence is piracy by the law of nations.*” (Courts of Judicature Act, 1964). The latter provision embodies the concept of “*universal jurisdiction*” and appears to confer jurisdiction to try violations of UNCLOS (Articles 100 to 107 and 110). It is not clear, however, whether conduct prohibited by UNCLOS can be tried if it is not specifically criminalized by Malaysian law, given the distinction between the ‘*triability*’ of an offence and jurisdiction to try the offence (Courts of Judicature Act, 1964). And finally, the Malaysian Federal High Court has jurisdiction to try offences against the state or any offence certified by the Attorney General to affect the security of Malaysia when such offences are committed on the high seas by a citizen or permanent resident of Malaysia or onboard a ship registered in Malaysia. That provision of the law provided the jurisdictional foundation for a recent piracy prosecution (Courts of Judicature Act, 1964).

The Maritime Institute of Malaysia (MIMA) the Government policy research institute set up in 1993 has so far taken a comprehensive approach in dealing with national, regional and global maritime matters affecting Malaysia and have so far successfully contributed towards a meaningful, comprehensive and cogent national maritime policy for Malaysia (MIMA Website). MIMA’s research wing The Centre for Ocean Law and Policy (OLAP), aspires to be Malaysia’s national centre of excellence for research in ocean law and policy issues and aims to provide timely and relevant advice and policy options as well as to identify key areas of interest for Malaysia’s multi-disciplinary realm of Ocean and maritime law that encompass UNCLOS and IMO and other related international law, as well as maritime and admiralty law. So far OLAP has undertaken the role of promoting awareness in ocean law and maritime legal aspects to appropriate stakeholders and the public, by conducting seminars, training workshops and conferences, quite effectively (MIMA Website).

Counter Piracy Maritime Exercises of Indonesia

Conversely, rooted in the history and experiences of the military and the state itself, Indonesian maritime strategic culture has so far shaped the perceived roles and responsibilities of the Tentara Nasional Indonesia Angkatan Laut (TNIAL), the most capable maritime security agency of Indonesia. Albeit institutional, doctrinal reform and weapons modernisation, the navy appears to be reluctant to relinquish its long-standing law enforcement and internal security roles resulting in overlap of roles and responsibilities among the various maritime security agencies and civil-military relations in Indonesia (Arif and Kurniawan, 2017: 77).

Indonesian maritime domain has ensured positive regulatory developments in the domain of illegal Unreported Unregulated (IUU) fishing; a ban on transshipments; a ban on the use of unsustainable fishing gear; the strengthening of auditing and licensing practices; the development of a more rigorous legal framework that has contributed to improving the governance of the fishery business.

(Morris and Paoli, 2018: 28). Hence, maritime security is a vital part of Indonesia's Global Maritime Fulcrum (GMF) policy. It articulates,

First, if maritime piracy and armed attacks against ships cannot be anticipated by Indonesia's coast guard and navy, it would potentially cause harm to the development of the maritime industry and service sectors of not only Indonesia but all the littorals of maritime SEA.

Second, vulnerability to maritime piracy may threaten the image of Indonesia as a maritime nation.

Furthermore, in 2014, President Joko Widodo declared his vision of GMF to transform Indonesia into a global maritime power. Underlying this vision is a renewed realisation of Indonesian geostrategic importance and the changing strategic environment (Morris and Paoli, 2018: 21). While non-traditional, trans-national maritime security threats such as piracy, armed robbery and other sea-borne crimes like illegal smuggling and trafficking continue to threaten Indonesian maritime jurisdictions, more traditional, conventional military threats are re-emerging as major powers like China, United States, Australia and India continue to stretch their areas of strategic interests. GMF stands in contrast with the previous Indonesian foreign policy and maritime doctrine as it seems to be more outward-looking and even assertive in pursuing its strategic interests, seeking to build the country's maritime defence capabilities, enabling it to play an active role in the Indo-Pacific region, re-establishing Indonesia's decades-old ethos of 'green water' navy finally into fruition (24).

On the international level, apart from UNCLOS, Indonesia has become a party to several maritime treaties that have enhanced its standing in maritime law protocols, such as the UN Convention against Transnational Organized Crime, the International Labour Organization Maritime Labour Convention (ILO-MLC). Five Indonesian ports have passed the International Ship and Port Facility Security Code (ISPS Code), set under the IMO, on minimum security arrangements for international ports and government agencies (Dinarto, 2016, Fenton and Chapsos, 2018). Finally, the concept of 'sharing' regulatory and operational approaches among regional states to combat shared maritime security issues may now be regarded among policymakers in Indonesia as the most viable solution to combat maritime piracy addressing regional maritime security challenges (Dinarto, 2016). Indonesia must strengthen maritime security cooperation through active diplomacy. According to its capacity as a middle-power country, Dinarto (2016) observed, Indonesia maximized its bargaining position at least in particular fields of interest. Indonesia is so far actively strengthening its maritime security cooperation through bilateral, trilateral and multilateral channels as a preventative measure.

Counter Piracy Maritime Exercises of Thailand

However, in case of Thailand, we find a robust and elaborate national maritime regime, at work, much before the UNCLOS has been incepted.

Thai Vessels Act, B.E. 2481 (1938) defines (Ministry of Transport, Thailand) "*trading in Thai waters*" reserves domestic coastal shipping i.e., transportation of cargo between two points in Thai waters, for registered Thai vessels. Section 7 of the same regulation stipulates that only registered Thai vessels with at least seventy per cent of Thai equity for domestic shipping with hundred per cent Thai national crew onboard and registered Thai vessels with at least fifty-one of Thai equity for international shipping can do "*trading in Thai waters*" whereas Section 47 stipulates that foreign-registered vessels can be allowed to do "*trading in Thai waters*" if (1) international agreements or treaties signed by Thailand agreed to do so, and (2) it is proved that certain type of

Thai vessels is not sufficient and will adversely affect the country's economy. This is to be approved by the Minister of Transport case by case for a period of one.

Furthermore, Thailand's anti-piracy law Bhumibol Adulyadej Rex Act on Prevention and Suppression of Piracy, B.E. 2534 (1991) reads "*all of the Laws, by /law and regulations in so far as they deal with matters provided herein or are contrary hereto or inconsistent herewith shall be replaced by this Act.*" According to the Section 1 of this act, "*The Acts of Piracy*" means any act of

- (a) Seizing or taking control over any ships by force or threats to endanger the ships or doing any act of violence or threatening to do any act or violence against any person or board the ship.
- (b) destroying the ship or causing damage to a ship or by any other means which is likely to cause danger to that ship.
- (c) detaining or confining the other person on by any other means whatever, depriving such person of the liberty of a person. Or,
- (d) robbery or gang-robbery which is committed on the high seas, or within the exclusive economic zone of any state by a person on board a private ship or a private aircraft against another ship or against a person or property or boarded such ships and for private ends of the offender.

"*Private ship or Private aircraft*" includes warship, Government Ship or Government Aircraft whose crew has mutinied or taken control over such ship or aircraft or seized or taken control by any person (Section 1, Bhumibol Adulyadej Rex, B.E. 2534).

"*Preliminary investigation and inquiry*" mean search for facts and evidence, the collection of evidence, or other proceedings conducted by the naval official according to the provisions of this Act in connection with the act of piracy to assert the fact or the particulars of the offence or establish the guilt or securing the delivery of the offender to the inquiry official (Section 2, Bhumibol Adulyadej Rex, B.E. 2534).

Following Section 5 of the said Act, the naval officials shall have the power to perform necessary measures and the preliminary investigation and inquiry of the naval official become an integral part of the inquiry official under the Criminal Procedure Court (Section 5, Bhumibol Adulyadej Rex, B.E. 2534).

If the Naval Official shall have a reasonable ground to suspect that it will commit or has committed an act of piracy (Section 6, Bhumibol Adulyadej Rex, B.E. 2534); by sending boat or aircraft under his command to the suspected ship, to verify the right to fly the flag and if there is any reasonable ground, the search can be conducted following Section 6 and the suspected can be detained following Section 7, 8, 9 of the said Act and following Section 10 and 11, the offences and the accused shall be tried and adjudicated by the Criminal Court of Bangkok Military Court, depending on the venue of the act, be it coastal water or territorial water or high seas (Section 7, 8, 9, 10 and 11, Bhumibol Adulyadej Rex, B.E. 2534).

Furthermore, Thai anti-piracy act offers different punishments to the offenders depending on the gravity of the offence.

Section 15: Any person who commits the act of piracy by seizing or taking control of a ship, by doing any violence, threatening to do any act of violence to cause damage to a ship or by doing any

act against any person on board such ship shall be punished with imprisonment of five to ten years and a fine of fifty thousand to a hundred thousand Baht.

Section 16: Any person who commits the act of piracy by destroying a ship shall be punished with death, imprisonment for life or imprisonment of one to twenty years.

Section 17: Any person who commits the act of piracy by causing damage to a ship which is likely to cause endanger to any person shall be punished with imprisonment of six months to seven years and a fine of five thousand to seventy thousand Baht.

Section 18: Any person who commits the act of piracy by causing damage to a ship or by any other means whatever which likely to cause damage to such ships shall be punished with imprisonment of six months to five years or a fine not exceeding fifty thousand Baht or both.

Section 19: Any person who commits the act of piracy by detaining or confining the other person or by any other means whatever depriving such person of the liberty of five to ten years and fine of fifty thousand t a hundred thousand Baht.

Section 20: Any person who commits the act of piracy by robbers or gang-robbers shall be punished with imprisonment of ten to 20 years and a fine of a hundred thousand to two hundred thousand Baht.

- It is interesting to note that to halt maritime theft, attacks, smuggling and abductions, the U.N. High Commission on Refugees had supported the Thailand Government's anti-piracy program, where the Thai marine and provincial land police are being schooled in law enforcement methods aimed at combating maritime piracy and other sea-borne crimes (Thailand Factsheet Maritime Sector, 2018). As a co-sponsor of the program, the United States spend about \$7 million in maritime and coast-guard training and has installed a U.S. Coast Guard unit in Puget Sound. Lt. Cmdr. Mark Jorgenson, commander of the Pacific area training team informed the media that *"the Thais are being trained in maritime law enforcement strategies including boardings, search-and-rescue missions and first aid."* (Geographic Research Study, 1984: No. 6). Lt. Cmdr. Steve Kraus, refugee officer at the U.S. embassy in Bangkok, said in a report to the U.S. Coast Guard that he believed that the anti-piracy program would be working. He claimed the number of assaults on refugee boats has been cut from 3.2 attacks on a boat in 1981 to 1.2 attacks a boat in 1986 (Geographic Research Study, 1984: No. 6).

Still, Tung Thanh Nguyen, the coordinator of the Southeast Asian Refugee Coalition in Seattle, believes that Piracy and other acts against coastal communities and illegal immigrants overpopulating the coastal refugee camps are difficult to deter. *"Programs such as the one operated by the Thai government will do little" ... as ... "these anti-piracy programs do not begin to touch the surface in finding solutions to the problem of victimization."* (Silk Legal website). Mr Tung stressed due to poverty, it is not rare, he said, *"for the coastal communities to be fishermen by day and pirates or smugglers by night."* Furthermore, through major investments in infrastructure and the development of the Eastern Economic Corridor (EEC), a strategically located economic zone, Thailand becomes the maritime gateway to Asia. Positive and stable economic forecasts for the Southeast Asian region, combined with Thailand's ambitious plans, have created interesting business opportunities for Dutch enterprises in the maritime sector.

Politico-Legal Dynamics of the Concerned Littorals Regarding Piracy

Thus, we can see, that the politico-legal dynamics of seaborne piracy in the pelagic waters of SEA is varied and incongruous. Are these states triggered to 'use of force' law by post-9/11 developments related to the instruments addressing the issue of seaborne piracy? The national approaches to a multi-layered response of the players and stake-holders therefore, would define the role of the global communities involved.

Malaysian Initiatives:

Acts of piracy that occur within Malaysian waters are policed by the Malaysian Maritime Enforcement Agency (MMEA), established in 2004 (MMEA Website). The Malaysian Maritime Zone includes Malaysia's internal waters, its territorial sea, its continental shelf, its exclusive economic zone, and the Malaysian fisheries zone. The MMEA is charged with maintaining law and order, protecting peace, safety and security, preventing and detecting crime, apprehending and prosecuting criminals, and collecting security intelligence within the Malaysian Maritime Zone and specifically charged with preventing and suppressing piracy and is empowered to stop, enter, board, inspect, and detain any vessel and to arrest its occupants if it has reason to believe an offence has been committed. Prosecution of a person MMEA arrests requires the consent of the public prosecutor (MMEA Website). However, The MMEA is required to respect the right of innocent passage established by UNCLOS. Since acts of piracy generally involve the commission of some other crime that is expressly defined by Malaysia's criminal code, those substantive offences can be tried in Malaysian courts if they are committed in Malaysia's maritime zone or if they are committed on the high seas by Malaysian citizens or on a ship registered in Malaysia. Given the present state of Malaysian law, doubt about the power to prosecute pirates in Malaysian courts only arises when an act of piracy affects Malaysians on the high seas but is not committed by Malaysians and does not occur on a ship that is registered in Malaysia (HG.org).

Moreover, there are occurrences where Malaysian maritime anti-piracy law came in conflict with that of UNCLOS-IMO protocol (Zubir, 2012). For example, in February 2011, Malaysian prosecutors charged seven Somali pirates captured by Malaysian naval forces in the Gulf of Aden, who were accused of shooting at naval personnel who had apprehended a hijacked chemical tanker, seized by the pirates, owned by a Japanese firm but operated by a Malaysian company. Prosecutors argued that the court had jurisdiction because the pirates threatened the security of Malaysian citizens. Zubir (2012) observes that the argument did not satisfy international jurisdictional statutes, given that the ship was not registered in Malaysia. The defence moved to dismiss the charges on the ground that the crime occurred in international waters, beyond the territorial jurisdiction of Malaysia. Malaysian Federal Court denied that motion. The pirates eventually entered into a plea agreement and entered guilty pleas to reduced charges of discharging a firearm with the intent to avoid arrest, a crime that is not subject to the death penalty. They were each sentenced to a term of incarceration. Since the defendants entered guilty pleas, the jurisdictional issue was never tested on appeal to the International Court of Justice, under the universal maritime regime (Zubir, 2012).

Indonesian Initiatives:

In 2014, the Indonesian government established Badan Keamanan Laut i.e., Indonesian Maritime Security Agency (BAKAMLA) reorganising previous Badan Koordinasi Keamanan Laut i.e., Indonesian Maritime Security Coordinating Agency (BAKORKAMLA) with an idea to develop a single entity that leads the maritime law enforcement operations and synergise the activities of the various other maritime security stakeholders coherently (Arif and Kurniawan, 2017: 78). Apart from that, at present, in addition to the TNI-AL, there are the Marine Police, the Transport Ministry's Sea and Coast Guard Unit (Kesatuan Penjaga Laut dan Pantai), Customs, the Fisheries

Surveillance Unit, the Foreign Ministry, the Attorney General's Office, the Interior Ministry, the Defence Ministry, the Ministry of Human Rights and Legal Affairs, the National Intelligence Board and the General Headquarters of the Indonesian Armed Forces – all responsible for law enforcement and maritime safety and security (Morris and Paoli, 2018: 31). In early 2015, the TNI-AL Western Fleet, which oversees maritime security in the western part of the country including the Malacca Straits, Singapore Straits and other pelagic waters of SEA, established a Quick Reaction Team (QRT) to provide a better response to illegal activities in the area. The operations carried out by the Quick Reaction Team have successfully arrested several vessels operating illegally in the Indonesian waters (Arif and Kurniawan, 2017: 80).

Following the establishment of BAKAMLA in 2014, under the Indonesian Law No. 32/2014 and PERPRES No. 178/2014 to synergise law enforcement across the various Maritime Law Enforcement (MLE) agencies, SATGAS 115 Presidential Task Force was also established in 2015 under PERPRES No. 115 to combat fisheries crimes (SATGAS Website). Administered under the KKP portfolio, SATGAS 115 seeks to strengthen administrative and legal sanctions against illegal fishing in Indonesian waters, thus far revoking 291 licenses, suspending 261 licenses and issuing 48 warning letters so far (SATGAS Website). Whereas BAKAMLA is now coordinating the assets and personnel from other MLE agencies and naval counterparts in a joint task force arrangement to monitor, detain, inspect and work with the proper legal authorities to prosecute violations of Indonesian maritime law (Fenton and Chapsos, 2018). Despite constraints, both SATGAS 115 and BAKAMLA have leveraged increased regulatory and legal powers to combat maritime security threats (SATGAS Website).

Indonesia's maritime sector also gained a boost since 2016 when the coordinating minister for Maritime Affairs Luhut Binsar Panjaitan agreed to cooperate with Japan, establishing the strategic bilateral Indonesia-Japan Maritime Forum (IJMF). The two countries agreed to collaborate in the field of maritime security, maritime economy, maritime infrastructure, as well as maritime education and training (The Jakarta Post). Seeking strategic cooperation in the maritime and industrial sectors, Japan would not only contribute to the development of the fish markets in Natuna Besar and the energy sector in East Natuna but also would be constructing a strategic port in Sabang, and work with the Indonesian Maritime Security Board to work on smuggling issues. Though the agreement appears to neglect the growing transnational maritime threat in SEA i.e., maritime piracy, incidents of which have mostly occurred in Indonesian waters, particularly in the shipping lanes from the Malacca Straits to the Singapore Straits and it signifies strategic bilateral security cooperation between Indonesia and Japan in term of sea-borne smuggling prevention (Dinarto, 2016).

Thailand's Initiatives

2014 onwards Thai Government has made their maritime objective clear that do not want outside influence in their internal policies in terms of the refugees and illegal immigrants, who actively participate in maritime piracy, narco-terrorism and other sea-borne crimes (Thailand Factsheet Maritime Sector, 2018). The Port Authority of Thailand (PAT) is responsible for the development and management of Thailand's major deep-sea ports (Ministry of Transport, Thailand). In recent years, the PAT has started to transform its ports into green ports per the IMO standards (Thailand Factsheet Maritime Sector, 2018). Laem Chabang Port, the largest in Thailand, the 4th largest in ASEAN, and the 22nd in the world (2015), is located in the EEC and handles 54% of Thailand's total imports and export. Chiang Saen port is located on the bank of the Mekong River close to the border with Myanmar and Laos. It functions as a mid-point depot for shipments from south China to Laem Chabang. Chiang Khong port, north of Thailand, serves small ships from Laos and is less important for Thailand's economy (Thailand Factsheet Maritime Sector, 2018). These ports are strategically crucial to Thailand's maritime security and economy. Hence PAT continuously invests

in modernizing ICT and reporting systems, creating a one-stop-shop service centre, and increasing these ports' capacity.

Conclusion: Towards A Multi-Lateral Interdependent Approach

Since the rise of Islamic terrorism in the SEA, Malaysia, Indonesia and Thailand shifted more focus to coordinated maritime patrols and collaborative maritime goals. Indonesia has warned the international community about the Abu Sayyaf militant operatives and that if this issue could not be addressed immediately and holistically, the problem could reach levels seen off Somalia in the Gulf of Aden. Indonesian Foreign Minister Retno Marsudi said "*We will undertake coordinated patrols in the maritime areas of our common concern*" (CNA, 9 May 2017). At least one-seventh of the Thai Anti-Piracy operation zone overlaps jurisdictional claims of Cambodia, Vietnam and Malaysia, encouraging a tendency toward cautious enforcement efforts in these 'grey' areas. In accord with Malaysia, however, Thailand has claimed Criminal jurisdiction in part of their joint development zone. Thailand thus could extend its anti-piracy activities into an approximately 2,800 – square kilometres area where there is a high incidence of pirate attacks. In 2014 Thai and Vietnam agreed to promote coastal shipping and patrolling along the eastern region of Thailand to the south of Vietnam by utilizing small and medium-sized ports. Cambodia was invited to join this maritime exercise as the coastal route also passes through its southern region with some potential coastal ports infested by pirates. The Tripartite Task Force (TTF) on Thailand-Cambodia-Vietnam (TCV) Coastal Shipping was established in 2015 (Ministry of Transport, Thailand). Indonesia, Malaysia and the Philippines have agreed on such joint patrols in 2016 (The Maritime Executive, 16 May 2016). Joint maritime patrols in Sulu and Celebes seas involve ships from the three national navies i.e., of Malaysia, Indonesia, and the Philippines coordinating together and crossing into each other's territorial waters (The Maritime Executive, 16 May 2016). The US has extended its naval expertise and has given about \$200 million in communications and surveillance equipment to the three countries' joint maritime forces over the past decade (CNA, 9 May 2017). Expanding maritime security cooperation, joint defence production, counter-terrorism strategy and boosting trade and investment was the major focus of Thai Prime Minister Prayut Chan-o-Cha's visit to India in July 2018 (Economic Times, 12 July 2018).

Henceforth, how regional and national actors are functioning differently within the scope of a international law and agencies like UN, ASEAN etc, have been surveyed. It has been found that maritime states of Malaysia, Indonesia, and Thailand have developed their maritime policies keeping piracy deterrence in mind. However, most attacks in the SEA take place within the territorial waters of the littoral states, the correct term to use for the crime is '*armed robbery*,' not piracy (IMB Annual Report, 2019), like robbery of sea-vessels, hijacking of vessels, kidnap-for-ransom attacks, port corruption and other petty crimes. Consequent multilateral and bilateral cooperative efforts under the aegis of regional counter-piracy maritime regime addressed the transnational problem of piracy quite effectively. But state-by-state approach, instead of an interdependent approach leads to discrepancies in the sentences handed down to the pirates in the pelagic waters of SEA. It also jeopardises the diplomatic relations among neighbouring littorals with conflicting interest. Hitherto, accepting all the odds – Malaysia, Indonesia and Thailand – have channelized their efforts with an interdependent approach, on rewarding a robust counter-piracy maritime regime in the pelagic SEA.

References

- Arif M and Kurniawan Y (2017) Strategic Culture and Indonesian Maritime Security. *Asia & the Pacific Policy Studies*, 5(1), 77–89.
- Bhar B S (2021) How does Malaysian law deal with acts of piracy at sea? HG.org Legal Resources.
- Bhar D (2021) Admiralty Law. Legal Articles. HG.org Legal Resources.
- Bhar D (2021) OLAP introduction. Legal Articles. HG.org Legal Resources.
- Bing N C (2015) Comprehensive Strategic Partners but Prosaic Military Ties: The Development of Malaysia China Defence Relation 1991 – 2015. *Contemporary South East Asia*, 37(2), 269 – 304.
- Braun D (1983) *The Indian Ocean: Region of conflict or "peace zone"?* New York: St. Martin's Press.
- Chaudhury D R (2018) India, Thailand to firm up maritime security cooperation. *The Economic Times*. 12 July.
- Chew E (2007) *Crouching Tiger, Hidden Dragon: The Indian Ocean and the Maritime Balance of Power in Historical Perspective*. S. Rajaratnam School of International Studies. Nanyang Technological University. *RSIS Working Paper* 144:1 – 21.
- Dinarto D (2016) Indonesia Needs to Step up Its Fight Against Maritime Piracy: Indonesia's new maritime forum with Japan misses some critical areas of potential cooperation. *The Diplomat*. 29 December.
- Fenton A J and Chapsos I (2018) Prosecuting Pirates: Maritime Piracy and Indonesian Law. First Look. *Australian Journal of Asian Law*, 19(2), October 18.
- Geographic Research Study No. 6 (1984) Gulf of Thailand: Maritime Jurisdictional Disputes and anti-Piracy Activities. 4 April.
- Gupta S (2004) Delhi gets Indian Ocean coalition to guard the seas. *Indian Express*, 16 March.
- Kularbwong K (2014) *Coastal Shipping in Thailand and Regional Cooperation on Coastal Shipping*. Maritime Promotion Division, Ministry of Transport, Thailand.
- Majumdar M. (2015) The ASEAN way of Conflict Management in the South China Sea. *South Asian E-Journal*, 39(1), 73-87.
- Morris L J and Paoli G P (2018) A Preliminary Assessment of Indonesia's Maritime Security Threats and Capabilities. RAND Corporation Report, 21 – 28.
- News Report (2016) Indonesia, Philippines, Malaysia Act Against Pirates, *The Maritime Executive*, 6 May.
- News Report (2016) They must move in a convoy, don't travel alone", *Channel News Asia*, 9 May.
- News Reporter (2014) South East Asian Navies to patrol Straits of Malacca. *The Strait Times*. Singapore, 29 June.

PPT (2018) Thailand Factsheet Maritime Sector. Netherlands Embassy, Bangkok. Ministry of Foreign Affairs. January.

Prashanth Parameswaran (2015) Indonesia, Malaysia Step Up Fight Against Piracy: Firmer response comes amid growing concerns about the problem, *The Diplomat*, 2 September.

Scott E (1987) Anti-Piracy Program Seen Working in Thailand. Maritime News. *The Journal of Commerce Online*.

Southern D (2018) Changes to Thailand's Anti-Piracy Laws. Legal Advice. Silk Legal 18 September.

Strategic Comments (2006) Piracy in South-east Asia Obstacles to security cooperation, *International Institution for Strategic Studies*, 6(5).

Zubir N A (2012) Maritime Violence: Implications to Malaysia. *Arena Hukum*, 6(1), 1-74.

Relevant Statutes, Legislations, Reports

UNCLOS. Articles 100 – 110.

SUA Convention, 2006.

IMB Annual Reports. 2014 – 2020.

Act on Prevention and Suppression of Piracy, (2009) Bhumibol Adulyadej Rex, B.E. 2534. Section 1 – 11.

Courts of Judicature Act 1964 (Revised 1972), Malaysia.

Thai Vessels Act, B.E. 2481 (1938).

Relevant Websites

www.un.org

www.mima.gov.my

www.mmea.gov.my

<http://satgas115.id/>

www.cia.gov

www.icc-ccs.org

www.silklegal.com

www.unescap.org

www.commonlii.org

www.iiss.org

www.hg.org

www.rand.org

www.maritime-executive.com

www.channelnewsasia.com

www.joc.com

www.thediplomat.com

www.economictimes.indiatimes.com

www.thejakartapost.com

www.straitstimes.com

“Quarterly News-Magazine”

POLITICAL REFLECTION

CALL FOR CONTRIBUTION

Published by CESRAN International

Political Reflection

welcomes contributions

from scholars, students, and professionals

in all aspects of international relations, politics, and political economy.

- Articles submitted should be original contributions and should not be under consideration for any other publication at the same time.
- Articles for the Magazine should be submitted via email to the following addresses:

Rahman.dag@cesran.org | editors@cesran.org

- Author's name, title and full address with a brief biographical note should be typed on a separate sheet.
- The ideal **PR** article length is from **1000** to **2000** words.
- **Political Reflection Magazine adheres to the CESRAN Harvard reference style.** View the guidelines below to ensure your manuscript conforms to the reference style. <https://therestjournal.com/wp-content/uploads/2019/03/Reference-Style.pdf>
- If a submitted article is selected for publication, its copyright will be transferred to **Centre for Strategic Research and Analysis (CESRAN Int.)**. Published papers can be cited by giving the necessary bibliographical information. For re-publication of any article in full-text permission must be sought from the editors.
- Authors bear responsibility for their contributions. Statements of fact or opinion appearing in **Political Reflection Magazine** are solely those of the authors and do not imply endorsement by the Magazine or the **CESRAN Int.**