Maritime Threats to the South and Southeast Asia: Scope for a Regional Agreement

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Abstract

Piracy has continued to be a thriving criminal activity in the seas and pirates are considered to be the enemy of mankind. Recent reports show that more than half of the piracy reports reported have been from the area of Southeast Asia. Along with piracy, armed robbery, illicit trafficking, and smuggling have broadened and deepened the nature and scope of this threat. The Law of the Sea Convention (UNCLOS III) 1982, SUA Convention, 1988 and the regional agreements establish the legal frameworks then several organizations have enhanced enforcement measures in the suppression of sea perils. This paper attempts to examine the drawbacks in the existing legal framework and maritime security arrangements and to provide suggestions to fill the gaps. It further argues that India should take the lead in entering into a regional maritime security agreement with South and South East Asian nations within the ambit of UNCLOS 1982. This is important in the background of South China Sea Dispute and consequent maritime security issues in the region.

Introduction

The region of Southeast Asia has become one of the important sea lanes and straits, including the busiest one, the Malacca Straits. It is estimated that every year more than 50000 vessels pass through these straits that connect the Indian Ocean with the South China Sea.[1] Tankers carrying oil from Middle East countries to China, Japan and other countries pass through the strait every day. The second heaviest container handling port after Shanghai, Singapore is part of this sea line.[2] Moreover South East Asian countries

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1　　Yun YunTeo, *'Target Malacca Straits: Maritime Terrorism in Southeast Asia', Vol. 30, Studies in Conflict & Terrorism* p. 541, 2007, p. 561.

2　　'JOC Top 50 World Container Ports 2014', 15 December 2015, available at http://www.joc.com/port-news/international-ports/joc-top-50-world-container ports_20150820.html, accessed on 15 December 2015.

are rich in natural resources and minerals including oil and gas in their offshore facilities.[3] Therefore the maritime security of this region is a matter of grave concern for all countries due to its strategic importance. The threat of piracy and robbery is the single most unsettled act of violence against vessels. In 2015 alone, more than 120 incidents of vessel hijacking and robberies have been reported in the South and Southeast Asia, thus making the region the world's most pirated waters. The calculation of loss due to piracy was estimated to the tune of $4.9 billion to $8.3 billion a year.[4] Apart from this, drug trafficking, smuggling, terrorist activities in the sea and human trafficking continue to be some of the other crimes committed at sea. The growth in the number of incidents in South and Southeast Asia is alarming especially since it has made the region the capital of maritime crimes.

There is no clear definition of the term 'Maritime security'[5]and it is a dynamic concept.[6] The United Nations Convention on the Law of the Sea, 1982 (UNCLOS or UNCLOS III) largely remains silent on this issue.[7] Prof. Natalie Klein says that 'maritime security' means 'the protection of a state's land and maritime territory, infrastructure, economy, environment and society from certain harmful acts occurring at sea'. In this context 'harmful acts or threats' are used in the inclusive sense and includes not only all the threats mentioned in the 2008 report of the UN Secretary but also threats which may arise in future.[8]

When the states agreed to regulate the maritime affairs through the UNCLOS, SUA etc the conventions do not provide clear and adequate provisions to deal with the threats to the maritime security. The objective of this paper is to examine the drawbacks of the existing legal framework under United Nations Convention on the Law of the Sea 1982 (UNCLOS) to address piracy and other identified threats to the South and Southeast

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[3]　Caroline Liss, 'The Privatization of Maritime Security-Maritime Security in South East Asia: Between a Rock and a Hard Place', February 2007, *Murdoch University* available at http://www.murdoch.edu.au/Research-capabilities/Asia-Research-Centre/_document/working-papers/wp141.pdf, accessed on 16 November 2015.

[4]　CNBC News, 'Piracy Increased by 22% in South East Asia', 9 July 2015, available at http://www.cnbc.com/2015/07/09/piracy-increases-by-22-in-southeast-asia.html, accessed on 9 September 2015.

[5]　Chris Rahman, 'Concept of Maritime Security - A Strategic Perspective on Alternative Visions for Good Order and Security at Sea with Policy Implications for New Zealand', 12 December 2015, *Centre for Strategic Studies: New Zealand Victoria University of Wellington,* available at http://www.victoria.ac.nz/hppi/centres/strategic-studies/documents/Concepts-of-Maritime-Security-DP07-09.pdf, accessed on 12 December 2015).

[6]　UNGA, 'Oceans and the Law of the Sea: Report of the Secretary-General' ,10 March 2008, *UN Doc A/63/63*, available at https://documents-dds-ny.un.org/doc/UNDOC/GEN/N08/266/26/PDF/N0826626.pdf?OpenElement, accessed on 21 November 2015.

[7]　United Nations Convention on the Law of Sea (adopted 10 December 1982, opened for signature 10 December 1982, entered into force 16 December 1994) 1833 UNTS 3 (UNCLOS) art 19.

[8]　Natalie Klein, *Maritime security and the Law of the Sea*, Oxford: Oxford University Press, Oxford, 2011, p. 11.

Asian region and to make further suggestions to mitigate and strengthen maritime security particularly for coastal countries.

Identified Maritime Threats

In the UN Report 2008 on Oceans and the Law of the Sea, seven specific threats to maritime security have been identified which includes piracy, armed robbery, maritime terrorism, smuggling, illicit trafficking, illegal fishing and marine environmental pollution.[9] Though all of these sea perils are serious threats, however, piracy, armed robbery and maritime terrorism may be identified as the most critical threats to the maritime security to the South and Southeast Asian region.

Piracy and Armed Robbery against Ships

The evidence of Piracy may be traced even in 9th century in South Asia. During 18th century, the British forces were also employed to suppress pirates in Southeast Asian region.[10] The act of piracy is so heinous that, as per the Piracy *Jure Gentium* (by international law),[11] the pirates are considered as the *hostis humani generis* or enemies of all humankind.[12] Pirates in all time are primarily interested in pecuniary benefits.[13] They may be poor fishermen or well organized group of persons (including terrorist groups in particular out to raise funds).

The 'piracy' has been defined under Art. 101 of the UNCLOS and in simple words, the crime of piracy is an act of illegal violence against life and property at sea committed for the purpose of pecuniary benefits[14] through stealing property and ransom for securing the release of the hostages.[15] Both the offences of 'piracy' and 'armed robbery'[16] have

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9   Ibid (n.6).

10   Maximo Q. Mejia Jr., 'Pierre Cariou, Fran͵cois-Charles Wolff' Piracy in Shipping. 2010, available at https://halshs.archives-ouvertes.fr/hal-00470616/document, accessed on 27 August 2015.

11   Ibid (n.7), art 105.

12   Ibid (n.8) p. 118

13   Hua-Lun Huang, 'Who are sea cutthroats? A typological analysis of pirates, Crime', 2009, *Law and Social Change,* available at http://link.springer.com/article/10.1007%2Fs10611-009-9225-x#page-2 , accessed on 19 November 2015.

14   Ho, Joshua H., 'Enhancing Safety, Security, and Environmental Protection of the Straits of Malacca and Singapore: The Cooperative Mechanism', Vol. 40, *Ocean Dev. & Int'l L.* p. 233, 2009, p. 247.

15   Robert Beckman, 'Enhancing Regional Cooperation on Piracy and Maritime Crimes ',National University of Singapore(CIL) , available at
     http://cil.nus.edu.sg/wp/wp-content/uploads/2010/10/Beckman-and-Davenport-Enhancing-Regional-Cooperation-in-Piracy-and-Maritime-Crimes.pdf ,accessed on 29 November 2015.

16   'IMO Code of Practice for the Investigation of the Crime of Piracy and Armed Robbery Against Ships', 18 January 2010, *INTERNATIONAL MARITIME ORGANIZATION,* available   at
     http://www.imo.org/en/OurWork/Security/PiracyArmedRobbery/Guidance/Documents/A.1025.pdf, accessed 14 November 2015.

been defined in identical term in the UNCLOS and IMO Code respectively.[17] The difference lies in the place of occurrence.[18] If the act is committed within the territorial waters then it will be regarded as 'armed robbery'[19] whereas when the same act is committed anywhere beyond the coastal state's jurisdiction, it will be treated as 'piracy'.[20]
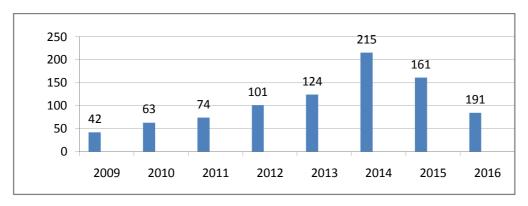
Table A.1. The piracy incidents from 2009 to 2016

Source: ICC IMB Piracy and Armed Robbery against Ships Annual Report, 2016

The most affected country of the Southeast Asia is Indonesia where 49 attacks of piracy have been reported in 2016. Malaysia, Singapore and other countries in the region are always under threat of piracy. This is happening under the nose of joint marine police patrol from Singapore, Malaysia and Indonesia.[21] Within the South Asian region, piracy is serious concern especially to India and Bangladesh. In 2016 when Bangladesh is affected by 3 attacks of piracy, India counts for 14 attacks during the same period. The Annual Report (mentioned above) provides that more than half of the world's piracy have been reported in the South and Southeast Asia.[22]

Need of Responsible Institutional Framework for Suppression of Piracy

Information relating to piracy and armed robbery is crucial for the suppression of this offence. As mentioned before, the most important agencies involved in the collection of such news are the International Maritime Bureau (IMB) Piracy Reporting Centre and the International Maritime Organization (IMO).[23] The main purpose of the IMB is to receive

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[17]   Douglas Guilfoyle, 'International law and counter-piracy in the Indian Ocean', Vol. 8, *Journal of the Indian Ocean Region* p. 202, 2012 p. 218.

[18]   Robert C. Beckman, 'Combatting Piracy and Armed Robbery Against Ships in Southeast Asia: The Way Forward', Vol. 33*, Ocean Dev. & Int'l L.* p. 317, 2010, p. 341.

[19]   Peter Chalk, 'Piracy off the Horn of Africa: Scope, Dimensions, Causes and Responses'*, 16 The Brown Journal of World Affairs* p. 89, 2010, p.108.

[20]   Ibid (n.8) p. 303.

[21]   Ted Kemp, 'World's Most Pirated Waters', *CBNC ,*available at http://www.cnbc.com/2014/09/15/worlds-most-pirated-waters.html, accessed on 10 July 2016.

[22]   Prashanth Parameswaran, 'Indonesia, Malaysia Step Up Fight Against Piracy', *The Diploma,* available at http://thediplomat.com/2015/09/indonesia-malaysia-step-up-fight-against-piracy/, accessed 10 July 2016.

[23]   *Ibid 14*

reports and share such reports with its members. The IMO has both monthly and quarterly circulation of piracy related news. In Asia, the ReCAAP has established an Information Sharing Centre in Singapore.[24] The Centre receives reports from designated and notified 'focal points' of the contracting parties to the agreement then shares the news according to the agreement provided the confidentiality of the information is restored.[25]

Legal Framework Combating Piracy and Armed Robbery

Articles 100 to 107 of the UNCLOS and the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA) Convention 1988 and its Protocols formed the basis of the international legal instruments to deal with the crime. Article 101 has been discussed above and the UNCLOS empowers the States to conduct inspection and seizure to suppress piracy.[26]

The UNCLOS does not cover the piratical act of internal seizure or hijacking.[27] It is the SUA Convention that addresses this limitation. The SUA Convention does not require two ships, motives of the offenders and geographical limitations but it criminalizes the intentional acts of violence 'within a ship' irrespective of purpose or motivation, if such acts endanger the safe navigation of the vessel though the term "piracy" has not been used in the Convention (Article 3).[28]

The Convention (SUA) requires the parties to enact law, criminalizing such act at the domestic level and it is provided for under Article 3 of the Convention. Further the state is obliged either to prosecute or extradite such offenders.[29] Again the SUA Convention does not cover such offence if it is committed within the territorial sea of any state.[30]

Interestingly, UN Doc. S/RES/1846 (2008) confirms that piratical acts within the state's jurisdiction qualify as an offence under the Convention. Yet the obligation imposed on the parties to the Convention is limited as it really does not impose an obligation to exert jurisdiction over such incidents against vessels of other nations.[31] The 2005 SUA Protocol makes some headway that permits inspection of the suspected vessels. However, the inspection is possible if the targeted vessel consents.

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[24]   Suk Kyoon Kim, 'Maritime Security Initiatives in East Asia: Assessment and the Way Forward', Vol. 42, *Ocean Dev. & Int'l L. p. 227,* 2011, p. 244.

[25]   'About ReCAAP', *ReCAAP Information Sharing Centre (ISC),*
        available at http://www.recaap.org/AboutReCAAPISC.aspx, accessed on 8 December 2015.

[26]   Ibid (n.11), art 105.

[27]   Convention for the suppression of unlawful acts against the safety of maritime navigation (adopted 10 March 1988, entered into force 1 March 1992) 1678 UNTS 304 (Fixed Platform Protocol) art 3.

[28]   Nikos Pass & Anamika Twyman-Ghoshal, 'Controlling piracy in Southeast Asia- thinking outside the Box', *Piracy And International Maritime Crimes In   ASEAN* p.62, 2012, p.94.

[29]   Convention for the suppression of unlawful acts against the safety of maritime navigation (adopted 10 March 1988, entered into force 1 March 1992) 1678 UNTS 304 (Fixed Platform Protocol) art 7.

[30]   Peter Lehr, 'Piracy and maritime governance in the Indian Ocean', Vol. 9, *Journal of The Indian Ocean Region* p. 104, 2013, p.119.

[31]   *Ibid.*

Combating Piracy in the South and Southeast Asian Water

Countries like Pakistan, Sri Lanka and Maldives are rarely affected by piracy but India and Bangladesh are the countries most affected due to piracy within South Asian region. Chennai in India and both the Chittagong and Mongla Ports of Bangladesh are reported as the most troubled parts of the region. However, it is noteworthy that piracy in this region is more of a social issue than one of organized crime[32] and petty theft.[33]All the countries of the region have ratified UNCLOS 1982 but within this region, except Sri Lanka no other country has specific legislation dealing with piracy yet.

In case of Bangladesh, the Coast Guard Act, 1994 deals with the act of piracy though the Act does not mention the term 'piracy' as such. The Navy and Coast Guard of the respective countries are involved with the search and seizure operation of piratical acts. Efforts have been made to enact legislation to fight the peril of piracy in India in the form of the Piracy Bill, 2012.[34] However, the Bill is yet to be passed by the Parliament and the bill does not cover the issues like less harmful acts of piracy i.e. trespass, stealing of valuables from the vessels. Moreover, the Bill provides limited jurisdiction as a crime committed by an Indian vessel or against Indian vessels is subjected to Indian courts. Yet, the court follows the policy of universal jurisdiction on the piracy[35] and a clear legislation is required in India.

In some cases, there may be bilateral agreements between states. There is a clear agreement between the US and India for the protection US mercantile ships when traversing Indian waters. The Indian Navy looks after those ships within the Indian Ocean and the Bay of Bengal regions. However, laws in the South Asian region to tackle piracy remain a misnomer. It is upon India now to take the lead and to initiate the arrangement of a regional agreement to combat piracy within the South Asian region.

The SUA Convention has the least applicability to the Southeast Asian region as the key States like Indonesia and Malaysia have not ratified the Convention.[36] Accordingly this international legal instrument is less effective in the suppression of piracy and armed robbery within the region.

A fact that must be emphasized is that individual national efforts are not enough to suppress piracy and combat armed robbery within the Southeast Asian region. The need of the hour is to take a concert and combined effort and therefore in this context a regional agreement between countries in the said region is the only alternative measure to

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32   Vijay Sakhuja, 'Sea Piracy in South Asia', ed. Peter Leher, New York: Routledge, 2008, p. 23.
33   Vijay Sakhuja, 'Maritime Security in Southeast Asia', *Vol. 29, Contemporary Southeast Asia: A Journal of International and Strategic Affairs* available at http://muse.jhu.edu/journals/contemporary_southeast_asia_a_journal_of_international_an d_strategic_affairs/v029/29.2sakhuja.pdf, accessed 27 October 2015.
34   The Piracy Bill 2012, *PRS India* available at http://www.prsindia.org/uploads/media/Piracy/piracy%20bill%20text%20_%202012.pdf Accessed, 16 September 2015.
35   *Pride Foramer v. Union of India (UOI) And Ors,* AIR 2001 Bom 332, 2002 (4) Bom CR 751. See also, *Aban Loyd Chiles Offshore Ltd. v. Union of India &Ors.* (2008) 11 SCC 439
36   Terence Lee & Kevin McGahan, 'Norm Subsidiarity and Institutional Cooperation: Explaining the Straits of Malacca Anti-Piracy Regime', Vol. 28, *The Pacific Review*, 2015.

suppress such perils at sea. A need for joint anti-piracy measures to combat this issue was felt and the first joint step in this direction was taken in 2003 when Malaysia and Thailand began coordinated patrolling measures along their maritime borders. This effort inspired the countries along the Malacca Strait in particular Malaysia, Singapore and Indonesia. The countries therefore started a joint operation titled MALSINDO in 2004. 'MALSINDO Malacca Straits Coordinated Patrol' was the code name of the trilateral joint patrolling operation consisting of the forces of Indonesia, Malaysia and Singapore. Initially the operation was started only with the maritime forces of these three countries. Later on in 2008, the operation was empowered by adding air vigilance. However, these patrolling systems had some flaws. Firstly, they were arranged in such a way that the movement of the security personnel was restricted to being within the borders of their respective countries. Also it was not a joint patrolling system and they were not entitled to the right of hot pursuit.[37] Therefore these patrolling systems were less effective. Again in 2004, the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP) came into force in 2006. The primary objective of the agreement was that the parties ought to take effective measures in preventing and suppressing piracy and armed robbery. In practice, however, the mandate lies in information sharing and providing mutual legal assistance among parties to the agreement and therefore the fact that Malaysia and Indonesia have not joined the agreement that makes the effort less effective.

The primary reasons for non-participation of these countries to such combined effort are sovereignty related issues that ultimately weaken counter measures in the suppression of piracy and armed robbery. However, in the present day, concepts of absolute sovereignty are largely obsolete because sovereign states are necessarily accepting restrictions on their absolute power in the larger interest of the international community.

Terrorist Acts Involving Shipping, Offshore Installations and Other Maritime Interests and Illicit Trafficking in Arms and Weapons of Mass Destruction

The threat of maritime terrorism in the South and Southeast region remains palpable. A floating bomb, guided by terrorists, sent into the vessels or ports can cause a huge impact on the heavily networked shipping industry in the region.[38] Vessels, containers, ports and offshore installations are vulnerable to such attacks. Further, consequences of maritime terrorism will have a significant impact on human life and international trade and commerce in particular. Again marine vessels, crew members, sea ports and huge containers may be used for the purpose of terrorist activities.

From the Western region to the Eastern region, the area is subjected to the threat of terrorism. While in the West, the Al Qaeda is the most active; the *Abu Sayyaf* group is involved with similar activities in Malaysia, in the east. Other deadly terrorist groups of the

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[37] Here the term is used to mean to give a chase by officials of a country behind the accused involved with the maritime offence for the punishment. Within the MALSINDO framework the officials of one country are not allowed to give a chase to such accused beyond its territorial limit.

[38] Paul W. Parfomak & John Frittelli, 'Maritime Security: Potential Terrorist Attacks and Protection Priorities', 2007, available at http://www.au.af.mil/au/awc/awcgate/crs/rl33787.pdf, accessed on 8 December 2015.

region include the Taliban, *Jaish* and *Lashkar* groups who are present and active in the Indo-Pak-Afghan region (including HUJI in Bangladesh and *Jemaah Islamia* (JI) in Indonesia).[39] Some of the deadly incidents of such evil may be worth mentioning here. The *Abu Sayyaf* group killed 166 people on board Super ferry 14 incidents in 2004. There were two terrorist attacks on Mumbai in 1993 and 2008 respectively. In both of the tragedies, the terrorists found sea routs safe to reach the targets. In the latter occasion, 10 members of the Pakistan based terrorist group *Lashkar-e-Toiba* reached Mumbai from Karachi through the sea route and killed 164 persons and injured 308 persons.[40] The recent incident of maritime terrorism is an attempt to take control of PNS *Zulfiqar*, a Pakistani Navy frigate by the Al Qaeda in the Indian Subcontinent (AQIS is a wing of Al Qaeda).[41]

Maritime Target

It is interesting to note that while, on the one hand, Peter Lehr[42] points out that terrorist groups, who are efficient in land based attacks are not really capable of executing maritime operations and that lack of maritime knowledge and skills may keep them away from such operation in the sea. On the other hand, Peter Chalk states that various commercial firms are providing such training and equipments making them fit for marine affairs.[43] The Super Ferry 14 incident shows that how lethal maritime terrorism can be. Again the terrorist groups may exploit the skill, techniques and equipments of other existing organized crime syndicates in the South and Southeast region, which are engaged in smuggling.[44]

Law and Collective Enforcement Measures

Maritime terrorism has been taken a little more seriously in the SUA Convention. The Convention and its Protocol 2005 have extended the jurisdiction of one state into the

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[39] Raymond Catherine Zara, '*Maritime Terrorism, A Risk Assessment: The Australian Example*', ed. Joshua Ho, Catherine Zara Raymond, Singapore: Institute of Defense and Strategic Studies, 2005, p. 179-212.

[40] 'Home Minister's Statement on Terrorist Attacks in Mumbai', *South Asia Terrorism Portal,* available at
http://www.satp.org/satporgtp/countries/india/document/papers/08_dec_12_HM_st.htm , accessed on 28 October 2015.

[41] Vijay Sakhuja, 'Maritime Terrorism: Karachi as a Staging Point*"*, *Institute of Peace and Conflict Studies,* available at
http://www.ipcs.org/article/peace-and-conflict-database-pakistan/maritime-   terrorism-karachi-as-a-staging-point-4680.html, accessed on 14 December 2015.

[42] Peter Lehr, 'Maritime Terrorism: Locations, Actors, and Capabilities', ed. Rupert Herbert-Burns, Sam Bateman, Peter Lehr, (CRC Press, 2009), p. 55. Also Victor Asal & Justin V. Hastings, 'When Terrorism Goes to Sea: Terrorist Organizations and the Move to Maritime Targets, Terrorism and Political Violence', *Vol. 27, Terrorism and Political Violence* p. 722, 2015, p. 740.

[43] Peter Chalk, '*The Maritime Dimension of International Security Terrorism, piracy, and Challenges for the United States',2008*, available at
http://www.rand.org/content/dam/rand/pubs/monographs/2008/RAND_MG697.pdf, accessed on 19 December 2015.

[44] Victor Asala and Justin V. Hastings, 'When Terrorism Goes to Sea: Terrorist Organizations and the Move to Maritime Targets', Vol. 27, *Terrorism and Political Violence* p. 722, 2015, p. 740.

territorial waters of another state. The unlawful act of maritime terrorism specifically dealt with in the SUA Convention. The Convention covers unlawful offences committed in the territorial seas, the archipelagic waters, international straits and the Exclusive Economic Zone (EEZ). The Convention criminalizes the unlawful act of seizing control over the vessel, destroying the vessels, or demand of ransom, committing an act of violence against person on ship; it also includes an attempt of those acts and an accomplice with act of compelling another to do such unlawful act. The convention follows the principle of *aut dedere aut judicare* which means that the state party to the treaty must either prosecute or extradite a person who commits one of those unlawful acts for prosecution. Unfortunately, very few states of Southeast Asia have ratified the SUA Convention and importantly both Malaysia and Indonesia are yet to ratify the convention. They therefore are deprived of tools of the convention, thereby compromising measures against maritime terrorism.

Limited individual enforcement mechanism in suppression of maritime terrorism has proven to be ineffective. It is important that efforts are made to form an effective common enforcement mechanism consisting of security forces of the countries. In consonance with this idea, both the MALSINDO and the ReCAAP have come into existence. Unfortunately the MALSINDO has not arrived at a consensus on the issue of boundary limitation and the ideal solution of 'joint patrols' is that such patrolling must not be subjected to territorial restrictions.

Another combined effort is the cooperation among the ASEAN countries and the adoption of the ReCAAP in 2004. The ReCAAP is a regional agreement to promote and enhance cooperation against piracy and armed robbery in Asia. The agreement establishes the ReCAAP Information Sharing Centre (ReCAAP ISC). The Centre is connected with the ReCAAP Focal Points through a secure web-based Information Network System (IFN). The Centre facilitates communication and information among the respective governments to improve response to such incidents.

With regard to counter measures against maritime terrorism the countries like India, Pakistan, Sri Lanka and Bangladesh are bound by the SUA Convention and virtually committed to that. Further, efforts of these countries remain ineffectual to suppress crime through the South Asian Association of Regional Cooperation (SAARC) and ASEAN Regional Forum (ARF).

Considering the serious nature of such threat, there must be a strong counter mechanism. The basic characteristic of the enforcement mechanism countering such threat should not be individualistic in nature. Most of the enforcement agencies of countries are confined within their own geographical limits. Such an approach is not at all helpful in suppressing trans-boundary crime like maritime terrorism. However, efforts by multilateral forces countering such threats may be effective.

The South and South East Asian Approach

The common ground for South and Southeast Asian countries relating to maritime threats and dependency on seaborne trade encourages in the creation of coordinated measures against such threats. However, when a cooperative approach by the members enhances economic development, regional initiatives promoting regional marine security

are obstructed by distrust and lack of political will on the part of the littoral states of the region especially in the Southeast Asia.

India has contributed the most to the United Nations (UN) peacekeeping operations with more than 90000 personnel being deployed and has entered into mutual understanding and agreements with the littoral states.[45] In the recent years, India took leading initiatives to strengthen regional maritime security by taking steps for the collective gathering of national navies in particular. It raised serious concerns over maritime security in IORA, IONS and the ASEAN Defense Ministers Meeting (ADMM).[46]

It is important to note that under the chairmanship of India, the Indian Ocean Rim Association (IORA) has started addressing maritime security issues. There is growing importance in the promotion of consultation, reassurance, transparency and interdependency in this respect. Most of the countries of the region are the members of the Indian Ocean Naval Symposium (IONS).[47] India took necessary initiatives and the inauguration of the INOS-2008 was held under the Chairmanship of Indian Navy in New Delhi, 2008. Again the gathering at Milan is another important naval gathering of several nations who are developing an environment for a cooperative mechanism in promoting marine security of the nations.[48]

India took leading initiatives to bring about a healthy consensus for the Trilateral Cooperation on Maritime Security (TCMS) in combating maritime security challenges through cooperative measures.[49] India, Sri Lanka and Maldives have agreed to work together in the promotion of Maritime Domain Awareness (MDA), Long Range Identification and Tracking (LRIT), Merchant Ship Information System (MSIS) and Automatic Identification System (AIS) with Search and Rescue (SAR). Other important thrust areas of the initiatives are to enhance the bilateral exercises and the communication of information relating to maritime threats. This '*maritime troika*' i.e. India, Maldives and Sri Lanka will not only facilitate themselves but also encourage other littoral states of the

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[45]   Kapil Bhatia, 'Reinforcing Maritime Connectivity through Information Sharing: An Indian Perspective, ed. DR Pang Yang Huei', 2001, *Singapore: POINTER: Journal of the Singapore Armed Forces*, available at
        http://www.mindef.gov.sg/imindef/publications/pointer/supplements/IFC/_jcr_content/i mindefPars/0006/file.res/MINDEF_Pointer%20IFC%20Supplement%20FINAL.pdf,
        accessed on 13 November 2015.

[46]   'ASEAN Defense Ministries Meeting', available at
        https://admm.asean.org/index.php/about-admm/2013-01-22-10-51-   17.html, accessed on 13 December 2015.

[47]   It is a platform providing for the exchange of opinion among the naval professionals over the issues relating to maritime security in the Indian Ocean Region. The littoral states of South Asia, Indonesia, Malaysia, Myanmar, Singapore, Thailand and Timor Leste are the members of it.

[48]   In 2014 there were navies of 17 nations that took part at Port Blair in the Andaman & Nicobar Islands in the Bay of Bengal. and see P.K. Ghosh (2014). Maritime Security Trilateralism: India, Sri Lanka and the Maldives, Strategic Analysis, 38 no. 3, (May 14).

[49]   'Outcome Document of the Second NSA-Level Meeting on Trilateral Cooperation on Maritime Security between India, the Maldives and Sri Lanka', available at
        http://www.mea.gov.in/bilateral-documents.htm?dtl/21922/Outcome+Document+of+the +Second+NSALevel+Meeting+on+Trilateral+Cooperation+on+Maritime+Security+betwe en+India+the+Maldives+and+Sri+Lank ,accessed 9 December 2015.

region to draw a common frame work in combating transnational maritime threat to the region.[50]

Information sharing is a major tool to combat maritime security. In this respect, India is moving forward with a leading role in this region. It has ratified the ReCAAP and is ensuring the sharing of information between the Indian Maritime Rescue Coordination Center Mumbai (MRCC) and the ReCAAP ISC.

Through the Merchant Ship Information System (MSIS) portal, India is connected with several Navies. In addition to this, the engagement of the Indian Navy with the Information Fusion Centre (IFC) is conducive to the joint effort in combating maritime security.[51] It complements the larger strategic landscape between India and Southeast Asia.[52]

After the bloody terrorist attack in Mumbai in 2008, India has taken steps to revamp its coastal and maritime security support system. The functioning of the National Command Control Communication Intelligence (NC3I) is a major step in this direction. The Information Management and Analysis Centre (IMAC) is the nodal office of the network linked with 51 coastal stations. The IMAC is responsible for the classifying and analyzing such information to assess threats at sea. Also the National Maritime Domain Awareness (NMDA) project is likely to be linked with the network and the IMAC shall function as the center of the project. The Government of India is seeking cooperation from the littoral states for the effective enforcement of the NMDA project. India is stressing on its priority to strengthen the maritime security of the region. However, the accomplishment of such initiatives is highly dependent on the cooperation of the littoral states of the region.

Moreover, the unified and indivisible characteristics of the law of the sea demand extended cooperation. Given the encouraging success, which has been possible due to the functioning of MALSINDO mechanics, it is the time to take initiatives to limit the dominating weakness (mentioned above) inherent to this coordinated patrolling. It is inevitable that the concern about the sovereignty and the existing divergent perceptions regarding the core values of the maritime security concerns among the countries like the Singapore, Malaysia, and Indonesia are required to be reconciled at the earliest. India has bilateral and multilateral engagement and understanding with Thailand and Indonesia. India's attachment with the Singapore and beyond through the maritime exercises and cooperative engagements in response to the maritime concerns is the result of enhanced requirement of maritime awareness, confidence and cooperation among these maritime nations. India's initiative is justified by its increasing dependencies on the Malacca Straits and the SLOC on trade and strategic reasons. Indeed, it will be judicious to engage India

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[50] Sakhuja, Vijai, 'India, Sri Lanka & Maldives: A Maritime Troika Leads the Way', available at http://www.ipcs.org/article/peace-and-conflict-database-sri-lanka/india-sri-lanka-maldives- a- maritime- troika-leads-the-way-4065.html , accessed on 13 November 2015.

[51] 'IFC is a regional Maritime Security (MARSEC) information-sharing center founded by Singapore Navy and it facilitates information-sharing and collaboration between partners to enhance maritime security to the region', available at http://www.mindef.gov.sg/imindef/press_room/official_releases/nr/2014/apr/04apr14_nr /04apr14_fs.html#.VkV2qLcrLIU, accessed on 13November 2015.

[52] Ibid (n.43).

to the MALSINDO. If India joins with the patrolling, the friendly attachment and interdependence between India and with these countries (the Singapore, Malaysia, and Indonesia) will definitely boost confidence and trust among these countries. Such awareness and transparency among these nations are required for realization of the shipment transforming from 'coordinating patrolling MALSINDO' to 'joint patrolling Extended MALSINDO' which will have the resources and expertise of the Indian maritime forces. The newly formed surveillance should operate under the supervision of a 'centralized command' consenting of the forces and personnel of all these countries. The agreement among the littorals on the issues of 'required limited hot pursuit' to catch marine criminals is not impossible under such a joint framework.

Conclusion

The geographical and strategic importance of the Sea Line of Communication in the South and Southeast Asian region demands marine order. The maritime water of the area is highly significant to both regional and international trade and commerce and related activities. The proper functioning of such a chain of activities is dependent on the peaceful existence of the marine environment. When maritime order is threatened, it throws everything into jeopardy especially since such maritime criminal activities are not confined within any single state's maritime zone. The cause and effect of such criminal activities surely spread over several states of the region.

The fundamental characteristics of the existing measures for combating threats to the marine security to the region are largely state centric. And counter measures adopted by the individual state are largely ineffective in combating marine threat. Further, such measures are subject to the exclusive interests of the states. This has been seen in case of Indonesia wherein the state is primarily interested in protecting its fishing resources and therefore gives priority to measures against illegal fishing rather than to measures against piracy. Limited resources, weak legal framework and mixed priorities of the individual countries further incapacitate the individual efforts of states in the suppression of maritime threats. Lack of political will among countries of the region is yet another impediment in setting up a robust system of marine security in the region.

It is important to the regional power to take effective steps and take wider responsibility to secure the peaceful use of the maritime waters of the region. However, these inclusive interests can become a reality only with the sincere and cooperative efforts of other member nations within the region to conclude a regional agreement on maritime security. An initiative to bring all these countries together for a coordinate effort to counter these threats in South and Southeast Asian countries is explicit. However, a country from this region is yet to take lead role for this purpose.

Continuous united efforts have been reflected with the functioning of ReCAAP and Malacca Straits Coordinated Patrol. Considering the challenges and concerns to maritime order, it is high time that the countries of the region join hands to take a concerted effort to curb the menace of piracy, illicit trafficking etc. It is time to look beyond narrow, singular interests of states alone and to initiate extensive action, which will protect the region at large. Only a united strategy will be able to address these problems.

India has played an important role in the development of modern Law of the Sea. Beginning with the First UN Conference on the Law of the Sea 1958, wherein India took a lot of interest and has made a fair contribution to the adoption and ratification of the UNCLOS, 1982. Again India has ratified several international legal instruments like the SUA Convention and SUA Protocol and has enacted the Suppression of Unlawful Acts against Safety of Maritime Navigation and Fixed Platforms on Continental Shelf Act, 2002. Further the state has contributed in the formation and functioning of international organizations dealing with maritime activities. India's role would therefore be appreciatively monumental to initiate the strategy which will facilitate the bringing together of all member nations into a common consensus to form a strong regional agreement in order to secure maritime order in the South and Southeast Asian region.

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