

**CHAPTER III**

**THE REGIONAL COOPERATION AGREEMENT ON COMBATING  
PIRACY AND ARMED ROBBERY AGAINST SHIPS IN ASIA (RECAAP)**

The Regional Cooperation Agreement on Combating Piracy and Armed Robbery Against Ships in Asia (ReCAAP) is the first regional cooperation in Asia to focus on piracy and armed robbery issue on government-to-government basis. As a breakthrough, the ReCAAP has main focus not militarily, but on information sharing in fighting against piracy and armed robbery.

**A. ReCAAP As A Regime**

In the first chapter, it is explained that a regime consists of principles, rules, and norms which are implied in order to resolve certain problems. International regime particularly, is aimed to help states to achieve collective welfare. The sets of principles, rules and norms of regime are the base mechanism for states to an integrated cooperation. Cooperation is essential because it is a process in which governments consider that their partners are able to assist in gaining their goals.<sup>1</sup>

The main function of regime is to maneuver solutions to solve joint problems. Maritime issues which involve common interest dilemma are solved through collaboration and coordination.<sup>2</sup> Therefore it is also essential to involve regime in solving the issues. Piracy, in this case as one of maritime issues, is an issue which

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<sup>1</sup> Valencia, Mark J. "Regional Maritime Regime Building: Prospects in Northeast and Southeast Asia." *Ocean Development & International Law*. (2000). 223-247. Retrieved from <http://dx.doi.org/10.1080/009083200413145> on 14 December 2014. p. 225.

<sup>2</sup> Ibid p. 226

becomes the dilemma of not only one state. In Southeast Asia where the issue of piracy is a concern of the states regarding their maritime security, the Regional Cooperation Agreement on Combating Piracy and Armed Robbery Against Ships in Asia (ReCAAP), established an integrated form of cooperation and collaboration.

Regime has principles, norms, rules, and decision making procedure. In the case of regional cooperation, the norms, rules, principles and decision making procedures are in form of treaty arrangement, joint activities, regional organization, harmonization of law and policies, and informal contacts.<sup>3</sup> Joint activities is one of the most common form of regional cooperation and the most demanding as it involves interaction in a particular area or agency. Treaty arrangement, at the same time is also essential as the base of the cooperation.

The ReCAAP Agreement is the base of the cooperation. It is the base for the norms, rules, principles and decision making procedure for ReCAAP as a regime which contains what the contracting parties ought to do, their rights and obligations. The implementation of the agreement is including the establishment of the ReCAAP Information Sharing Center (ISC) as an international organization and as the process mechanism toward the three pillars of ReCAAP, Information Sharing, Capacity Building, and Cooperative Arrangement. These three pillars are the product of the

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<sup>3</sup>Valencia, Mark J. "Regional Maritime Regime Building: Prospects in Northeast and Southeast Asia." *Ocean Development & International Law*. (2000). 223-247. Retrieved from <http://dx.doi.org/10.1080/009083200413145> on 14 December 2014. p.232.

agreement, which then proceed to become the main programs in fighting against piracy and armed robbery.

## **B. The ReCAAP Agreement**

The ReCAAP agreement is divided into six parts and consisted of 22 articles.<sup>4</sup> The first is introduction and also explains about the general provisions and obligations which urged the states to cooperate and to be active in combating piracy, as well as respect each other's jurisdiction and sovereignty. The second part discuss about the establishment of the Information Sharing Center (ISC) as the "center" of operational in promoting close cooperation among the contracting parties.

In the third part there is explanation about cooperating through the Information Sharing Center. In order to be able to communicate with the center, each of the contracting parties are commanded to design focal points. The fourth part continues to explain about the about cooperation, including about extradition and mutual legal assistance subject to the national laws and regulations of the contracting parties. In is also in this part which explains about cooperation through capacity building and cooperative arrangements such as exercises or other forms. The information sharing, capacity building and cooperative arrangements from part three and four of the agreement are concluded as the three main pillars of ReCAAP in combating piracy and armed robbery. The last part, which is the fifth,

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<sup>4</sup> The ReCAAP Agreement

discuss about final provisions, such as settlement of disputes, amendment and withdrawal.

### **C. The ReCAAP Information Sharing Center (ISC)**

More than a month after the establishment of ReCAAP, the Information Sharing Center (ISC) was launched as the first counter piracy mechanism which the agreement created.<sup>5</sup> The ISC was set as International Organization (IO) which contained local staff from Singapore, and representatives from each of the contracting parties. It was also declared as the first government-to-government counter piracy effort in Southeast Asia.<sup>6</sup>

As the center, it is in the ISC where the Executive Director and Governing Council of ReCAAP resides. The Executive Director is the head of the ISC, and together with the Governing Council, they manage all the information sharing which passes through the ISC, structural management of the ISC and ReCAAP, as well as the finance. The ISC also facilitates the operational cooperation among the contracting parties, analyse the piracy and armed robbery incident reports as well as supporting capacity building activities for the contracting parties. In operating, the

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<sup>5</sup> Ho, Joshua. "Combating Piracy and Armed Robbery in Asia: The ReCAAP Information Sharing Centre (ISC)." *Marine Policy* (2008): 432-434. Article retrieved from [www.elsevier.com/locate/marpol](http://www.elsevier.com/locate/marpol) on 14 December 2014.

<sup>6</sup> Endo, Yoshihida. "Enhancing Regional Cooperation: The Asia Initiative". 11<sup>th</sup> Asia Pacific Heads of Maritime Agency's Forum. Manila, 16-19 June 2010. Retrieved from <http://www.amsa.gov.au/aphomsa/archives/Meeting%2011/Presentations/Topic%209%20Enhancing%20Regional%20Cooperation-Endo%28ReCAAP%29.pdf> on 14 December 2015.

ReCAAP ISC has three main principles, respect for sovereignty, effectiveness and transparency.

#### **D. Actors related to ReCAAP**

The actors involved in the operational mechanism of the ReCAAP includes the contracting parties, the non signatories states, non state actors, as well as organizations. All the actors contribute and affect the establishment and operation of the ReCAAP in achieving the goal as a regime.

##### **1. Contracting Parties**

The contracting parties are the states which had ratified the ReCAAP agreement. The original contracting parties of the ReCAAP which had finalized the agreement are sixteen Asian states, which includes the ten states of Southeast Asia. They are including Japan, China, South Korea, India, Bangladesh, Sri Lanka, Indonesia, Thailand, Malaysia, Singapore, the Philippines, Vietnam, Cambodia, Myanmar, Laos, and Brunei. However, only fourteen states which brought the agreement into force in September 2006. Indonesia and Malaysia still postponed in ratifying the agreement.

As the ReCAAP proceed on, there have been some additional contracting parties from outside of the region. Norway is one of the first external state which joined the ReCAAP on August 2009. Other European states which then followed Norway to join ReCAAP are Denmark, the Netherland, and the United Kingdoms. On August 2013, Australia became the nineteenth contracting party on the ReCAAP, an action which was followed by the United States on September 2014.

## **2. Non-ReCAAP Signatories**

The non-ReCAAP signatories involved as actors are the states which have not ratified the agreement but whose naval and law enforcement have interaction with ReCAAP. In Southeast Asia, there are two states which have not ratified, Indonesia and Malaysia. Because of the geographical location of the two states, the accession with ReCAAP is very important in preserving the goals of ReCAAP.

## **3. Non-State Actors**

Generally, non-state actors are basically any entities which do not belong to any official institution of a state. In the case of ReCAAP, the non-state actors involved in its operational mechanism are including the pirates, brigands and thieves, as well as shipping and fishing industries. The pirates, brigands and thieves are categorized as the subject of the issue as the cause of the insecurity in the maritime area which leads to the establishment of ReCAAP. The shipping and fishing industries, on the other hand, have a share of role as they also have concern regarding the security of the maritime area.

## **E. Jurisdiction and Law Enforcement**

On the first article of the first part, the ReCAAP agreement defines piracy and armed robbery based on the definition from the UNCLOS 1982. Piracy and armed robbery against ships are differentiated based on the occurrence location. Both involve any illegal violent act by individual or group toward the crew or passenger of ships or aircrafts aiming to take money and goods. While piracy is described as illegal acts which occur in the high seas and outside the jurisdiction of any state, the armed

robbery against ships are illegal acts which occur within the jurisdiction of the Contracting Party. Individual or group who participates and facilitates the acts is also classified as act of piracy.

While speaking of the maritime jurisdiction in Southeast Asia, it is to be known first that the maritime area of the region is consisted of archipelagos. Because of the complex maritime structure of the region, there have been numbers of overlapping jurisdiction claim and area disputes. One of the main factors is including the fact that most of the Southeast Asian waters are bordered as territorial waters, Exclusive Economic Zone (EEZ), and archipelagic waters.

Generally divided into mainland and maritime area, the mainland includes Cambodia, Laos, Myanmar, Thailand, Vietnam and West Malaysia, while the maritime area consists of East Malaysia, Indonesia, Singapore, Philippines, East Timor, Brunei, and Christmas Island. On the case of ReCAAP where the region is divided based on the signatory countries<sup>7</sup>, Southeast Asia states are categorized into the area of Andaman Sea, Strait of Malacca, Gulf of Thailand, South China Sea, Sulu Sea, and Philippine Sea.

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<sup>7</sup> Multinational Experiment 7. "Framework for Regional Analysis Maritime Security Regimes (MSR) Draft". WISE: Multinational Capability Development Campaign 2013-14 – Norway. Retrieved from <http://mne.oslo.mil.no:8080/Multinatio/MNE7produkt/RegionalMa2>. p. 2



Figure 3.1 Southeast Asia Map

Source: Perry-Castaneda Library Map Collection<sup>8</sup>

If observed through the figure 3.1 of map of Southeast Asia, the Andaman Sea is the area which covers the south of Myanmar, west of Thailand, Northwest of Malaysia and North of Sumatra, Indonesia. At this point all these four states of Southeast Asia shares some boundaries. On the area of the gulf of Thailand, Thailand, Cambodia and Vietnam shares jurisdiction of the of 304,000 km<sup>2</sup> from 6° N to 13°30' N latitude and 99°E to 104° E longitude seabed area.

<sup>8</sup> Southeast Asia [Map]. Perry-Castaneda Library Map Collection. < [http://www.lib.utexas.edu/maps/middle\\_east\\_and\\_asia/southeastasia.jpg](http://www.lib.utexas.edu/maps/middle_east_and_asia/southeastasia.jpg)>. Accessed on 9 May 2015.



The Malacca strait, on the other hand, is the narrow form of the Andaman Sea which is cramped in between the territorial waters of Indonesia, Malaysia and bordering with southern part of Thailand. The 805 km wide strait is the main channel which connects the Indian and Pacific oceans, and plays an important role for the economy of the region as being the main trading passage.

South China Sea is a part of the Pacific Ocean and is 3,500,000 km<sup>2</sup>. In the south, it borders with Singapore and Malacca straits on the eastern and southern limit, about 1°6' N, 102°58' E, to the east coast of Sumatra and southwest extreme of Borneo. On the west, Malaysia, Vietnam and Cambodia shares jurisdiction over their territorial waters and on the west there is the Philippines.<sup>9</sup> Because of its wide range of area, the borders in South China Sea still remain disputable.

Another area is the Sulu Sea, which is primarily located between the Philippines archipelago. On the northeast, it borders with the South China Sea. On the southern and western area, the Philippines borders jurisdiction with Indonesia. Other areas are including the Singapore Straits, the Philippines Straits and the gulf of Tonkin which are parts of the jurisdiction of Singapore, the Philippines, and Vietnam.

Due to the fact that territorial issue, particularly in the maritime area of Southeast Asia, is very sensitive, all the states preserve the security of each of their legal authority based on the national laws and regulations. For information sharing on ReCAAP, all the information are to be passed to each of the law enforcement which

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<sup>9</sup> International Hydrographic Organization. *Limits of Ocean and Seas (Special Publication No.28)*.1953. Retrieved from [http://www.iho-ohi.net/iho\\_pubs/standard/S-23/S23\\_1953.pdf](http://www.iho-ohi.net/iho_pubs/standard/S-23/S23_1953.pdf) on 9 May 2015.

each states have locate on their jurisdictions. On the fourth part of the ReCAAP agreement, cooperation in combating piracy and armed robbery also includes extradition and mutual legal assistance. Based on each of the contracting parties' laws and regulations, if the law enforcement in one of the contracting party seized pirates who have committed crime in the jurisdiction of other party, they should extradite the pirates if there is any request to.

Law enforcement generally means any system which enforce the law by capturing, suppressing, and deterring the outlaw. In maritime security, the law enforcement includes any agencies which works in preserving the security of the sea and coastal area. The agencies ranges from Navy, Coast Guards, Port Authority, Public Security, Marine Police, and so on.

Based on the ReCAAP Agreement, all the law enforcement regarding piracy and armed robbery incidents are to be handled by individual states. This is basically because the main focus of ReCAAP in combating piracy and armed robbery is through information sharing. The information of piracy incidents are regulated within the ReCAAP Information Sharing Center (ISC), Rescue Coordination Points in the region and the focal points of the contracting parties. Through these three centers as well that the information flows to stake holders, especially law enforcements of the states related to the incidents. According to the Article 3 of the ReCAAP Agreement, the contracting parties are generally obliges to prevent and suppress piracy and armed robbery based on their national law. The jurisdiction of piracy and armed robbery is based on the territorial area of the incidents.

Table 3.2 ReCAAP and Non-ReCAAP Coast Guards' and Navies' Order of Battle for Patrol Capable Ships According to Janes Fighting Ships, 2011

States	Frigate	Corvette	Offshore Patrol Vessel	Fast Attack Craft	Patrol Craft	Patrol Craft - Coastal	Patrol Craft – Inshore	Total
Singapore	6	6	-	6	11	-	12	41
Thailand	9	7	2	9	9	51	16	103
Philippines	1	14	1	8	6	32	-	62
Vietnam	6	9		17	27	2	4	65
Brunei	-	-	3	2	7	-	-	12
Cambodia	-	-	-	2	13	-	2	17
Myanmar	-	3	36	6	-	-	-	45
Bangladesh	5	-	2	34	4	29	-	74
Sri Lanka	-	-	3	62	7	7	275	354
Indonesia	6	23	-	5	43	71	-	148
Malaysia	2	11	-	14	19	-	-	46

Source: MNE Regional Study: ReCAAP ISC<sup>10</sup>

The table 3.2 contains information about the law enforcements of some of the ReCAAP signatories and non-signatories in patrolling their territories. On the table, there are different types of patrol ships distributed by states in preserving the security of their territorial waters, or in this case is called the Order of Battle. The Order of Battle on the table includes Frigate which is warship, Corvette or smaller warship, Offshore Patrol Vessel, Patrol Craft, Patrol Craft in the Coastal area, and Patrol Craft

<sup>10</sup> Multinational Experiment 7. "Framework for Regional Analysis Maritime Security Regimes (MSR) Draft". WISE: Multinational Capability Development Campaign 2013-14 – Norway. Retrieved from <http://mne.oslo.mil.no:8080/Multinatio/MNE7produkt/RegionalMa2>. p.9

in the Inshore. The Fast Attack Craft is the most common patrol ships which most of the states have while Inshore Patrol Craft is the least. From the table, it is clear that Sri Lanka has the highest number of patrol ships. On the other hand, Brunei has the least number. This could be related to the length of the territorial waters of the states.