The Need for a Regional Mechanism to Combat Piracy at Sea in the South Asian Region.

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Abstract— This research paper explores whether there is a need for a regional mechanism to combat piracy in South Asia with special reference to Sri Lanka. Thus, the objectives of this paper revolves around identifying whether there is a need to implement a regional anti-piracy mechanism, its practicality and the challenges that has to be faced if such regional mechanism is to be introduced. The methodology adopted in this paper is a comprehensive analysis of available literature on the matter of global piracy and regional mechanisms. The Literature review explores using available statistics if there is an urgent need for a regional mechanism to combat piracy in South Asia. It draws the attention to successful regional mechanisms of other regions of the world. It will also briefly look in to the subject matter with the standpoint of benefits to Sri Lanka if such a mechanism is implemented. The results and analysis of available statistics indicates that the number of pirate attacks in the Indian Ocean especially near India and Bangladesh mainly, is increasing though the past decade. This may be due to a spill over effect from the piracy hotspot in the Southeast Asian region like the Malacca strait. Even though the countries of the South Asian region are part of the regional agreement known as the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAPP) for all Asian countries, it is observed that they need a sub-regional mechanism that is sensitive to the geographical, political, economic concerns of the South Asian region. In conclusion it is evident that there appears to be a need to form a regional mechanism to combat piracy in the South Asian region. This could be achieved through the existing institution for regional corporation namely South Asian Association for Regional Co-operation (SAARC).

Keywords: Piracy at Sea, Piracy in South Asia, Regional anti-piracy mechanisms

I. INTRODUCTION

With the rapid globalization process there is an expansion of the needs of the people and trading economies. The world has become linked through land, air and sea routes. Many of the world's goods are transported through sea routes and piracy has become a global threat not just in the modern era but also from ancient times. One of the first international instruments and corporation came about to eradicate piracy and slavery in the world. Pirates were considered to be enemies of mankind under Customary International law. But for many centuries after those collaborative efforts piracy is threatening global stability and economies. Abductions, deaths, violence and damage to maritime vessels force all states to wake up from their slumber and take definitive action against combating piracy. As a result many international instruments [1] and regional instruments [2] establishing regional corporation mechanisms took birth.

The United Nations Convention on the Law of the Sea 1982 in Article 101(a) defines piracy as;

> **"Any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft as well as against a ship, aircraft, persons or property in a place outside the jurisdiction of any State"**

It further states that any act of voluntary participation in the operation of a ship or an aircraft with the knowledge that it is a pirate ship or aircraft also includes an act of piracy.

This research paper explores whether there is a need for a regional mechanism to combat piracy in South Asia with special emphasis on Sri Lanka. Thus the objectives of this paper will revolve around identifying whether there is a need to implement a regional anti-piracy mechanism, its practicality and the challenges that has to be faced if such regional mechanism is to be introduced.

II. METHODOLOGY

The literature research method was adopted in this paper. This paper focuses on a comprehensive analysis of available literature on the matter of global piracy and regional mechanisms. The Literature review explores using available statistics whether there is an urgent need for a regional mechanism to combat piracy in South Asia. It draws the attention to successful regional mechanisms of other regions of the world. It will also briefly look in to

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[1] The United Nations Convention on the Law of the Sea of 1982
[2] For an example regional instruments include the ASEAN Declaration on the Prevention and Control of Transnational Crime which mentions piracy as a transnational crime, the Regional Cooperation Agreement on Combating Piracy and Armed Robbery in Asia of 2004

the subject matter with the standpoint of benefits to Sri Lanka if such a mechanism is implemented.

III. RESULTS AND DISCUSSION

Safe sea routes are vital not just for economic expansion but also for the safety of citizens of various states who are engaged as crew members of sea vessels. Piracy has evolved in to a global threat fought with violence and advanced technology.

There are different organizations which were established to prevent, report, reduce and combat international piracy. International Maritime Bureau (IMB) and the International Maritime Organization (IMO) IMO are two such organisations which are concerned with the issue of piracy. It should be noted that the two organisations define piracy in dissimilar ways. The International Maritime Organization is a body under the United Nations (UN), and it has adopted the definition of piracy from the United Nations Convention on the Law of the Sea (UNCLOS)[3]. According to Amri (2004) the definition itself is quite narrow and defines some illegal activities at sea to be 'piracy'.

The International Maritime Bureau is established as a part of the International Chamber of Commerce (ICC) but the IMB's definition is broader and covers almost all attacks against ships in all maritime jurisdictions of a state (Amri, 2004). Under the broad definition given by IMB, an act committed by the crew/ passenger of the ship to board or attempting to board any ship together with the motive to commit theft or any other crime should be present. But not only that, there should be an attempt or capability to use force in furtherance of that act (Abhyankar,1999).

In the Code of Practice for the Investigation of Crimes of Piracy and Armed Robbery against Ships of the International Maritime Organisation (IMO) Assembly Resolution A.1025(26) armed robbery against ships is defined as;

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

2. Any act of inciting or of intentionally facilitating an act described above.

According to the statistics offered by the International Maritime Bureau (ICC International Maritime Bureau, 2016), the Somali pirates had launched 237 attacks near

the coast of Somalia in 2011 alone indicating the gravity of the situation at hand.

According to Brandon (2000) as cited by Bulkeley (2003) "ninety precent of the world's trade moves by ship, one-third of the world's shipping moves through Southeast Asia's waters, and 65% of all pirate attacks in 2000 occurred in Southeast Asia".

Therefore the South East Asian region has piracy hotspots like the Malacca strait which is the strait that joins the South China Sea with the Indian Ocean. It is one of the main sea routes of the cargo ferrying vessels in Asia. According to the report for the first quarter for the year 2016 of the IMB (ICC International Maritime Bureau, 2016) high numbers of piracy for that quarter could be observed near India and Bangladesh in the South Asian region. When comparing these data with the statistics available from 2011 (1st quarter) the piracy attacks both attempted and actual have increased dramatically near India.

Locations of actual and attempted attacks in the first quarters (January – March) of 2011 – 2016

	2011	2012	2013	2014	2015	2016
Indonesia	5	18	25	18	21	4
Malaysia	9	2			3	
Philippines	1	2	1		2	2
Singapore Straits	4	2	2	5	2	
South China Sea	4		1			
Vietnam	2	3	1		8	2
Bangladesh	4	3	4	4	1	
India	3	3	4	2	2	10

Table I- ICC- IMB Piracy and Armed Robbery Against Ships Report – First Quarter 2016.

In the first quarter of 2016 the highest number of locations where piracy attacks took place as per this report is India and Nigeria. The number of attacks (10 attacks) near India exceeds the sub total of the attacks made near other countries in the Asian region. Bangladesh too shows a consistent pattern of attacks until 2015. Thus we can safely assume that the high levels of piracy in the Malacca strait may have a spill-over effect to the Indian Ocean. Two thirds of the total 37 attacks within

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[3] United Nations Convention on the Law of the Sea, Signed 10 December 1982 in Jamaica

this period can be attributed to locations near the countries of India, Indonesia and Nigeria.

According to the ICC- IMB Piracy and Armed Robbery Against Ships Annual Report for 2015 during the whole period of 2015 71% of the total of 246 reported incidents could be attributed to Indonesia, Vietnam, Nigeria, India, and Malaysia.
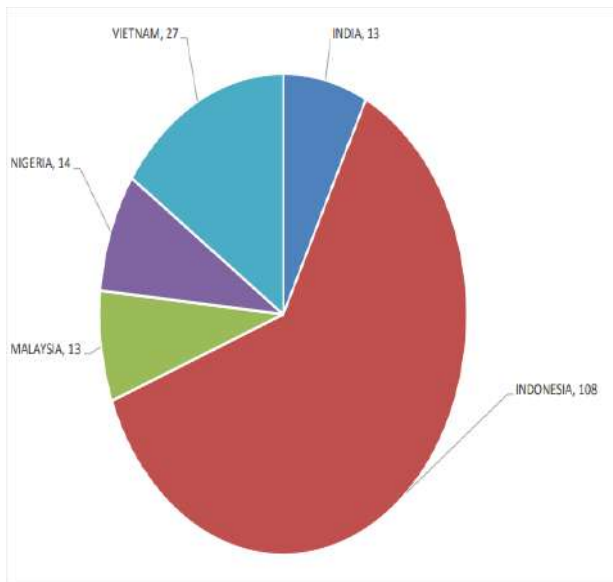

Chart I- ICC- IMB Piracy and Armed Robbery Against Ships Annual Report for 2015.

In India, Sikka and Kandla ports frequently reported piracy attacks in port and anchorage areas. In Bangladesh as per the report (ICC International Maritime Bureau, 2016) indicates that robbers usually target ships preparing to anchor and most attacks were reported at Chittagong anchorages. The main two types of ships that were attacked during 2016 were tankers carrying chemical products and Bulk carriers. It is a notable fact that the attempts to capture crude oil transporting vessels has diminished greatly but the threat still remains. Thus it indicates that piracy can affect negatively to trade and commerce directly affecting the economies of States.

In 2015 in India, a total of three incidents were reported near the port of Sikka and in the Kandla port six cases of incidents were reported (ICC International Maritime Bureau, 2015). Chittagong port in Bangaladesh reported 10 incidents of piracy for the full year of 2015. The above statistics clearly indicates that South Asia too has been significantly affected by this global piracy threat and some form of collective action is needed to ensure that the threat does not reach proportions that cannot be handled by the countries.

It is easily understandable how Asia is targeted by pirates. One third of the world's shipping moves through the Strait of Malacca and the Singapore Strait. Most trade between Europe and China, and nearly all the crude oil that moves from the Persian Gulf to the big Asian economies like China, Japan and South Korea. It was calculated that a ship enters the Malacca

strait every four minutes and it is in certain locations the straight is only 1.7 miles wide (*Kemp and Trythall*, 2014)

A. Regional Instruments and Cooperation

However there are many regional instruments that States have ratified in view of eradicating piracy. The Regional Cooperation Agreement on Combating Piracy and Armed Robbery in Asia of 2004 also known as the "ReCAAP Agreement" is a fine example for this. Almost all the Asian states signed this regional agreement and it established the Information Sharing Center known as the "ReCAAP ISC". However since its inception it has not successfully managed to reduce notably the problem of piracy in the Asian waters.

The Southeast Asian countries being the countries that are one of the highest reported piracy attacks through their regional association ASEAN have taken steps to combat piracy even though they are part of the larger cooperation agreement for Asia known as the ReCAPP Agreement. This has led to a decrease in the number of attacks or rather number of successful attempts at piracy. Even though they were part of a larger agreement for Asia the Southeast Asian countries has formed their own sub-regional mechanism because each region has region-specific factors that has to be addressed giving attention to them in particular. This leads the South Asian countries to the significant milestone or point of decision making to seriously consider whether they should adopt sub-regional (for the South Asian region) mechanism to strengthen their capacities to combat piracy.

As pointed out earlier in the discussion there is a tendency to have a spill-over effect from the piracy hotspots in Southeast Asia to the Indian Ocean. When this happen the eight South Asian countries (India and Bangladesh in particular) are at risk. Compared to the other countries with a strong sub-regional mechanism like in the Southeast Asian countries the South Asian countries lack expertise in combating piracy simply because it had not been a huge threat over the past few decades. The recent trend in the gradual increase in the number of attacks in the Indian Ocean forces the South Asian countries to re-think their strategies in this regard. Since many of these countries are developing countries of the third world they have to engage in some sort of a regional corporation mechanism to ensure that they have and share enough resources, expertise and technical support.

B. Practical dimensions of having a regional mechanism

This endeavor of achieving regional cooperation may prove to be indeed difficult. Especially when taking in to consideration the regional political power play. For an example India and Pakistan is in a conflict situation over Kashmir. Sri Lankan and Indian(the southern India including Tamilnadu) relations are tense over the ethnic conflict, illegal fishing in territorial seas and the island of Kachchathivu. Afghanistan which is a recent

addition to the South Asian countries is also unpredictable due to the nature of the internal politics and wars. India when it comes to naval power has a higher bargaining power than her neighboring countries and may over shadow the other States.

With all of these in mind it should be noted that achieving regional corporation is not impossible and a good example for this is the South Asian Association for Regional Cooperation (SAARC). This regional cooperation has undertaken many regional endeavors and attempts that are progressive and beneficial to the region such as; the South Asian Free Trade Area (SAFTA) which removed trade barriers to increase the level of economic cooperation, energy cooperation, initiation of Integrated Programmes of Action (IPAs) for areas like Agriculture, rural development, human resources development etc. It is evident that SAARC is expanding its scope from a regional mechanism that mainly focused on political and economic cooperation to that which encompasses cultural and social dimensions of the region as well.

C. Impact on Sri Lanka

Sri Lanka is not without a threat in the aspect of pirate attacks. For an example the recent Comoros-flagged oil tanker that was captured by Somali pirates in March 2017 had eight Sri Lankan crew members. This is the first such attack of a large commercial vessel off Somalia since 2012 (The guardian, 2017). Even though the crew was released without ransom through negotiations it is a clear eye opener that Sri Lanka should take preventive measures and establish mechanisms to address the issue of piracy.

During the 1900's Sri Lanka had the largest floating dock in Asia which was situated in Trincomalee and it is still known as one of the deepest ports in Asia. Sri Lanka is slowly expanding its ports and the recent addition of a port in Hambanthota also indicates that there will be an increase in the number of ships that comes to its harbors. The harbor in Hambantota is situated in the locality of many international marine lanes where nearly 2,000 ships move along every day. It is an excellent port for bunkering of ships. Through these recent expansions of harbours sea trade can be improved drawing more and more ships to the ports. Thus it is imperative that Sri Lanka takes positives steps to address the issue of piracy.

There are several key benefits that Sri Lanka will gain if such a regional mechanism is implemented. One such benefit is that since Sri Lanka does not have sufficient expertise in this field, a regional mechanism will ensure shared expertise of professionals in the field.

Through a regional mechanism it is not just professional consultations that could be received but also the sharing of advanced technology could be achieved and this could be a highly beneficial aspect for countries that are comparatively poor in terms of finances and technological equipment within the South Asian region.

A country cannot carry out piracy eradication operations alone simply because of the vast ocean area that has to be covered. Thus when a regional mechanism is established they can share human resources and the moment a pirate attack is notified the country/navy which is closest to the ship can take immediate action.

A regional mechanism will ensure proper flow of information between different governments and their naval forces. They can establish regional information centers that monitor and evaluate pirate activities within that area. Countries like Sri Lanka could extremely benefit from the strong naval power offered by regional power blocks such as India.

A regional instrument/treaty could be brought in to affect that sets out the responsibilities, duties, obligations and jurisdictional matters with regard to such a regional mechanism.

III. CONCLUSION

It is evident from the above discussion that there appear to be a need to form a sub-regional mechanism to combat piracy in the South Asian region. This could be achieved through the existing institution for regional corporation namely South Asian Association for Regional Co-operation (SAARC).

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