



MARITIME SECURITY AND LAW ENFORCEMENT:  
THE MALAYSIAN EXPERIENCE

BY

SU WAI MON

A thesis submitted in fulfilment of the requirement for the  
degree of Doctor of Philosophy in Law

Ahmad Ibrahim Kulliyah of Laws  
International Islamic University Malaysia

January 2018

## ABSTRACT

Maritime security issue has been received the greater awareness by the international community since after the September 11 attack. Although there is no universal definition of the term 'maritime security', it covers a wide range of serious maritime security threats such as piracy and armed robbery at sea, maritime terrorism, threat of trafficking in arms and WMDs, threat of slavery, trafficking in persons and drug trafficking, IUU fishing, and threat of damage to marine environment which are of great concern for the international community. Not only the prescriptions of rules but also their effective enforcement is necessary for sustainable international maritime security. Port State jurisdiction has been found to be favoured by the international community as a response to the unreliable enforcement efforts by flag of convenience States particularly in cases of vessel-source pollution and illegal-fishing on the high seas. Coastguards are found to be the best models as law enforcement agencies as practiced by the United States, UK, Canada and Japan. The existing legal framework on maritime security in Malaysia is found to be insufficient because of legal loopholes particularly for maritime crime coverage since there is no substantive law to take action against serious maritime crimes such as piracy and maritime terrorism which leads to ineffective law enforcement. The evaluations on the maritime law enforcement mechanisms showed that Malaysia is in need of systematic national maritime security policy particularly in terms of distribution of powers to avoid overlapping jurisdiction among agencies in enforcing the laws. The critical appraisal of the MMEA evidences that the MMEA is yet to stand solely as the well-established agency for law enforcement against all maritime security threats because of its limited as well as very old assets which are almost 50 years old vessels and therefore, low efficient to perform law enforcement functions effectively. The comprehensive analysis of the MMEA Act 2004 reveals that there are weaknesses in the Act itself which need to be fixed to become clearer and more logical legislation particularly related to the issue of the right is 'hot pursuit'. There are various security threats challenging Malaysian maritime security where piracy and armed robbery at sea is found to be the most rampant. Other threats include maritime terrorism, security invasions in eastern coast of Sabah such as kidnapping for ransoms (KfR) and hijackings by terrorist groups, issue of unresolved maritime boundaries, human trafficking and smuggling of migrants, maritime environmental pollution and IUU fishing. These findings accentuate the need for sustainable legal and enforcement mechanisms in Malaysia.

## خلاصة البحث

تلقت قضية الأمن البحري وعيا أكبر من المجتمع الدولي منذ اعتداء ١١ سبتمبر. وعلى الرغم من عدم وجود تعريف عام لمصطلح "الأمن البحري"، إلا انه يغطي مجموعة واسعة من التهديدات الأمنية البحرية الخطيرة مثل القرصنة والسطو المسلح في البحر، والإرهاب البحري، والتهديد بالالتجار بالأسلحة وأسلحة الدمار الشامل، والتهديد بالرق، والاتجار بالأشخاص والأشخاص والاتجار بالمخدرات، والصيد غير المشروع وغير المبلغ عنه وغير المنظم، والتهديد بإلحاق الضرر بالبيئة البحرية التي تشكل مصدر قلق بالغ للمجتمع الدولي. وتجدر الإشارة إلى انه ليس من الضروري وضع وصف للقواعد فحسب، بل أيضا يتعدى إلى تنفيذها الفعال، من أجل تحقيق الأمن البحري الدولي المستدام. كذلك اعتبر المجتمع الدولي أن الولاية القضائية لولاية الميناء هي استجابة لجهود التنفيذ التي لا يمكن الاعتماد عليها من جانب الدول الملائمة، ولا سيما في حالات تلوث مصادر السفن والصيد غير القانوني في أعالي البحار. وقد تم الاتفاق على خفر السواحل ليكون أفضل نماذج وكالات تنفيذ القانون كما هو المطبق عليه من قبل الولايات المتحدة والمملكة المتحدة وكندا واليابان. ومع ذلك، يلاحظ أن الإطار القانوني القائم بشأن الأمن البحري في ماليزيا غير كاف وذلك بسبب الثغرات القانونية ولا سيما فيما يتعلق بتغطية الجرائم البحرية نظرا لعدم وجود قانون موضوعي لاتخاذ الإجراءات ضد الجرائم البحرية الخطيرة مثل القرصنة والإرهاب البحري والذي يؤدي إلى عدم فعالية تنفيذ القانون. وقد أظهرت التقييمات المتعلقة بآليات تنفيذ القانون البحري أن ماليزيا في حاجة إلى سياسة وطنية منتظمة للأمن البحري لا سيما من حيث توزيع السلطات، وذلك لتجنب تداخل الاختصاص بين الوكالات في تنفيذ القوانين. وقد أشار التقييم الحاسم لوزارة الشؤون الاجتماعية والاقتصادية إلى أن وزارة الشؤون الاجتماعية والاقتصادية لما تستطع بعد على اعتمادها كوكالة راسخة لتنفيذ القانون ضد جميع التهديدات الأمنية البحرية نظرا لمحدودية أصولها القديمة جدا التي تبلغ من العمر ٥٠ عاما تقريبا، وكفاءة لأداء ووظائف تنفيذ القانون بشكل فعال. بالإضافة الى ذلك، يكشف التحليل الشامل لوكالة تنفيذ القانون الماليزية لعام ٢٠٠٤م أن هناك أوجه ضعف في القانون نفسه تحتاج إلى أن تكون ثابتة لتصبح تشريعات أكثر وضوحا وأكثر منطقية فيما يتعلق على وجه الخصوص بمسألة الحق وهو "المطاردة الساخنة". هناك العديد من التهديدات الأمنية التي تواجه الأمن البحري الماليزي حيث تبين أن القرصنة والسطو المسلح في البحر هو الأكثر انتشارا. وتشمل تلك التهديدات أيضا الإرهاب البحري والغزوات الأمنية في الساحل الشرقي لولاية صباح الماليزية مثل الاختطاف من أجل الفدية، واختطاف الجماعات الإرهابية، ومسألة الحدود البحرية التي لم تحل بعد، والاتجار بالبشر، وتهريب المهاجرين، والتلوث البيئي البحري، والصيد غير المشروع وغير المبلغ عنه وغير المنظم. لذلك تؤكد هذه النتائج عن الحاجة إلى آليات قانونية وتنفيذ مستمر في ماليزيا.

## APPROVAL PAGE

The thesis of Student's Name has been approved by the following:

---

Name 1  
Supervisor

---

Name 2  
Co-Supervisor

---

Name 3  
Internal Examiner

---

Name 3  
External Examiner

---

Name 4  
External Examiner

---

Name  
Chairman

## DECLARATION

I hereby declare that this dissertation is the result of my own investigations, except where otherwise stated. I also declare that it has not been previously or concurrently submitted as a whole for any other degrees at IIUM or other institutions.

SU WAI MON

Signature .....

Date .....

**INTERNATIONAL ISLAMIC UNIVERSITY MALAYSIA**

**DECLARATION OF COPYRIGHT AND AFFIRMATION OF  
FAIR USE OF UNPUBLISHED RESEARCH**

**THE IMPACT OF MOBILE INTERFACE DESIGN ON  
INFORMATION QUALITY OF M-GOVERNMENT SITES**

I declare that the copyright holders of this dissertation are jointly owned by the student and IIUM.

Copyright © 2018 Su Wai Mon and International Islamic University Malaysia. All rights reserved.

No part of this unpublished research may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording or otherwise without prior written permission of the copyright holder except as provided below

1. Any material contained in or derived from this unpublished research may be used by others in their writing with due acknowledgement.
2. IIUM or its library will have the right to make and transmit copies (print or electronic) for institutional and academic purposes.
3. The IIUM library will have the right to make, store in a retrieved system and supply copies of this unpublished research if requested by other universities and research libraries.

By signing this form, I acknowledged that I have read and understand the IIUM Intellectual Property Right and Commercialization policy.

Affirmed by Su Wai Mon

.....

Signature

.....

Date

## ACKNOWLEDGEMENTS

Firstly, I would like to express my sincere gratitude to my beloved Supervisor Prof. Dr. Abdul Ghafur Hamid @ Khin Maung Sein for the continuous support of my Ph.D study and related research, for his patience, motivation, and immense knowledge. His guidance helped me in all the time of research and writing of this thesis. I could not have imagined having a better advisor and mentor for my Ph.D. study. I also would like to express my heartfelt gratitude to Prof. Dr. Abdul Ghafur Hamid and wife Aunty Daw San San May (B.A. (law), L.L.B., L.L.M.) for moral and emotional support in place of my parents while I am away from my family throughout my stay in Malaysia. My heartfelt gratitude also goes to my beloved Uncle Amir Noorudin @ U Khin Maung (Dip. Ag; B.Sc. Hons; H.G.P; R.L; Advocate) and wife Aunty Daw Ye Ye Oo (Dip. Ag, B.Sc.; JAT) for the generous support and prayers throughout the journey.

I am also very grateful to my beloved Father U Myint Wai (B.A. (Law), L.L.B., L.L.M.) and lovely Brother Kyaw Moe Myint Tun (L.L.B, L.L.M) who have always supported and encouraged me while struggling to complete my Ph.D. I am also grateful to my other family members and friends who have supported me along the way.

# TABLE OF CONTENTS

Abstract .....	ii
Approval Page.....	iv
Declaration .....	v
Copyright Page.....	vi
Acknowledgements .....	vii
Table of Contents.....	viii
List of Tables .....	xii
List of Figures .....	xiii
List of Statutes.....	xiv
List of International Legal Instruments.....	xv
List of Cases.....	xv
Abbreviations.....	xvi
<b>CHAPTER ONE: INTRODUCTION .....</b>	<b>1</b>
1.1 Background to the Research .....	1
1.2 Statement of the Problem.....	3
1.3 Objectives of the Research .....	7
1.4 Hypothesis .....	7
1.5 Significance of the Research .....	8
1.6 Literature Review .....	9
1.6.1 Maritime Security: The International Perspective .....	9
1.6.2 Maritime Security: The Malaysian Perspective .....	15
1.7 Scope and Limitations .....	17
1.8 Research Methodology .....	18
1.9 Outline of Chapters.....	20
<b>CHAPTER TWO: MARITIME SECURITY: A MATTER OF CONCERN TO THE INTERNATIONAL COMMUNITY .....</b>	<b>23</b>
2.1 Introduction.....	23
2.2 Freedom of the Sea Versus Maritime Security.....	24
2.3 Defining Maritime Security.....	29
2.4 Critical Analysis of Key Maritime Security Threats .....	38
2.4.1 The Threat of Piracy and Armed Robbery at Sea .....	38
2.4.2 The Threat of Maritime Terrorism.....	45
2.4.3 The Threat of Trafficking in Arms and WMDs.....	50
2.4.4 The Threat of Slavery, Trafficking in person and Drug Trafficking .....	52
2.4.5 The Threat of Illegal, Unreported and Unregulated (IUU) Fishing .....	57
2.4.6 The Threat of Damage to Marine Environment.....	59
2.5 Evaluation .....	62



<b>CHAPTER THREE: MARITIME SECURITY AND THE ISSUE OF LAW ENFORCEMENT .....</b>	<b>64</b>
3.1 Introduction.....	64
3.2 Different Roles of Flag States, Port States and Coastal States in Maritime Law Enforcement .....	65
3.2.1 The Role of Flag State in Law Enforcement.....	67
3.2.2 The Role of Port State in Law Enforcement .....	69
3.2.3 The Role of Coastal State in Law Enforcement.....	73
3.3 The Issue of Law Enforcement in Various Maritime Zones .....	77
3.3.1 Ports and Internal Waters.....	78
3.3.1.1 International Ships and Ports Facility Security (ISPS) Code.....	81
3.3.1.2 Container Security Initiative (CSI).....	87
3.3.2 Territorial Sea .....	89
3.3.3 Contiguous Zone.....	91
3.3.4 Exclusive Economic Zone .....	93
3.3.4.1 Fishing.....	94
3.3.4.2 Marine Pollution.....	97
3.3.5 Continental Shelf.....	99
3.3.6 International Straits .....	105
3.3.7 High Seas .....	107
3.4 Interdiction of Ships outside the Territorial Sea.....	110
3.4.1 2005 SUA Protocol .....	111
3.4.2 Proliferation Security Initiative (PSI) .....	116
3.5 Law Enforcements by Coastguards of Selected Countries: The International Best Practices .....	118
3.5.1 United States .....	119
3.5.2 United Kingdom of Great Britain and Northern Ireland.....	124
3.5.3 Canada.....	126
3.5.4 Japan.....	129
3.6 Evaluation .....	113
 <b>CHAPTER FOUR: LEGAL AND REGULATORY FRAMWORK ON MARITIME SECURITY IN MALAYSIA .....</b>	 <b>135</b>
4.1 Introduction.....	135
4.2 Legal Regulation of Maritime Security in Malaysia .....	136
4.2.1 Federal Constitution and the Division of Power between the Federation and the States .....	141
4.2.2 Territorial Sea Act 2012 and the Maritime Territorial Sovereignty of Malaysia.....	141
4.2.2.1 Breadth of the Territorial Sea and the exercise of the soverignty .....	146
4.2.2.2 Distribution of Power between Federal Government and State Governments: the Issue of Oil Royalty .....	146
4.2.2.3 Delimitation of Territorial Sea and Maritime Security .....	148
4.2.3 Exclusive Economic Zone Act 1984 .....	150
4.2.4 Continental Shelf Act 1966.....	155
4.2.5 Fisheries Act 1985 .....	159
4.2.6 Merchant Shipping Ordinance 1952 and Maritime Security .....	162

4.2.7 Penal Code .....	167
4.2.8 Extraterritorial Jurisdiction under Precedural Laws .....	169
4.2.9 Immigration Act 1959/1963 and Maritime Security .....	178
4.2.10 Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act .....	173
4.2.11 Strategic Trade Act (STA) 2010 .....	177
4.2.12 Legal Regulation of Port Security in Malaysia.....	179
4.3 Maritime Enforcement Mechanism in Malaysia .....	185
4.3.1 National Security Council .....	186
4.3.2 Royal Malaysian Navy.....	188
4.3.3 Marine Department .....	190
4.3.4 Maritime Police/Marine Operation Force .....	192
4.3.5 Department of Environment (DOE).....	196
4.3.6 Port Authorities and Port Security .....	197
4.3.7 Council for Anti-Trafficking in Persons and Anti-Smuggling of Migrants (MAPO) .....	202
4.3.8 Malaysian Maritime Enforcement Agency (MMEA).....	204
4.4 Evaluation .....	205

**CHAPTER FIVE: A CRITICAL APPRAISAL OF THE MALAYSIAN  
MARITIME ENFORCEMENT AGENCY .....207**

5.1 Introduction.....	207
5.2 Reasons for the Establishment of MMEA .....	208
5.3 Background of the MMEA .....	209
5.4 Organizational Structure of the MMEA .....	213
5.4.1 Appointment of the Director General of the Agency.....	213
5.4.2 Appointment of the Other Officers of the MMEA .....	214
5.4.3 Chain of Command .....	216
5.5 Reporting Structure of the MMEA, ESSCOM and MMEAD.....	219
5.6 Functions and Powers of the MMEA .....	222
5.6.1 Functions of the MMEA .....	222
5.6.2 Powers of the MMEA .....	225
5.7 Inspection, Arrest and Prosecution by the MMEA.....	230
5.8 Challenges against Single Law Enforcement Body.....	232
5.8.1 Financial Issues and Assets.....	233
5.8.2 Human Capital Development and Expertise.....	236
5.9 Cooperations vs Confrontations with other Agencies .....	237
5.10 Comparison between MMEA and the other Coast Guards .....	242
5.11 The Issue of the Right of Hot Pursuit .....	245
5.12 Revision to the MMEA Act 2004.....	249
5.13 Evaluation .....	256

**CHAPTER SIX: MARITIME SECURITY CONCERNS AND THE  
NEED FOR SUSTAINABLE LEGAL AND ENFORCEMENT  
MECHANISMS IN MALAYSIA .....258**

6.1 Introduction.....	258
6.2 The Issue of Piracy and Armed Robbery at Sea.....	259
6.2.1 Piracy and Armed Robbery Threats in the Straits of Malacca.....	260
6.2.2 Piracy and Armed Robbery Threats in Other Parts of Malaysia...	267

6.2.3 Legal Loopholes and Enforcement Constraints.....	268
6.3 The Issue of Maritime Terrorism.....	270
6.4 Maritime Security Threats in Eastern Coast of Sabah.....	280
6.4.1 Lahat Datu Incursion.....	283
6.4.2 The Issue of Kidnapping for Ransoms (KfR).....	287
6.4.3 Issues and Challenges.....	293
6.5 The Issue of Unresolved Maritime Boundaries .....	297
6.6 Human Trafficking and Smuggling of Migrants .....	302
6.7 Marine Environmental Pollution .....	310
6.8 IUU Fishing in Malaysian Waters .....	314
6.9 Threats to Malaysian Port Security.....	319
6.10 Evaluation .....	326
<b>CHAPTER SEVEN: CONCLUSION .....</b>	<b>328</b>
7.1 Introduction.....	328
7.2 Summary of Research Findings.....	328
7.3 Recommendations.....	338
7.4 Suggestions for Future Research.....	349
<b>REFERENCES.....</b>	<b>350.</b>

## LIST OF TABLES

<u>Table No.</u>		<u>Page No.</u>
4.4	Statistic of Arrest by Marine Police Force	195
6.1	Locations of Actual and Attempted attacks, January-December 2011-2016	195
6.3	Summary of Maritime Boundary Agreements between Malaysia and it Neighboring Coastal States.	297
6.5	Differences between Trafficking in Persons and Smuggling of Migrants	303
6.6	Percentage of using air, land and sea routes to enter Malaysia	306

## LIST OF FIGURES

<u>Figure No.</u>		<u>Page No.</u>
1.1	Total of piracy and armed robbery incidents as per region of the world January-December 2013	42
1.2	Total of piracy and armed robbery incidents as per region of the world January-September 2014	42
4.1	Governing Laws on Malaysian Port Security	180
4.2	Institutional Framework for Implementation of ISPS Code in Malaysia	184
4.3	Organizational Structure of Internal Security & Public Order Department	192
4.5	Illustration of the Situations of Ports in Malaysia	199
5.1	Legal Regimes of Oceans and Air Space Area	212
5.2	Malaysian Maritime Zone	212
5.3	The Chain of Command of the MMEA	217
5.4	Operational Areas of the Malaysian Maritime Enforcement Agency	218
5.5	Illustration of the Reporting Structure of the MMEA, ESCOM and the MMEAD	221
6.2	The Location of East Coast of Sabah	281
6.4	The Potential EEZ Boundary Line in the Strait of Malacca	301
6.7	Reporting Structure of Enforcement Agencies for Fisheries in Malaysia	318
6.8	Diagram of Port Activities	320
6.9	Example of Potential targets for each port activity	321

## LIST OF STATUTES

Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007  
Bintulu Port Authority Act 1981  
Court of Judicature Act 1964  
Criminal Procedure Code 1999  
Continental Shelf Act 1966  
Exclusive Economic Zone Act 1984  
Federal Constitution of Malaysia  
Fisheries Act 1985  
Environmental Quality Act 1974  
Immigration Act 1959/1963  
Merchant Shipping Ordinance 1952  
Merchant Shipping (Oil Pollution) Act 1994  
Malaysia Maritime Enforcement Agency (MMEA) Act 2004  
National Land Code of Malaysia  
National Security Council Act 2015  
Petroleum Mining Act 1966  
Penal Code of Malaysia  
Port Privatization Act 1990  
Protected Areas and Protected Places Act 1959  
Police Act 1967  
Port Authorities Act 1963  
Penang Port Commission Act 1955  
Prevention of Crime Act 2014  
Prevention of terrorism Act 2015  
Strategic Trade Act 2010  
Security Offences (Special Measures) Act 2012  
Territorial Sea Act 2012

## **LIST OF INTERNATIONAL LEGAL INSTRUMENTS**

Asia Maritime Security Initiative (AMARSECTIVE)  
Charter of the United Nations  
Convention for the Suppression of Unlawful Acts against Safety of Maritime Navigation 1988  
Convention for the Safety of Life at Sea 1974  
Convention on the International Regulations for Prevention of Collisions at Sea (COLREG) 1972  
Container Security Initiative (CSI)  
Convention to Suppress the Slave Trade and Slavery 1926  
General Agreement on Tariff and Trade (GATT)  
High Seas Convention 1958  
International Ships and Port Facilities Security (ISPS) Code  
International Convention on Oil Pollution Preparedness and Cooperation (OPRC) 1990  
International Convention for the Prevention of Pollution from Ships 1973  
International Convention on Civil Liability for Oil Pollution Damage 1992  
International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1992  
International Convention on Salvage (SALVAGE) 1989  
Nairobi International Convention on the Removal of Wrecks 2007  
Proliferation Security Initiative (PSI)  
Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships 1973 or MARPOL 73/78  
SUA protocol 2005  
Southeast Asia Maritime Security Law Enforcement Initiative (MLE)  
United Nations Convention on the Law of the Sea 1982

## **LIST OF CASES**

Archille Lauro 1985  
Mv Limburg 2002  
USS Cole 2000  
S.S. Lotus Case (France v. Turkey) 1927  
Case Concerning Sovereignty over Palau Ligitan and Pulau Sipadan (Indonesia v. Malaysia)  
Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras)

## ABBREVIATIONS

AMARSECTIVE	Asia Maritime Security Initiative
AIS	Automatic Identification System
ATIPSOM	Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act
ASG	Abu Sayyaf Group
ASEAN	Association of Southeast Asian Nations
ATM	Malaysian Armed Forces
CEACR	Committee of Experts on the Application of Conventions and Recommendations
CSI	Container Security Initiative
C-TPAT	Customs-Trade Partnership against Terrorism
CBP	Customs and Border Protection
CIDRAC	Combined Defense Intelligence Analysis and Research Course
CGG	Canadian Coast Guard
COSPAS-SARSAT	Cosmicheskaya Sistyema Poiska Avariynyich Sudov-Search And Rescue Satellite Aided Tracking
COLREG	Convention on the International Regulations for Prevention of Collisions at Sea
DFO	Department of Fisheries and Oceans'
DOFM	Department of Fisheries Malaysia
DOFS	Department of Fisheries Sabah
DOE	Department of Environment
DG	Director General
DHS	Department of Homeland Security
EEZ	Exclusion Economic Zone
EQA	Environmental Quality Act
ESSCOM	Eastern Sabah Security Command
ESSZONE	Eastern Sabah Security Zone
FAO	Food and Agricultural Organization
FMSC	Federal Maritime Security Coordinators
GESEMP	Group of Experts on the Scientific Experts of Marine Pollution
GATT	General Agreement on Tariffs and Trade
HMC	Her Majesty's Coastguard
HQ	Headquarters
ICJ	International Court of Justice
IMO	International Maritime Organization
ISPS	International Ships and Ports Security
IMB	International Maritime Bureau
ILC	International Law Commission
IUU	Illegal Unreported and Unregulated
IMDG	International Maritime Dangerous Goods
ITLOS	International Tribunal for the Law of the Sea



IMOC	International Maritime Officer Course
ISIL	Islamic State of Iraq and Levant
JCG	Japan Coast Guard
JI	Jemahh Islamiah
KfR	Kidnapping for Ransoms
LNG	Liquefied Natural Gas
LRIT	Long Range Identification and Tracking
LKIM	Fisheries Development Authority of Malaysia
MAPO	Council for Anti-Trafficking in Persons and Anti-Smuggling of Migrants
MAQIS	Malaysian Quarantine and Inspection Services
MARPOL	Marine Pollution
MAF	Malaysian Armed Forces
MCS	Monitoring, Control and Surveillance
MMEA	Malaysia Maritime Enforcement Agency
MMEAD	Maritime Enforcement Affairs Division
MMZ	Malaysian Maritime Zone
MISC	Malaysian International Shipping Corporation
MS	Malacca Strait
MSP	Malacca Straits Patrol
MOUs	Memoranda of Understandings
MCA	Maritime Coastguard Agency
MSET	Maritime Security Enforcement Team
MSO	Merchant Shipping Ordinance
MOT	Ministry of Transport
MIMA	Maritime Institute of Malaysia
MSST	Maritime Safety and Security Team
MLE	Southeast Asia Maritime Security Law Enforcement Initiative
NSC	National Security Council
NBC	Nuclear Biological Chemical
NSP	National Security Policy
NSOF	National Special Operations Force
NPOA-IUU	National Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated fishing
NOC	National Operations Council
OPRC	International Convention on Oil Pollution Preparedness and Cooperation
POTA	Prevention of Terrorism Act
POCA	Prevention of Crime Act
PSI	Proliferation Security Initiative
PFSP	Port Facility Security Plan
PFSA	Port Facility Security Assessment
PRC	People's Republic of China
PTP	Port of Tanjung Pelepas
PMD	Prime Minister's Department
PDRM	Royal Malaysian Police
RDV	Radiological Dispersal Device

ReCAAP	Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia
RCMP	Royal Canadian Mounted Police
RFMO	Regional Fisheries Management Organization
RMAS	Royal Maritime Auxiliary Services
RMN	Royal Malaysian Navy
RMP	Royal Malaysian Police
RSA	Royal Security Army
SAR	Search and Rescue
SDF	Self Defense Force
SUA	Suppression of Unlawful Acts
SOLAS	Safety of Life at Sea
SOSMA	Special Offences (Special Measures) Act
SOP	Standard Operating Procedures
SSA	Ship Security Assessment
STA	Strategic Trade Act
STAR	Special Task and Rescue
STRAITREP	Mandatory Ship Reporting System used in Straits
SEARCCT	Southeast Asia Regional Centre for Counter Terrorism
SALVAGE	International Convention on Salvage
TBA	Tri-Border Area
TIP	Trafficking in Persons
TTEG	Tripartite Experts Group
UNCLOS	United Nations Convention on the Law of the Sea
US	United States
UAVs	Unmanned Aerial Vehicles
WMD	Weapons of Mass Destruction
WIG	Wing Ground Effect

# CHAPTER I

## INTRODUCTION

### 1.1 BACKGROUND TO THE RESEARCH

Three-fourths of the Planet Earth is covered by oceans and various issues of social, political, economic and national security issues may arise from the use of vast oceans and its resources. The oceans, which are the life blood of all the countries around the world, are governed by the United Nations Convention on the Law of the Sea 1982<sup>1</sup> and a variety of other international conventions, whose main purpose is to maintain safety and security of all the maritime zones.

Prior to September 11, 2001, although the issue of maritime security was considered as a necessary element for the management of maritime community, only a relatively small priority was given in actual application to the overall scheme of commercial shipping and port operations. Maritime security issue has been received the greater awareness by the international community only after the September 11 terrorist attack. The world has shown its serious concern over this issue of maritime security in particular in the 21st century.

In maritime history, 'piracy' has been the only principal threat to maritime security and its suppression has also been the object of customary international law. However, modern day maritime security involves a broader concept of piracy as well as many other threats to maritime navigation. Nowadays, maritime security threats also

---

<sup>1</sup> The Convention was opened for signature on 10<sup>th</sup> December 1982 in Montego Bay, Jamaica, and entered into force on 16th November 1994. It covers all the matters relating to law of the sea. [http://www.un.org/depts/los/convention\\_agreements/convention\\_overview\\_convention.htm](http://www.un.org/depts/los/convention_agreements/convention_overview_convention.htm) accessed on 6 November 2013.

include drug smuggling, human trafficking, transportation of WMDs weapons, threats to marine biosecurity, such as the introduction of alien diseases and organisms. The expanded range of maritime security threats poses serious risks to the safety of the ships, the ports they sail to, and the persons aboard them, as well as added danger to the cargoes they are carrying.

Among the wide range of maritime security threats, terrorism against shipping or maritime terrorism<sup>2</sup>, which is in essence different from the crime of piracy, has become the primary concern particularly after the September 2001. The first actual maritime terrorist attack was the *Archille Lauro* incident in 1985. This terrorist attack stimulated the awareness of the necessity of cooperation of international community in order to suppress the acts of maritime terrorism. Moreover, it also highlighted the vulnerability of international legal framework in addressing maritime terrorism as a serious maritime security threat. Following the *Archille Lauro* incident, the International Maritime Organization (IMO) seriously considered to establish relevant and effective legal initiatives to promote maritime security. In 1988, the IMO adopted the Convention on the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA or Rome Convention)<sup>3</sup>, the first international convention which address the menace of maritime terrorism.

Today, the trans-boundary nature of suppressing maritime security threats creates a good number of legal challenges for States particularly in ensuring and

---

<sup>2</sup> “Unlike traditional pirates (who are still an active security risk), the perpetrators of terrorist attacks on shipping do not necessarily operate from vessels other than the ships they are attacking. Indeed, their attacks may be to use the targeted ship as the means to deliver a bomb to their selected destination or to employ the ship itself as a weapon. Most important, the perpetrators may not necessarily act with a view to any personal gain for themselves.”

<sup>3</sup> The Convention was adopted by the International Conference on the Suppression of Unlawful Acts against the Safety of Maritime Navigation at Rome on 10 March 1988, entered into force on 1 March 1992; there are 161 states parties, representing 94.7% of world registered tonnage of ships.

asserting the enforcement jurisdiction. Most of the challenges are due to exclusive flag state control over the foreign vessels and the issue of state sovereignty in particular for the coastal states. There are still loopholes in the maritime security regime in suppressing maritime security threats. One of the reasons for ineffective enforcement mechanisms against maritime security threats is the lack of cooperation at international as well as regional level. At the national level, it is necessary to possess the well-managed and systematic national maritime policy. If there is the lack of effective enforcement measures at the national level for each and every maritime nation, it would be far from achieving the primary aim of improving maritime security at international level.

To date, the international community has managed to come out with quite a number of legal initiatives for the purpose of improving maritime security. Among them are, the International Ship and Port Facility Security Code (ISPS Code), which requires the regular assessment of ships and ports in order to identify threats to the maritime security and the development and implementation of security plans based on those assessments and 2005 Protocol to the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation,<sup>4</sup> which permits ship-boarding at sea for the suppression of particular terrorist offences.<sup>5</sup>

Regardless of adopting a number of international conventions and legal initiatives on maritime security, the purpose cannot be achieved if there is lack of effective enforcement measures or effective law enforcement actions. That is the reason for embarking on an in-depth research which identifies loopholes and

---

<sup>4</sup> The 2005 Protocol entered into force on 28 July 2010. As of October 2013, it has been ratified by 27 states.

<sup>5</sup> Natali Klein, *Maritime Security and the Law of the Sea*, Oxford: Oxford University Press, 2011, at 1.

shortcomings of law enforcement measures against maritime security threats and explores ways and means to improve them. The main focus is on the Malaysian experience as it is a maritime nation with a variety of maritime security concerns.

## **1.2 STATEMENT OF THE PROBLEM**

Nowadays, the international community is facing with numerous challenges from serious maritime security threats. Among them are piracy, maritime terrorism and armed robbery at sea, transnational organized crimes at sea, IUU fishing, damage to the marine environment and proliferation of WMD weapons. Particularly, the issue of WMD becomes the most serious threat when the terrorists use those weapons in their attacks. The international community has shown its concern over the maritime security by establishing prescriptive measures such as 1988 SUA Convention, 2005 SUA Protocol<sup>6</sup>, International Ship and Port Facility Security (ISPS) Code<sup>7</sup>, Container Security Initiative (CSI)<sup>8</sup>, and Proliferation Security Initiative (PSI)<sup>9</sup>.

However, there are two main obstacles in enforcing the measures, namely, the exclusive jurisdiction of the flag State on the high seas and the issue of sovereignty of the coastal state. The 2005 Protocol to the SUA Convention has been ratified by only 19 States and the overwhelming majority of States are against it because of its extensive boarding procedures which affect their sovereignty. Likewise, the initiative like PSI

---

<sup>6</sup> It is the Protocol to the 1988 SUA Convention and it entered into force on 28 July 2010; there are 19 State parties, representing 29.75 % of world registered tonnage of ships.

<sup>7</sup> It was established in the form of amendments to the 1974 Safety of Life at Sea (SOLAS) Convention and entered into force on 1 July 2004.

<sup>8</sup> It was established by the United States in response to the September 11 terrorist attack as part of US Customs and Borders Protection's (CBP) layered cargo security strategy. It was announced in January 2002 and first implemented in ports shipping the highest volume of containers to the United States. It operates in 58 ports worldwide: North, Central, and South America, the Caribbean, Europe, Africa, the Middle East and throughout Asia.

<[http://www.cbp.gov/sites/default/files/documents/csi\\_brochure\\_2011\\_3.pdf](http://www.cbp.gov/sites/default/files/documents/csi_brochure_2011_3.pdf)> accessed on 8.6.2014.

<sup>9</sup> It was spearheaded by the United States and launched on May 31, 2003.

<<http://www.state.gov/t/isn/c10390.htm>> accessed on 8.6.2014.

cannot be fully implemented as it lacks the participation of some Asian countries because of their concern over the breach of sovereignty and their reliance so much on exclusive jurisdiction of the flag State. Moreover, enforcement jurisdiction is not effective when the flag States are reluctant in taking actions against their vessels particularly those States offering flags of convenience. An in-depth research is therefore necessary to measure the seriousness of these loopholes and shortcomings of the law enforcement measures and to explore the ways and means to maintain sustainable maritime security.

As far as the maritime security in Malaysia is concerned, Malaysia is not only a State which is mainly relying on the international maritime trade but also a littoral state to the Straits of Malacca and Singapore, a well-known piracy hot spot area. The vulnerability of Malaysian maritime security is so obvious due to weaknesses in both prescriptive and enforcement measures. There are loopholes in national legislation as Piracy is not specified as an offence in the Penal Code and Malaysia does not possess the Piracy Act like some other maritime nations. Malaysia is taking actions against piratical acts and armed robberies in its territorial sea as normal theft or robbery offences under the Penal Code and not as maritime crimes. Therefore, Malaysian laws are ineffective to take serious criminal actions against pirates and terrorists.

Civil Procedure Code extends the jurisdiction of Malaysian Courts to extra-territorial offences but it is only limited to the national security, and does not extend to piracy and maritime terrorism. Although the Courts of Judicature Act allows the Malaysian High Court to adjudicate piracy cases on the High Seas but substantive law i.e., the Penal Code does not extend legal effect beyond the territorial sea. Apart from the traditional threats of piracy, controlling the threats of terrorism and weapons of mass

destruction is also a big challenge for Malaysia in sustaining its national maritime security and there is no law in Malaysia in order to address them.

In addition, the current situation of Malaysia is in urgent need of effective enforcement measures in light of the recent security breaches such as the *Lahad Datu* Invasion (2013) by the Sulu militants in Sabah and the Pom-Pom Island Incident (2013) which the gunmen killed the Taiwanese man and kidnapped his partner. They are the very recent attacks happened in Sabah and both incidents are due to the lack of maritime territorial security. These security breaches are the very good reason to question the effectiveness of national maritime security of Malaysia.

As far as the issue of maritime law enforcement is concerned, there were a variety of enforcement agencies in Malaysia. When the Malaysian Maritime Enforcement Agency (MMEA) was established, it was supposed to be an integrated maritime enforcement agency which administers all the maritime enforcement issues such as interdictions, search and rescue, seizing of vessels which violate laws within the Malaysian maritime zones and prosecution of the accused persons. Now that it has been ten years since the MMEA was established, it is high time to assess the effectiveness of the MMEA as the primary maritime law enforcement agency, the issue of overlapping of functions and powers of various maritime related government agencies such as, the Department of Environment (DoE), marine police, the navy and the Department of Fisheries, and the proper coordination of otherwise of these enforcement agencies.

Therefore, there is an urgent need for embarking on a comprehensive research which focuses on the issues and challenges of maritime law enforcement in Malaysia and explore the best solutions for improving Malaysian maritime security.