

## PROSECUTING PIRACY AT THE HIGH SEAS: THE EXPERIENCE OF MALAYSIA

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### ABSTRACT

The development of the law on piracy under two major international treaties; the Geneva Convention, 1958 and the United Nations Convention on the Law of the Sea, 1982 has witnessed great acceptance and application of the law with many coastal states have crafted specific anti-piracy law as a manifestation of their commitments to the international treaties. However, up until today, Malaysia has yet to come out with a single and unified statute against piracy despite being a member to both treaties. The law is scattered in a different set of documents and carried out by various agencies that are responsible to each respective law. It is argued that given this is the position in Malaysia, the prosecution of piracy would be a critical problem for the law enforcement. In this paper, we address this concern by looking at both Malaysian legal framework as well as the experience of the country against international piracy, particularly the case of *Bunga Laurel*. The findings suggest that there are more than twenty Acts that might be used against piracy. As a sovereign state under the international law, Malaysia also has the right to resort to principles of international law for the apprehension and prosecution of high sea pirates. To this effect, the case of *Bunga Laurel* has really manifested the successful application of Malaysian law by the High Court of Malaya against international piracy. The paper concludes that the absence of a single anti-piracy law is not necessarily an obstacle, but instead an advantage with great choice of law available for the prosecution in this country.

**Keywords:** piracy, high seas, court of judicature act, Criminal Procedure Code, Penal Code, *Bunga Laurel*

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## MENDAKWA LANUN DI LAUT LEPAS: PENGALAMAN MALAYSIA

### ABSTRAK

Perkembangan undang-undang pelanunan di bawah dua triti utama dunia; Persidangan Geneva 1958 dan Persidangan Pertubuhan Bangsa-Bangsa Bersatu berkenaan dengan Undang-Undang Laut 1982 telah menyaksikan penerimaan dan pengamalan yang baik terhadap undang-undang tersebut apabila banyak negara-negara pinggir laut telah menggubal undang-undang khas anti-pelanunan sebagai membuktikan komitmen mereka terhadap dua perjanjian antarabangsa itu. Walau bagaimanapun, meskipun Malaysia merupakan negara anggota bagi kedua-dua triti tersebut, ia sehingga ke hari ini belum menggubal sebuah undang-undang khas dan bersepadu bagi menghadapi jenayah pelanunan. Undang-undangnya berselerak di dalam beberapa set dokumen dan dikuatkuasakan oleh pelbagai agensi yang bertanggungjawab terhadap undang-undang tertentu. Melihatkan kepada situasi di Malaysia ini, pendakwaan jenayah pelanunan oleh agensi penguatkuasaan dilihat pasti akan berdepan dengan masalah yang kritikal. Di dalam kertas ini, kemusykilan ini dirungkai dengan melihat kepada kerangka perundangan Malaysia serta pengalaman negara ini menghadapi jenayah pelanunan antarabangsa, khasnya dengan merujuk kepada kes *Bunga Laurel*. Dapatan kajian ini menunjukkan bahawa Malaysia mempunyai lebih dua puluh Akta yang boleh digunakan untuk menghadapi jenayah pelanunan. Sebagai sebuah negara berdaulat di bawah undang-undang antarabangsa, Malaysia juga berhak merujuk kepada prinsip-prinsip undang-undang antarabangsa bagi menangkap lanun-lanun di laut lepas. Bagi tujuan ini, kes *Bunga Laurel* telah membuktikan kejayaan pemakaian undang-undang Malaysia oleh Mahkamah Tinggi Malaya terhadap pelanunan antarabangsa. Penulisan ini merumuskan bahawa ketiadaan satu undang-undang anti-pelanunan yang bersepadu bukanlah suatu halangan bagi Malaysia, bahkan pihak pendakwa raya mempunyai kelebihan dengan banyaknya tersedia pilihan undang-undang yang boleh digunapakai bagi tujuan pendakwaan.

**Kata kunci:** pelanunan, laut lepas, Akta Mahkamah Kehakiman, Kanun Acara Jenayah, Kanun Keseksaan, *Bunga Laurel*

## INTRODUCTION

Piracy has long been recognized by the international community as an outlaw, a *hostis humano generis*.<sup>1</sup> A pirate may be captured, tried and punished by “any nation into whose jurisdiction he may come.”<sup>2</sup> The international law on piracy is among the oldest customary rules which have been awarded the status of *jus cogens*. In other words, piracy is always a serious crime, a heinous one.

Malaysia as a coastal state<sup>3</sup> has a long-standing history of fighting against piracy. Piracy, both within and beyond territorial waters of the state is always an endless challenge to the law enforcement of the country. Recently, Malaysia has taken an active role in suppressing piratical activities within her territorial waters. With increasing threats<sup>4</sup> of piracy from surrounding areas, Malaysia together with other littoral states have cooperated in a number of operations against piracy including Trilateral Malacca Straits Coordinated Patrols (MASLINDO), Eyes in the Sky (EIS), Malacca Straits Patrols (MSP) and Sulu Seat Patrol Initiative

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<sup>1</sup> Dixon Martin, *International Law* (United Kingdom: Oxford University Press, 2013), 148.

<sup>2</sup> Oppenheim, *Oppenheim's International Law*, ed. A. Jennings, R. & Watts, 9<sup>th</sup> edn. (Great Britain: Longman Group UK Limited, 1992), 746 and Judge Moore in *Lotus Case* (1927), PCIJ, Series A, No. 10, 70.

<sup>3</sup> About 95 percent of Malaysia is surrounded by water which puts the country at the very high risk of piracy threats, “The World Factbook: Malaysia,” *Central Intelligence Agency*, accessed November 1, 2017, <https://www.cia.gov/library/publications/the-world-factbook/goes/my.html> .

<sup>4</sup> The International Maritime Bureau (IMB) report in 2016 suggests that from 2012-2016 Malaysia has always been the target of attack throughout five consecutive years. In 2014, the number rose to 24 cases of actual and attempted attack in Malaysia which makes the country second to Indonesia with 100 cases in that year. This number leaves behind Somalia, the once most pirated sea with only four cases in 2014. Nevertheless, the report for the following years shows a decrease in the number of cases for Malaysia. 2015 recorded 13 cases and 2016 recorded only 7 cases. The change in the trend is attributed to active patrol by littoral states since 2005. For further reference, kindly refer ICC International Maritime Bureau, *ICC IMB Piracy and Armed Robbery against Ships – 2016 Annual Report* (London, United Kingdom, 2017). pp. 5 and 17.

(INDOMALPHI). Just in October 2017, Malaysia had launched the Trilateral Air Patrol (TAP) together with Indonesia and Philippines, to further stronghold their security.<sup>5</sup> Piracy is no longer perceived as a domestic issue of concerned states, but a regional threat. Their consolidated move proves the serious nature of threat posed by piracy in the region. Given that is the case, unlike many other coastal states, Malaysia does not have a single and unified anti-piracy law which induces a serious question by various parties inside and outside the country – “*How does Malaysia prosecute pirates?*”

The above question concerns both theoretical and practical aspects of Malaysian law against piracy.<sup>6</sup> As such, this article will answer two vital questions on the issue: (1) what is the governing law on international piracy in Malaysia? (2) How pirates are prosecuted under the Malaysian law?

The two questions will be addressed in two different parts of this article respectively. The first part examines Malaysian law governing piracy at the high seas. It concerns theoretical aspects of the law and explain choices available for the prosecution of piracy under domestic law and international law. The second part goes further into the practical aspect of the law in order to understand how pirates are actually being prosecuted. This part speaks about the experience of Malaysia against international piracy. For that matter, the case of *Bunga Laurel* – the crime ever, Malaysian case against international piracy will be evaluated.

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<sup>5</sup> Kyaw Hla Win @ Md Hassan Ahmed; Seeni Mohamed Nafees; Ahmad Masum; Asghar Ali Ali Mohamad, “Suppressing Piracy and Armed Robbery against Ships in the Malacca Straits: A Critical Analysis,” *Malayan Law Journal*, 3 (2016); “Piracy and Armed Robbery against Ships in Asia 2017,” Oceans Beyond Piracy, accessed August 10, 2018, [http://oceansbeyondpiracy.org/reports/sop/se-asia#footnote3\\_8qpi7ck](http://oceansbeyondpiracy.org/reports/sop/se-asia#footnote3_8qpi7ck) .

<sup>6</sup> Unless otherwise stated, from now on, when ‘piracy’ is used anywhere in this article, the term refers to piracy under Art. 101 UNCLOS 1982. It is a crime committed beyond jurisdiction of any State.

## MALAYSIAN ANTI-PIRACY LAW

Piracy or piracy-like activities are generally treated as robbery or armed robbery under Malaysian law.<sup>7</sup> Pirates are charged as robbers in other ordinary cases. When there are other elements of crime involved such as the use of arms, firearms, hostage taking, asking for ransom, destruction of property etc. the charge will include other relevant provisions or even statutes to each respective crime committed. Strictly speaking, most cases that are brought before Malaysian courts for trial are not ‘piracy’ cases by definition of international law since they lack the most essential element of crime – *a crime committed on the high seas, beyond territorial jurisdiction of any state*.<sup>8</sup>

However, not having a single anti-piracy law is not necessarily a disadvantage to the country. In fact, the Malaysian authority has a wide selection of laws to apprehend, prosecute and punish the criminals.<sup>9</sup>

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<sup>7</sup> An example is the recent case on 27<sup>th</sup> November 2016 where Kota Tinggi Sessions Court sentenced eight Indonesian men to imprisonment between 15 to 18 years each and whipping for robbing a ship MT Orkim Harmony, in waters off Tanjung Sedili in June 2015. They were charged for gang-robbery under s. 395 of Penal Code read together with s. 397 (with attempt to cause death or grievous hurt) under the same Code. “8 Indonesians jailed for tanker hijack in Malaysia,” Channel NewsAsia, accessed November 1, 2017, [www.channelnewsasia.com/news/asiapacific/8-indonesians-jailed-for-tanker-hijack-in-malaysia-7680842](http://www.channelnewsasia.com/news/asiapacific/8-indonesians-jailed-for-tanker-hijack-in-malaysia-7680842); “Eight Indonesian men jailed for robbing MT Orkim Harmony,” Malaymail, accessed November 1, 2017, [www.themalaymailonline.com/Malaysia/article/eight-indonesian-men-jailed-for-robbing-mt-orkim-harmony](http://www.themalaymailonline.com/Malaysia/article/eight-indonesian-men-jailed-for-robbing-mt-orkim-harmony).

<sup>8</sup> Article 101(a)(i) of the United Nations Convention on the Law of the Sea 1982 (UNCLOS) stipulates that piracy is a crime committed on the high seas. Article 105 of UNCLOS explains further that it should not include an area under the jurisdiction of any state.

<sup>9</sup> Among the statutes that can be used for this purpose include: Penal Code [Act 574], Court of Judicature Act 1964 [Act 91], Criminal Procedure Code [Act 593], Malaysian Maritime Enforcement Agency Act 2004 [Act 633], Arms Act 1960 [Act 206], Firearms (Increased Penalty) Act 1971 [Act 37], Police Act 1967 [Act 344], Dangerous Drug Act 1952 [Act 234], Explosives Act 1957 [Act 207], Corrosive and Explosive Substances and Offensive Weapons Act 1958 [Act 357], Kidnapping Act 1961 [Act 365], Prevention of Crime Act 1959 [Act

For this purpose, the Penal Code of Malaysia has become the principal Act to prosecute piracy. Major offences like robbery, murder, causing hurt, death or threat of causing hurt or death, hostage taking and extortion are defined and criminalized by the Code. Besides, Penal Code has always been the primary statute relied on by the authority when there is threat against peace and security of the State.

### **Court of Judicature Act 1964 [Act 91] and Criminal Procedure Code [Act 593]**

The conclusion of Geneva Convention on the High Seas in 1958<sup>10</sup> has witnessed major efforts initiated by contracting parties to strengthen their international cooperation and secure their subjects against threats of piracy. The effort includes criminalization of piracy at local level through introduction of relevant rules and regulations to honour the agreement made among the member states at international level. About eight years later, Malaysia has added a special provision on piracy into her own local law. The Court of Judicature Act 1964 (CJA) and Criminal Procedure Code (CPC) have then become two important statutes used by the authority to bring pirates at the high seas to her shore. It empowers the High Court to try offences on the high seas when they are considered as piracy by the law of nations. S. 22(1)(a) of CJA provides that the High Court shall have jurisdiction to try all offences committed:

- i. within its local jurisdiction;
- ii. on the high seas on board any ship or on any aircraft registered in Malaysia;

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297], Security Offences (Special Measures) Act 2012 [Act 747], Prevention of Terrorism Act 2015 [Act 769], Special Measures Against Terrorism in Foreign Countries Act 2015 [Act 770], National Security Council Act 2016 [Act 776], Customs Act 1967 [Act 235], Immigration Act 1959 [Act 155], Fisheries Act 1985 [Act 317], Exclusive Economic Zone Act 1984 [Act 317], Continental Shelf Act 1966 [Act 83] and Environmental Quality Act 1974 [Act 127].

<sup>10</sup> Malaysia acceded to the treaty in December 1960, "Convention on the High Seas: 1958," United Nations Treaty Collection, accessed November 1, 2017, <https://treaties.un.org/Pages/showDetails.aspx?objid=080000028003327e&clang=en>.

- iii. by any citizen or any permanent resident on the high seas on board any ship or on any aircraft;
- iv. by any person on the high seas where the offence is piracy by the law of nations.

Other than indirectly criminalizing the offence of piracy, S.22(1)(a)(iv) has also welcome the idea of piracy offered by international law (the then known as the ‘law of nations’). Piracy has been specifically defined by Art. 15 Geneva Convention in 1958 to mean:

- (1) Any illegal acts of violence, 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:
  - (a) On the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;
  - (b) Against a ship, aircraft, persons or property in a place outside the juris diction of any State;
- (2) Any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;
- (3) Any act of inciting or of intentionally facilitating an act described in sub-paragraph 1 or sub-paragraph 2 of this article.

Since Article 15 of Geneva 1958 on piracy has been taken word by word by UNCLOS 1982 into its Article 101, the same idea of piracy present in UNCLOS may be said to be identical or nothing but the same piracy under Geneva 1958. For that matter, what Malaysia has under s. 22(1)(a)(iv) of its CJA is piracy under UNCLOS 1982.<sup>11</sup> This section has become self-evident in that Malaysia welcomes the definition offered by international law. In addition to that, the above provision, other rules and regulations, cooperation and agreements made at both regional and international level also suggest that Malaysia always appreciates efforts to eliminate threats of piracy within her region and the regions beyond. The

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<sup>11</sup> Malaysia herself has ratified UNCLOS 1982 in 1996. “United Nations Convention on the Law of the Sea, 1992,” United Nations Treaty Collections, accessed November 1, 2017, [https://treaties.un.org/Pages/ViewDetailsIII.aspx?src=TREATY&mtdsg\\_no=XI-6&chapter=21&Temp=mtdsg3&clang=en](https://treaties.un.org/Pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XI-6&chapter=21&Temp=mtdsg3&clang=en).

attitude of Malaysia in this regard has shed the light that the State takes an agreement made with her counterparts very seriously and that she really considers piracy as a serious crime, a *hostis humano generis*.

S. 22(1)(b) of CJA and s. 127A (1) of CPC at the meantime provides a great opportunity for the authority to prosecute suspected offenders of piracy, robbery or armed robbery at sea. S. 22(1)(b) CJA and s. 127A (1) CPC provides that offences under Chapters VI, VIA and VIB<sup>12</sup> of Penal Code and under any written laws specified in the Schedule to the Extra-Territorial Offences Act 1976 or any offences under any other written law the commission of which is certified by the Attorney General (AG) to affect the security of Malaysia<sup>13</sup> committed as the case may be:

- (a) on the high seas on board any ship or on any aircraft registered in Malaysia;
- (b) by any citizen or any permanent resident on the high seas on board any ship or on any aircraft;
- (c) by any citizen or any permanent resident in any place without and beyond the limits of Malaysia;
- (d) by any person against a citizen of Malaysia;
- (e) by any person against property belonging to, or operated or controlled by, in whole or in part, the Government of Malaysia or the Government of any State in Malaysia, any citizen of Malaysia, or any corporation created by or under the laws of Malaysia located outside Malaysia, including diplomatic or consular premises of Malaysia;<sup>14</sup>

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<sup>12</sup> Limited to Chapter VI and VIA for CJA.

<sup>13</sup> There is an important question regarding AG's certificate here i.e., "How does a piracy, which is for private ends, affect the security of Malaysia?" This issue will be dealt with when we deliberate on Procedural Challenge to the case of *Bunga Laurel*.

<sup>14</sup> S. 22(1)(b) of CJA:

v. by any person against property belonging to the Government of Malaysia or the Government of any State in Malaysia located outside Malaysia, including diplomatic or consular premises of Malaysia.



- (f) by any person to compel the Government of Malaysia or the Government of any State in Malaysia to do or refrain from doing any act;

...

The significance of both sections is that the AG may, after a thorough deliberation, consider certain crimes to have affected the security of Malaysia and as such approve the case to be tried at the local court though it has been committed thousand miles away from the country.

Having clearly considered all these provisions under CJA and CPC, it can be safely concluded that the High Court of Malaysia may try any offence of piracy committed at the high seas, as long as the authority could satisfy the ground that the act committed is piracy under the international law or at least has in any manner affected the security of Malaysia, as the case may be.

### **Penal Code [Act 574]**

Any criminal act committed within Malaysia and beyond the country is tried primarily under the Penal Code. Piracy that most of the time committed on the high seas is a crime by virtue of s. 3 of the Code which considers it as an offence that may be tried within Malaysia. Furthermore, the following s. 4 explicitly provides that any offence under Chapter VI, VIA and VIB, regardless of it being committed on the high seas, is to be treated as if the offence is committed within territorial limit of Malaysia. In other words, any act committed on the high seas may be tried in Malaysian local courts when it can be proven that the same act is an offence under the Penal Code.

The widely accepted definition of piracy under Article 101<sup>15</sup> of the United Nations Convention on the Law of the Sea 1982 (UNCLOS) stipulates that piracy includes:

- (a) Any illegal act of violence, 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:

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<sup>15</sup> UNCLOS 1982, United Nations, accessed November 1, 2017, [http://www.un.org/depts/los/convention\\_agreements/texts/unclos/part7.htm](http://www.un.org/depts/los/convention_agreements/texts/unclos/part7.htm) .

- i. on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;
  - ii. against a ship, aircraft, persons or property in a place outside the jurisdiction of any State.
- (b) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft.
- (c) any act of inciting or of intentionally facilitating an act described in sub-paragraph (a) or (b).

Article 101 of UNCLOS 1982 is meant to provide for a comprehensive definition of piracy. It provides a very wide element of crime – any illegal act of violence, detention or depredation. As such, violence alone may include all sorts of criminal acts such as murder, robbery, extortion, kidnapping and other offences typically committed by pirates in their course of action. The same goes to illegal detention or depredation that is obviously a crime under any given law. These criminal acts are already covered by the Malaysian Penal Code and other statutes.

There are a number of provisions under the Penal Code which are relevant to certain acts usually committed by pirates in their criminal enterprise. Robbery that is always associated with piracy is explained under s. 390(2) of Penal Code in the following lines:

“Theft<sup>16</sup> is “robbery”, if, in order to commit theft, or in committing the theft, or in carrying away or attempting to carry away property obtained by the theft, the offender, for that end, voluntarily causes or attempts to cause to any person death, or hurt, or wrongful restraint, or fear of instant death, or of instant hurt, or of instant wrongful restraint.”

‘Violence’, ‘detention’ and ‘depredation’ that constitute crime of piracy under international law are all present in the above section of the Code in their own language. In a way or another, the crime involves causing or attempt to cause death, hurt or wrongful restraint or even

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<sup>16</sup> S. 378 reads:

Whoever, intending to take dishonestly any movable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft.

causing fear of the like. In fact, causing fear of instant death, hurt or wrongful restraint is sufficient to establish crime of robbery under s. 390(2). For the purpose of gang-robbery, ss. 391, 396, 399 and 400 are of good use to ensure that the higher degree of crime is addressed respectively. The Code in this regard has set a lower standard to prosecute suspected pirates at the high seas. In addition to that, by virtue of s. 3 of the Penal Code, whenever it could be established that crime of robbery is committed on the high seas, the same act is treated as if it was committed within Malaysia. Thus, any sea robbery may be tried under Malaysian local court and punished under s. 392 of the same Code with imprisonment up to fourteen years, or under s. 395 for gang-robbery with imprisonment up to twenty years.

In many cases of piracy, the pirates immediately fled the scene the moment they come to know about the presence of navy. In some serious cases, they showed resistance towards the warning given by the authority. S. 353 governs the scenario when it provides that any person assaults or uses criminal force to deter public servant from the discharge of his duty may be punished with imprisonment for a term which may extend to two years, or with fine, or with both. The use of criminal force in an attempt to commit theft or to wrongfully confine a person is an offence under ss. 356 and 357. The punishment under s. 356 is maximum two years imprisonment, fine, whipping or any two of such punishment. S. 357 provides for a maximum one-year imprisonment, two thousand ringgits fines or both.

Murder, a usually coincidental event following resistance by the pirates to surrender their unfinished business is an offence under s. 300 and punished under s. 302 with death. As stated just now, murder on board of a ship on the high seas is the same as murder on land. The same principle is applied to other offences too. According to s. 325, should a pirate cause grievous hurt to crew members of the ship, he is liable to imprisonment up to seven years and shall also be liable to fine upon conviction. When dangerous weapons<sup>17</sup> are used for that matter, s. 326 stipulates that the term of imprisonment may be extended up to twenty years and he may also be liable to fine and whipping. When grievous hurt

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<sup>17</sup> As specified under Corrosive and Explosive Substances and Offensive Weapons Act 1958.

is caused with the intent to extort property or to constrain to an illegal act, the offender is liable under s. 329 for another imprisonment up to twenty years, fine and whipping. Extortion alone in fact, is a crime under s. 383 and punished under 384 with imprisonment up to ten years, fine, whipping or both fine and whipping. When grievous hurt is caused onto navy officer with the intent to deter him from carrying out his duty, s. 333 with maximum imprisonment of ten years may be applied together with other sections from the same Code alone.

For the purpose of wrongful restraint and wrongful confinement, ss. 339 until 348 provides enough room for trial. When a detention is made with the intent to compel the Government of Malaysia, any other government or international organization, such an act is considered as hostage-taking under s. 374A and punished under s. 374A(a) with death if the act results in death or otherwise under s. 374(b) with imprisonment not less than seven years but not exceeding thirty years. Under s. 374(b), the offender shall also be liable to fine. The provision on this particular offence is quite fair with growing influence of international organizations and close cooperation established by countries with those significant organizations.

In short, the Penal Code alone appears to have provided sufficient ground to prosecute piracy on the high seas. The most important provisions of the Code are its ss. 3 and 4(2)(a) which empower the law to be applied not only within territorial limit of the country, but also beyond that border.

### **Other Relevant Acts**

Other than Penal Code, CJA and CPC, the Malaysian Maritime Agency Act, Arms Act, Police Act, Corrosive and Explosive Substance and Offensive Weapons Act, Kidnapping Act, Immigration Act, Prevention of Crimes Act, Security Offences (Special Measures) Act and Prevention of Terrorism Act are among other relevant Acts that may be used by the authority to capture the suspects charge and punish them. Each may be used in accordance with certain criteria of the offender, nature of the act, available evidence, procedural requirement and prospect penalty against the offenders.

## Principles of International Law

Since piracy is an offence committed on the high seas, the issues on jurisdiction that often surround the extra-territorial offences are of no exception to this particular crime. Other than relying only on CJA or CPC, Malaysia may invoke principles of international law to claim jurisdiction over suspected pirates. In fact, this is to be treated as another set of Malaysian anti-piracy law. Both national and international laws may be applied simultaneously at Malaysian local court.

As a member of a large international community, Malaysia is always privileged to rely on international law to safeguard her national interests and to maintain the international peace and security. The international law offers that a State may claim criminal jurisdiction based on the following five principles:

1. Territorial principle;
2. Nationality principle;
3. Protective principle;
4. Universality principle;
5. Passive personality principle.<sup>18</sup>

In order to bring home pirates caught at the open sea, Malaysia may have recourse to any of the above principles. The Territorial principle is a primary and a well-established principle that is being widely practiced by the states. The principle has two categories: objective and subjective territorial principle. Malaysia may invoke this principle based on *Lotus*<sup>19</sup> case, which the Permanent Court of International Justice (PCIJ) has agreed that the vessel of a State is to be assimilated to the territory of the State itself. Applying the objective territorial principle, a crime committed abroad but was completed on board of Malaysian vessel is treated as a crime committed on her soil itself. On the contrary, subjective

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<sup>18</sup> Abdul Ghafur Hamid @ Khin Maung Sein, *Public International Law: A Practical Approach* (Selangor, Malaysia: Sweet & Maxwell Asia, 3<sup>rd</sup> Edn. 2011), 128; Dixon Martin, *International Law* (United Kingdom: Oxford University Press, 2013), 150-159.

<sup>19</sup> *France v Turkey* (1927) PCIJ Reports Series A No. 10.

territorial principle considers a crime committed on board of Malaysian vessel but was completed abroad to be treated as a crime against Malaysia as well.

For the nationality principle, when piracy is committed by any of her national, Malaysia may obviously apply the nationality principle to bring the offender home and try him at the national court. However, this is subject to successful apprehension of the offender and his presence at the local court.

In regard to the protective principle, Malaysia may claim that certain attacks by pirates at the high seas is prejudicial to its vital interest irrespective of where the act takes place or by whom it was committed. The Protective principle is an established principle, although there are criticisms over some uncertainties regarding its practicality and the extent to which it may cover.<sup>20</sup> This principle has been applied in *Eichmann's* case where Israel has exercised jurisdiction to prosecute Adolf Eichmann whom the court concluded that he has committed crimes against Jewish people – a crime that affected the ‘vital interest’ of the state.<sup>21</sup> The principle is well recognized in Latin America, Europe, the Commonwealth countries, the United States and England.<sup>22</sup> In fact, the protective principle can be compared with s. 22(1)(b) of CJA and s. 127A(1) of CPC as discussed earlier under Malaysian law. Given that, Malaysia will have least objection to her claim of jurisdiction over international piracy using this principle due to the fact that multiple agreements and efforts at both regional and international have been concluded to promote prevention and suppression of international piracy

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<sup>20</sup> Malcolm N. Shaw, *International Law* (Cambridge, United Kingdom: Cambridge University Press, 8<sup>th</sup> Edn. 2017), 499; Matthew Garrod, “Unravelling the Confused Relationship Between Treaty Obligations to Extradite or Prosecute and “Universal Jurisdiction” in the Light of the Hebre Case,” *Harvard International Law Journal*, 59 (2018), 125; Caroline A. Fish, “Extraterritorial Human Trafficking Prosecutions: Eliminating Zones of Impunity within the Limits of International Law and Due Process,” *St. John’s Law Review* 91 (2017), 529.

<sup>21</sup> *Eichmann* (1961) 36 I.L.R. 277.

<sup>22</sup> Surendra Ananth, “Criminal Jurisdiction in International Law: A Malaysian Context in Light of MH17,” *Malayan Law Journal*, 1 (2015), 5.

with exceptional power granted by international community for any state to achieve that purpose.<sup>23</sup>

Based on the passive personality principle, Malaysia may also claim trial of the offender when her national is the victim of the crime. Moreover, Malaysia may further her claim on the ground that piracy is a *delicta jure gentium* (international crime) and a *hostis humano generis* (enemy of all mankind) that certainly fits the requirements of universality principle. Piracy is clearly a violation of international law, a real threat to international community and (in the language of PCIJ) *may be captured, tried and punished by any nation into whose jurisdiction he may come*. These are strong arguments in favour of Malaysia to have the case heard at her national court.

As briefly explained here, the five principles under international law may be invoked by Malaysia whenever she thinks fit and necessary. In addition to that, based on an early discussion to this Part, Malaysia seems to welcome international law on piracy and never hesitates to cooperate with any states at regional and international level for the purpose of suppression of piracy. Therefore, principles of international law always work as an integral part of Malaysian legal framework against international piracy. In fact, cases of piracy do offer a great opportunity for Malaysia to claim her right under international law and not only under its national law since piracy is always considered as *hostis humano generis*.

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<sup>23</sup> See for instance in Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in 2005, UNSC Resolutions 1816 (2008), 1976 (2011), 2020 (2011), European Union's Operation Atlanta in 2008 and NATO's Operation Ocean Shield in 2009.

## PROSECUTING PIRACY ON THE HIGH SEAS: THE CASE OF BUNGA LAUREL<sup>24</sup>

### Facts of the Case

On 20/01/2011 around 18:00 the vessel MT Bunga Laurel (BL) which was guarded by the Royal Malaysian Navy (RMN) vessel Bunga Mas 5 (BM5) reached at an area known as Easton 4. From that point BL with eight crew members sailed alone towards its destination and BM5 took its own route. Having realized that BL was no longer guarded, the accused persons<sup>25</sup> approached the vessel and later took a skiff out of their mothership and swiftly moved towards BL with the intent to rob and hijack the vessel. Their movement was, however, spotted by the crew members of BL and the Captain, Jose Ma Murillo Salazar alarmed BM5 and the MISC Response Centre in Kuala Lumpur about the incident. BL was then instructed to change its course and BM5 was directed towards the former so that both vessels would meet each other at the soonest time.

At 19:25, BL informed BM5 that a skiff was spotted at 1.6 nautical miles at the speed of 20 knots. Around four minutes later, the skiff advanced through the tail of BL. The Automatic Identification System (AIS) was activated and all crew members who were not on duty were ordered by the Captain to move down the floor right to the citadel. That moment, the skiff was approaching BL and the accused persons attempted to climb up the vessel using ladder. Their first attempt was, however, unsuccessful.

At 19:32, BM5 informed BL that a skiff was attempting to reach the latter from portside (the left side of the vessel) and BL reacted with evasive manoeuvres. Having failed at their attempt, the skiff moved to the tail of BL and attempted at boarding the vessel. Announcement was made again for the crew members to leave for citadel. Armed with guns,

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<sup>24</sup> In the High Court of Kuala Lumpur, Criminal Case No. 45D-23-2011, *PP v Ahmed Othman Jamal & 6 Ors.* (Unreported); Magistrate Court Kuala Lumpur arrest warrant no. 7-81-39-2011.

<sup>25</sup> Ahmed Othman Jamal (A1), Abdil Eid Hasan (A2), Koore Mohamed Abdile (A3), Abdi Hakim Mohd Abdi (A4), Mohd Abdi Ibrahim (A5) Kasayah Dhalin Hussein (A6) and Hasan Yusuf Ahmed (A7).



the accused persons later successfully climbed up the starboard of the vessel (the right side). The emergency alarm was then activated and the Captain ordered the rest of the crew members to leave for citadel. BM5 was informed about the action taken by BL and the Ship Security Alarm System (SSAS) was activated so that it could be easily spotted. Having successfully boarded BL, the accused persons ransacked almost the entire vessel.

At 20:10, the RMN team arrived at the scene and saw BL at the distance of 7.5 nautical miles with a skiff and a mothership nearby. A chopper was then sent to BL for aerial defence. When it was about 600 feet height and 1 nautical mile from the mothership, the vessel opened fire at the chopper. The chopper had no other choice but to return fire at the mothership and subsequently leave BL. At the same time, the pirates have finally reached the citadel and they forcibly banged the door from outside several times, only that they could not break it.

Later at 21:00, the chopper flew back to the scene to provide tactical support to the special navy team's (PASKAL) skiff launched from BM5 to BL. One of the accused spotted PASKAL team who was reaching the vessel and opened fire against them and this was witnessed by the team. PASKAL team returned fire against them. The chopper and PASKAL team exchanged fire against the pirates for about an hour and the mothership finally left BL.

At 22:00, one of the pirates communicated their intention to surrender to RMN team. The team then ordered them all to line up at the bridge of the vessel with their hands up. They later saw a few persons standing at the bridge waving with mega ray light. When some of the accused persons were still hammering the citadel's door and attempted to conceal the weapons used, the order was made for the second time by the RMN for all the accused persons to line up and surrender. Only then all of them chose to cooperate, moved out and lined up at the bridge with their hands up. The PASKAL team later boarded the vessel, apprehended all the seven accused in the instant case and searched for any possible remaining pirates. Their search found many dangerous weapons including two AK47 rifles, a single gun, ammunitions, a steel hammer and a ladder. During the incident, some accused persons suffered injuries and the RMN team were all unharmed. All the accused were then apprehended by RMN and were brought back to Malaysia using BL.

## From the Sea to the Shore

Since piracy is a *hostis humano generis*, Malaysia actually does not have much issue to bring the seven accused persons into her shore. In the instant case, although MT Bunga Laurel flew the Panama flag and was sailed by different nationals, the vessel was chartered by one MISC Berhad, a Malaysian company. As such, it is agreed that MISC has become the owner of Bunga Laurel at that particular time.<sup>26</sup> Furthermore, it is clear from the facts of the case that all of them have been apprehended by the RMN Special Team PASKAL and were brought straight away to Malaysia for further apprehension and proper charge. There was no other authority from other states known to have also directly involved in the operation. Thus, the principle of custody will always prevail for Malaysia. After all, no single state objects to the action taken by Malaysia against the accused persons.

## The Charge

Ahmed Othman Jamal and six others were initially charged in the Magistrate Court of Kuala Lumpur with the following:

“That you jointly on 20<sup>th</sup> January 2011 between 8:10 pm to 10:00 pm on board of Bunga Laurel vessel at Lat. 20° 14.73N Long. 063° 39.96 E, 250 nautical miles from Oman territorial waters, in furtherance of your common intention while committing a scheduled offence of robbery, had discharged firearms against Malaysian Royal Navy with intention to cause death or hurt. Therefore, you had committed an offence under s. 3 of Firearms (Increased Penalty) Act 1971 (Act 37)<sup>27</sup>

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<sup>26</sup> *Procedural Challenge*, para 10 and 16.

<sup>27</sup> S. 3 of FIPA reads:

Any person who at the time of committing or attempting to commit or abetting the commission of a scheduled offence discharges a firearm with intent to cause death or hurt to any person, shall, notwithstanding that no hurt is caused thereby, be punished with death.

The offences listed in the Schedule are: (1) Extortion, (2) robbery, (3) the preventing or resisting, by any person, of his own arrest or the arrest of another by a police officer or any other person lawfully empowered to make the arrest, (4) escaping from lawful custody, (5) abduction or kidnapping under ss. 363 to

and punishable under the same provision read together with s. 34 of Penal Code.”

Since the punishment under the s. 3 of FIPA is death penalty, the case was moved from Magistrate Court to High Court of Kuala Lumpur. During the course of trial, the offenders accepted alternative charge under s. 32(1)(a) of Arms Act 1960<sup>28</sup> offered by Public Prosecutor and pleaded guilty for the alternative charge. They were all subsequently sentenced with imprisonment instead of death penalty.

### **Procedural Challenge: The Jurisdiction of the Court and the Security of Malaysia**

The accused persons through learned counsel Mr. Edmund Bon Tai Soon have applied to the Court by way of a notice of motion to stay and/or strike out the charge against them.<sup>29</sup> The application was made on two main grounds:

1. The High Court of Malaya has no jurisdiction to try the purported offence stated in the charge against the applicant;
2. The Certificate issued by the Attorney General dated 11 February 2011 under s. 127A(1)(d) of the CPC<sup>30</sup> is wrong, flawed, null and void, and should be set aside.

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367 of the Penal Code and s. 3 of the Kidnapping Act 1961 [Act 365], (6) House-breaking or house-trespass under ss. 454 50 460 of the Penal Code.

<sup>28</sup> S. 32(1)(a): If any person makes or attempts to make any use whatsoever of an arm or imitation arm with intent to resist or prevent the lawful apprehension or detention of himself or any other person, he shall, on conviction, be liable to imprisonment for life or for a term not exceeding fourteen years.

<sup>29</sup> *Kasayah Dhalin Hussein v PP* [2012] 9 CLJ 1029; in the High Court of Malaya, Kuala Lumpur. Criminal Application No: 44-126-07/2012, 24 September 2012.

<sup>30</sup> The essence of the AG letters on 11 February 2011 are the following lines:

“...an offence affecting the security of Malaysia...”; and

“...may be tried anywhere in Malaysia...because it was committed against Malaysian nationals.”

On Ground 1, the learned counsel for applicants among other things contended that the alleged offence took place at some 250 nautical miles from Malaysia, beyond jurisdiction of the High Court of Malaya. On ground 2, the learned counsel argued that the alleged offence was perpetrated thousand miles away from Malaysia and was not directed against Malaysia herself. The A-G himself did not provide sufficient evidence on the ground why the incident could be said to have affected the security of Malaysia.

Upon close examination on the arguments put forward by both counsels, Justice Kamardin Hashim agreed with submission provided by the Deputy Public Prosecutor (DPP) and thus dismissed the application made by the learned counsel for the accused. Reading the clear and unambiguous s. 22(1)(b)(iv) of CJA<sup>31</sup> he affirmed that the jurisdiction of the Court is not limited only to cases committed within the local limits, but the Court has extra-territorial jurisdiction to hear cases outside its local limits.<sup>32</sup> The Court observed that:

“It is clear from reading the above provision of the law that any offence under any written law committed against citizen of Malaysia which is certified by Attorney General as offences affecting the security of Malaysia can be tried in Malaysia even though the offence was committed by non-citizen outside Malaysia. The applicant was charged for an offence under Firearms (Increased Penalties) Act 1971 (“FIPA”). FIPA is a written law in Malaysia.”<sup>33</sup>

The DPP in this regard has associated the ‘security of Malaysia’ with several indications. This, *inter alia*, is what the learned DPP had to say:

“The accused persons were not ordinary robbers, but a gang of pirates in the Gulf of Aden, an area commonly known for pirates’ attack spot. The 2011 report records 286 cases of armed robbery or attempted armed robbery and hijacking out of Somali coast with one of them

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<sup>31</sup> S. 22(1)(b)(iv) of CJA:

The High Court has jurisdiction to try ... any offences under any written law the commission of which is certified by the AG to affect the security of Malaysia ... by any person against the citizen of Malaysia.

<sup>32</sup> Para 12.

<sup>33</sup> Para 29.

being BL...The Maritime Piracy has also classified piracy as a grave, organized and transnational crime...The accused persons had used dangerous arms during their course of action. They are AK-47 and (other types of) guns. They had blatantly shot at the Navy using these firearms...This proves that they have access to firearms for their crimes...The fact of the case also shows that all the accused persons have successfully boarded BL and they have attempted to break the "citadel" where all the crew members gathered and took hide. Their acts prove that they did not only intend to take over the ship, but it was also their intention to hold the crew members hostages...The Court may take "judicial notice" about piratical activities in the Gulf. Their activities are often reported by the news the world over. If these ships are hijacked by the pirates, they will hold the crew members hostages and asked for ransom in exchange of the victims' security."<sup>34</sup>

Speaking about public interest, the learned DPP continued:

"The passage in the Gulf of Aden is one of the important passageways in the world. Having realized this significance and the need to secure the interest of Malaysia, the Government has sent the Navy to escort and protect the ships from Malaysia when they are off the coast of Somalia and around the Gulf...The public interest warrants a severe punishment to be imposed on the accused persons; to send the message to the world that Malaysia considers piracy a serious offence and that she would undoubtedly take stern actions against those threatening the interest of the State..."<sup>35</sup>

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<sup>34</sup> DPP's charge sheet, pp. 4-6 (unreported).

<sup>35</sup> *Ibid.*

There is a difference between piracy and terrorism; another offence usually said to threaten the security of states. Piracy is committed for private ends and terrorism on the other hand, is committed for political aims. However, both are often carried out violently i.e. involves the element of fear, use of firearms, threat to life, hijacking, hostages, public insecurity, etc. Both crimes affect the states in the sense that it violates their sovereignty – the highest value a state must maintain. The perpetrators of both crimes purposely attracted states' attention through their violent acts to have their objectives heard. The pirates ask for ransom and the terrorists call for certain political move by the states. The reputation of a state may be damaged through repeated attacks against its subjects and the failure or inadequate response to such an attack by the state.

In other words, piracy that was initially intended for private ends is said to have affected the security of Malaysia for a number of reasons: (1) grave and serious nature of the crime, (2) being organized by a gang of Somali pirates, (3) the attack was against RMN personnel who are citizens of Malaysia, (4) the violent manner in which the crime was carried out, (5) the use of firearms, (6) a large number of reports the world over on previous Somali pirates' activities, (7) the intent to take over and the ship, (8) the attempt to hold crew members hostages, (9) ransom intended by the pirates from Malaysian authority upon successful commission of the crime, (10) the need to protect the ships from Malaysia while at the high seas, and (10) the need to secure the interest of Malaysia.

Concluding his judgement, Justice Kamardin made a strong remark as follows:

“Malaysia became a party to the United Nations Convention on the Law of the Sea (UNCLOS) on 13 November 1996. Articles 100, 101 and 105 authorize member states to seize pirate ship and to arrest the persons involving in piracy. Member states (are) authorize(d) to bring suspected pirates to trial. Therefore, any member state has an uncontroversial power to seize any ship suspected of being used by pirates, arrest its crew and bring them to its territory for being tried in its court. Under the 1988 Convention on the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA Convention) where Malaysia also acceded to have a duty to adopt all the national laws necessary to assure the prosecution of any act of violence at sea. Member states are allowed to use a strong approach when nationals of

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This concern was actually raised by the DPP when pressing the charge against all the seven accused persons in the instant case.

Although piracy is committed for private ends, the crime affects many countries in tremendous manner. A world bank report in 2013 suggests that Somali pirates cost global economy \$18 billion per year as shippers are forced to change trading routes and pay higher insurance premiums. In modern time, the security of the state is not only limited to politics, but also its economy. Thus, any conduct posing a real threat to a state's national economy could be rightly subjected to the state's jurisdiction. *See* Sein, *Public International Law*, p. 132 & “Somali pirates cost global economy \$18 billion a year,” CNN, accessed August 12, 2018, <https://edition.cnn.com/2013/04/12/business/piracy-economy-world-bank/index.html>.

their own states were victim of hijacking. What the Malaysia Navies did in this case is not only allowed by our local laws, but also within the spirit of UNCLOS and SUA Convention. The action by the Malaysian authorities are semblance of what had been taken by the French Navies in the seizure of yacht *Le Ponant* and of the American Navies in the case of seizure of cargo ship *Maersk Alabama* by the pirates. In both cases the respective national navies arrested the pirates and put them in the hands of their national courts. Malaysia too, had have to take positive and certain action in defending their citizens and interest abroad especially while on high seas.”<sup>36</sup>

The final remark made by the judge carries a strong message that Malaysia could rely on both national and international laws to prosecute and punish international piracy. The local law of Malaysia through s. 22(1)(b)(iv) of CJA and s. 127A(1)(d) of CPC conferred jurisdiction on the High Court to try the offence allegedly committed by the accused persons. The charge was also made under s. 3 of Firearms (Increased Penalty) Act 1971 (but was later changed to s. 32(1)(a) of Arms Act 1960) read together with s. 34 of Penal Code. Both are national laws of Malaysia. Turning to the international law, since Malaysia is a party to UNCLOS 1982 and SUA Convention, the judge submits that the State is entitled to apply relevant principles laid down under both regulations pertaining to piracy most significantly the uncontroversial power conferred on her to seize any ship suspected of being used by pirates, arrest its crews and bring them to its territory for being tried in its court. The proposition made by the judge is also supported by the practice of other states specifically in the cases of *Le Ponant* and *Maersk Alabama*. Overall, his observation concludes that Malaysia in this regard may choose to invoke the principles of international law: nationality principle, protective principle, universality principle as well as passive personality principle.

### Judgement and Sentence

During the course of trial, all the seven accused persons accepted the offer made by the learned DPP, Mohamad Abazafree for plea of guilty of offence under s. 32(1)(a) of Arms Act 1960 read together with s. 34 of

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<sup>36</sup> *Procedural Challenge*, p. 35.

Penal Code. Consequently, all of them were found guilty and liable by the Court for the amended alternative charge and accused 1, 2 and 4 were sentenced to 10 years imprisonment, and accused 3, 5, 6 and 7 were given 8 years respectively.

### ***Bunga Laurel: Alternative Charges under Penal Code***

At the outset of the trial, the accused persons have been charged under s. 3 of FIPA with death penalty as the only punishment available under the said provision. S. 3 of FIPA covers the actual commission of the crime as well as its attempts and abetment. It also covers scheduled offences whereby the offender discharges firearm in the course of his criminal enterprise. The scheduled offences are: extortion, robbery, preventing or resisting arrest, escaping from lawful custody, abduction or kidnapping and house-breaking or house trespass. However, the charged under s. 3 of FIPA was later amended to s. 32(1)(a) of Arms Act 1960 that is specified for the use of arms against lawful apprehension or detention by the authority. With lesser serious offence under s. 32(1)(a), the option of the punishment is either life imprisonment or a term not exceeding fourteen years. The alternative charge is seemingly offered taking into account various factors including the backgrounds of each accused person such as the age of minority and their hardships.<sup>37</sup>

Be that as it may, the fact of the case tells us that the accused persons *have* to a certain extent *had*:

1. Unlawfully boarded BL;
2. Used violence in order to commit illegal act;
3. Prevented lawful detention by the authority.
4. Fired against the RMN; and
5. Threatened the lives of the crew members as well as the RMN team;

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<sup>37</sup> Papers submitted for *Plea-In-Mitigation* for the case highlight poor living conditions in Somalia, the homeland for the seven accused persons. War, poverty, hunger, homeless and jobless are among major misfortunes affected their lives which had really pushed them towards an almost dead end.



They at the same time have also *attempted* at committing several offences including:

1. Causing injury or grievous injury;
2. Murder;
3. Theft or robbery;
4. Extortion; and
5. Hostage-taking;

These offences are all covered by Penal Code as previously discussed in first section of this paper and each of them may be used by the Public Prosecutor to prosecute piracy at the high seas. S. 165 of CPC provides that a person may be tried for every offence committed:

(1) If in one series of acts so connected together as to form the same transaction more offences than one is committed by the same person, he may be charged with and tried at one trial for every such offence;

(2) If the acts alleged constitute an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, the person accused of them may be charged with and tried at one trial for each of those offences.

Speaking about cases like *Bunga Laurel* where the criminals could not successfully complete their business, the law on inchoate offences plays a crucial part here. S. 168 of CPC stipulates that the charge for attempt at committing the offence is to be read into the charge itself and consequently the accused person may be respectively convicted:

“When the accused is charged with an offence he may be convicted of having attempted to commit that offence, although the attempt is not separately charged.”

Another important legal provision on inchoate offences is s. 511 of Penal Code. The section does not only criminalize the attempt to commit offences under the Code, but extends its application to ‘any other written law’. S. 511 reads:

“Whoever attempts to commit an offence punishable by this Code or by any other written law with imprisonment or fine or with a combination of such punishments ... shall, where no express provision is made by this Code or by such other written law, as the case may be,

for the punishment of such attempt, be punished with such punishment as is provided for the offence.”

In other words, where the Code is silent about a particular criminal act and the offence committed is one of attempt, the DPP is invited to invoke s. 511 and look for the appropriate offence under other statutes. For the purpose of suppression of piracy, it is highly suggested that the phrase ‘any other written law’ is to be given a liberal interpretation to cover not only Malaysian local law, but also international law. The authority has to take the opportunity to invoke s. 511 and make a direct reference to international law such as UNCLOS 1982 where the definition of piracy is well-founded and Malaysia is also a member to the treaty. This certainly confirms with s. 22(1)(a)(iv) of CJA, the obligation of the country under international law and the spirit of the United Nations.<sup>38</sup>

## CONCLUSION

Piracy at the high seas as defined by UNCLOS 1982 is a crime under Malaysian law. Although admittedly the country does not have a single and unified anti-piracy law, piracy has been introduced into the law of the land primarily through CJA, CPC and Penal Code. S. 22(1)(a) of CJA stipulates that the High Court of Malaya shall have the power to try all offences committed on the high seas including the offence of piracy as defined by the international law. Furthermore, S. 22(1)(b) of CJA and s. 127A(1) of CPC provides that Malaysian authority shall have the necessary power to apprehend and prosecute almost all cases of piracy at the high seas provided that the AG can satisfy the court that the alleged offence being committed has in any manner affected the security of the state. Penal Code is the principal Act used to try offences committed within and beyond territorial jurisdiction of the state. Piracy is not excluded from s. 3 of the Code for the fact that it is an offence which by law may be tried within Malaysia. All other activities often committed during the course of criminal enterprise including the use of criminal force, voluntary causing injury or grievous injury, causing death, robbery, extortion, wrongful detention or wrongful confinement are all covered

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<sup>38</sup> S/RES/2383 (2017).

under the Penal Code. The Code and many more Acts that criminalize and punish piratical activities are powerful tools for the law enforcement agency of the country. In fact, the authority has a very wide selection of law applicable for the suppression, prosecution and punishment of piracy at the high seas.

The case of *Bunga Laurel* offers a close insight into the application of Malaysian law against international piracy. The DPP in this case has invoked provisions applicable under both CJA and CPC in order to bring piracy committed at the high seas into the jurisdiction of the High Court of Malaya. The final remark by Justice Kamardin affirmed the authority of the High Court to try piracy not only by virtue of its local law, but of international law as well. This is coupled with the responsibility of the state at international level and the interests it means to protect at all time and in all events. The case also demonstrates the trial of offenders using the Act other than Penal Code alone; the FIPA and Arms Act 1960 where all of the accused persons in the case of *Bunga Laurel* were convicted and sentenced with imprisonment from 8 to 10 years.

