The Condition of Possibilities for ASEAN in Adopting International Norms Against Sea Piracy

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The Condition of Possibilities for ASEAN in Adopting International Norms Against Sea Piracy

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ABSTRACT
The shift of sea piracy trend in Southeast Asia, from primordial piracy to contemporary piracy, has happened for a few decades. To ensure the region remains invulnerable, ASEAN as regional institution adopts two international maritime norms into the region to develop the regional norms against sea piracy. Those norms are the UNCLOS 1982 and the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation 1988 (SUA Convention 1988) and its Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (SUA Protocol 1988). This paper explores the process of external norms diffusions with the local extant norm using the norm diffusion theory and qualitative research method as the analytical framework. The research finds that ASEAN adopts the international norms with several adjustment especially on the notion of hot pursuit. Considering the sensitive nature of the issue, ASEAN accommodates hot pursuit through legal and law enforcement matter stated on the 2002 Work Plan to Implement ASEAN Plan of Action to Combat Transnational Crimes.

Keywords: ASEAN, Sea Piracy, Maritime Security, Maritime Security Cooperation, Norm Diffusions

ABSTRAK
Despite its recent popularity, sea piracy has existed in Southeast Asian waters for centuries. The earliest record of sea piracy in the region dates to the fifth century A.D. from a Chinese pilgrim who met instances of robbery and pillaging on Malacca Strait while traveling back home. By the seventeenth century, the pirates’ operations on the strait changed their target to the Dutch ships dominating the water (Chalk 1998). Despite the change of targets, the activities carried out by this group remain similar to its earlier pattern: raid and robbery. The transition from primordial piracy to contemporary piracy in Southeast Asia does not happen overnight. The current piracy trends that transpire across the region are the culmination of centuries of changes and evolutions. The first few records on sea piracy in the region imply that the activity referred to an illicit tax extraction executed by a band of outlaws (Young 2005). It was not until the seventeenth and eighteenth centuries that the term was used to specify a distinct armed robbery aboard a vessel (Young 2005).

In the early 1990s, the number of piracy incidents in Southeast Asia rises significantly, especially at Singapore and Malacca Strait (Chalk 1998; Liss 2003). The reported numbers sit at 107 attempted attacks and 102 actual attacks launched toward vessels in the region (Chalk 1998; Liss 2003). During this period, Southeast Asian water was deemed the most dangerous and pirate-infested water (Liss 2003). There is also a conspicuous shift in how the pirate groups carry out their attacks. The fatality of pirate attacks has also escalated. The group is prepared to use violence as a means to achieve their objectives (Liss 2003). The report indicates that as much as 25 percent of attacks carried out have involved assault, torture, hostage-taking, and, at worst, killing (Chalk 1998; Liss 2003). Around the mid-1990s, during Soeharto’s reign and the Asian Financial Crisis of 1997, Indonesian water became...
an infamous spot for pirate attacks (Chalk 1998). A total of 40 attacks were reported in Indonesian waters in 1997 (IMB 2003).

Previous studies emphasise the importance of having a solid fundamental norm and the root cause of inefficiency and problems. Several studies had discussed about ASEAN measures on sea piracy into regime approach, securitisation approach, and regional cooperation approach. However, it is worth noting that no studies have touched on the subject of diffusion of global norms into the preexisting regional norms within ASEAN. To contribute to the discussion, this article will explore how ASEAN, as an institution, incorporates international maritime security law, UNCLOS 1982 and SUA 1988, into the regional framework of maritime security cooperation.

Those using the regime approach set down the fundamental guidelines for formulating ASEAN cooperative frameworks and measurements. Said guidelines include principles, norms, and decision-making mechanisms agreed upon by all parties to reach the main objective of the cooperation (Bateman and Emmers 2009). Although UNCLOS 1982 is the global norm used as a primary reference in regional documents about maritime security (Beckman 2012; Beckman and Roach 2012), ASEAN remains faithful to its local norm which becomes the regional identity, in particular, the principle of confidence-building which reflected in ASEAN Regional Forum (Haacke and Morada 2010). The second approach, literatures that use securitisation approach, argues that sea piracy issues remain unsolved through ASEAN mechanism (Emmers 2003) due to the overlapping domestic interest and the high distrust between member states (Mak 2010). Those utilizing the regional cooperation approach state that the regional mechanism against sea piracy remains vague despite the existing delegation of tasks to regional sectoral bodies (Chalermpalanupap and Ibañez 2012). However, the mechanism is not flawless (Djelantik 2017), which would later become an obstacle to its implementation (Djalal 2021). Several authors argue that that issue can be minimalised if ASEAN applies the instruction as stated on maritime security international norms (Ho 2009) and reevaluates the
existing regional framework (Shie 2006).

Albeit the existing coordinated cooperation, ASEAN as a regional institution has yet to produce a mechanism to combat sea piracy. It was not until 1997, when piracy attacks started to swarm the region that the ASEAN Declaration of Transnational Crime was published. The document states that the member states are concerned about the threat piracy poses to regional stability and development (ASEAN 1997c). The declaration was followed by the ASEAN Plan of Action 1999, which elaborates on the region’s plan to combat the perceived threats (ASEAN 1999a).

ASEAN commits itself to formulating a mechanism that adheres to global and local norms. It is crucial to consider the relevant global norm, in this case, UNCLOS 1982, to ensure a robust common principle upheld by every party involved in order to achieve the common objectives (Bateman and Emmers 2009; Beckman 2012; Beckman and Roach 2012). However, sustaining the existing local norm is equally essential to ensure the mechanism produced aligns with the local value (Haacke and Morada 2010).

During the formulation, ASEAN faces various criticisms regarding its approach due to unclear and vague mechanisms. Although ASEAN delegated several of its sectoral bodies to stave off the increasing accidents (Chalermpalanupap and Ibañez 2012), the decision is proven to be lacking (Djelantik 2017). The lack of trust and overlapping interests between member states proves to be the region’s biggest hurdle (Mak 2010), leading to an inefficient mechanism to combat the region’s raging transnational crime, including sea piracy (Emmers 2003; Djalal 2021). Regardless of the critics, some still believe that the mechanism could work in favor of the region if appropriately implemented (Shie 2006; Ho 2009).

ASEAN’s member states’ decision to adopt international norms that rule mechanisms against sea piracy—UNCLOS 1982 and SUA 1988 and Its Protocol—in 2002 reflects ASEAN’s commitment to tackle various maritime threats in the form of traditional or non-traditional. Since the first time ASEAN breached the subject of maritime security...
in the regional dialogues, UNCLOS 1982 and SUA 1988 became the primary external documents that ASEAN adopted into the regional framework. However, ASEAN and its member states enthusiasm regarding those documents remains lukewarm. ASEAN highlights that attitude repeatedly mentions that ASEAN should remain loyal to its value—respect for each other’s territory and sovereignty—while following the international maritime security norm to combat sea piracy as stated in ARF Statement on Cooperation Against Piracy and Other Threats to Maritime Security.

Several ASEAN documents and communiqués indicate its commitment to preventing and tackling sea piracy in the region. The commitment is shown through adopting international norms mentioned before as the guiding principle in formulating a cooperative maritime security cooperation framework against sea piracy. In said framework, ASEAN specifically adds two distinct points, legal matters and law enforcement matters, into official ASEAN documents regulating cooperative mechanisms against sea piracy. With those initial facts, this article offers an analysis to explain the adoption process of international maritime security cooperation norms, especially ones regulating the mechanism against sea piracy, into the ASEAN regional framework. This paper will focus on the dynamics of norm diffusion in ASEAN.

NORM DIFFUSION THEORY

In conducting the research, this article will use norm diffusion theory from the constructivist perspective as an analysis instrument. Constructivist groups regard norms as a vital aspect of international relations study. They believe norms establish structure in global political dynamics and institutions (Finnemore 1996, 5–6). Furthermore, norms also become a foundation of international institution identity. Therefore, discussions and debates on the influence of norms on international institutions are deemed necessary (Goldstein et al. 2000). From these normative dialogues, ideational exchanges between agents are expected to bring forth an order that is accepted and applied to the
international society (Hurrell and Macdonald 2013).

Albeit its dynamic form, several constant aspects can be found in a set of norms. The most prominent is the social construct that collectively applies to the actors/agents involved (Finnemore 1996; Checkel 1998). Norm also consists of prescriptions and expectations of how an actor/agent should behave in a social community (Florini 1996). These prescriptions take various shapes and forms, but the most common are rules, standards, or principles (Hurrell and Macdonald 2013). Based on the characteristics mentioned earlier, this research shall define a norm as a form of collective social construct comprised of rules, standards, and principles that dictate how an actor/agent should behave in social interaction.

In contextual social constructs, these norms would always be contested (Finnemore and Sikkink 1998; Risse and Sikkink 1999). This debate surrounding these norms resulted in the act of external norm incorporation into the extant local norms (cognitive prior) called norm diffusion. Norm diffusion explores the process and situations that contribute to the movement of norms from one place to another (Rüland 2018). According to Rüland (2018), norm diffusion consists of three steps: framing, grafting, and pruning.

The norm diffusion process begins with analyzing and understanding the cognitive prior of norm-takers. By understanding cognitive prior, it is possible to draw how specific ideas spread and move (Pradityo, Sidiq, and Kurniawan 2021). Cognitive prior originates from traditional cultures or historical practices belonging to specific ethnic groups that become the collective identity of certain states or states of certain regions (Acharya 2009). This norm will later be contested by the external global norm brought by the external normative challenge (Rüland 2018, 32). In the context of ASEAN, cognitive prior refers to the beliefs that have become the region’s collective identity and thus become the principle of what is legitimate (Rüland 2014).

Framing plays a crucial part in the norm diffusion process. Through framing, norm entrepreneurs aim to persuade the targeted audience to welcome the normative agenda they support (Payne 2001). They
would raise a specific issue with language that gives new meaning, interpretation, and even dramatization, highlighting the urgency of the newly adopted norms to address the issue (Finnemore and Sikkink 1998; Acharya 2004; Rüland 2018). Framing is a communication strategy carried out by norm entrepreneurs to introduce a new normative agenda that they believe to be superior to the existing norm (Rüland 2018).

After an agenda is framed and accepted as superior and essential, norm entrepreneurs should find a linkage between the relevant international norm and the extant local norms (Rüland 2018). Instead of reconstruction, grafting is an act of reinterpretation and representation of international norms so that they would fit coherently with the preexisting local norms (Acharya 2004, 244; Fehl and Rosert 2020). The process involves an association of new global norms with the extant local norms to show their compatibility (Rüland 2018). The nexus between international and local extant norms is usually found through genealogical heritage shared between the two norms, resulting in “normative rooting and branching” (Fehl and Rosert 2020).

After an issue has been successfully framed and norms have been grafted, the last step is to prune the new norms. Pruning refers to the selection process of external global norms. In this process, external norms deemed to fit with the norm recipient’s normative structure would be accepted, and those that are not would be rejected (Rüland 2018). Pruning is also called cultural selection, as the selection is based on the cognitive prior of the norm taker (Steinhilper 2015). The pruning process assures that all parties involved can accept the new norm (Pradityo, Sidiq, and Kurniawan 2021).

METHODS

This article utilizes the qualitative research method. The method refers to a data collection and analysis technique focusing on non-numeric data (Lamont 2015). The authors apply the deductive approach to scrutinize a single-case-based research design to provide a theory-driven analysis and shed light on adopting international norms to formulate
a mechanism to tackle sea piracy in ASEAN. This research relies heavily on official ASEAN documents, official statements released through the ASEAN official website, or other means of media outlets. We also extensively utilize secondary data from previous research and supporting reports from related institutions such as IMB-ICC or ReCAAP.

Upon collection, the data will be classified into appropriate indicators according to norm diffusion theory. To further examine the data, this article applies the triangulation process. Triangulation refers to studying a phenomenon through multiple methods and data sources (Bryman 2012). In conducting this process, we cross-checked data from official documents and results/findings from previous research to reduce the bias of specific perspectives and produce an accurate study.

ASEAN NORM AGAINST SEA PIRACY: A DIFFUSION PROCESS

COGNITIVE PRIOR
During ASEAN’s first year, its security concept was heavily dominated by state-centric concerns that came with the region’s political dynamic. There are three levels of security threats acknowledged by ASEAN member states, which are external intervention from regional powers, intra-regional conflicts, and internal threats from communist insurgencies (Koga 2014, 738). Such perception derives from the political dynamic, which is dense with the presence of external power and influence in the region (Hänggi 1991). With the Western withdrawal from the region, it becomes a concern that other extra-regional powers, especially those directly linked to the communist movement, might be trying to fill the power vacuum by utilising political or military intervention (Koga 2014). In order to prevent such things, ASEAN member states see the need to reiterate their strategic stances and institutional utility regarding regional security.

Zone of Peace, Freedom, and Neutrality (ZOPFAN) Declaration begins as a concept proposed by Malaysia to ensure ASEAN regional
autonomy amidst the power vacuum in the region (Hänggi 1991; Koga 2014). The document consists of two operative points: the first operative paragraph declares ASEAN’s commitment to keep the region free from outside power interference, and the second urges the member states to broaden their cooperation to ensure regional solidarity (ASEAN 1971; Hänggi 1991, 18). While it is agreed that ZOPFAN is more of a long-term goal, the declaration shows ASEAN’s early attempt at devising a framework to promote regional cooperation and stability (Koga 2014; Southgate 2021). In general, ZOPFAN synthesizes ASEAN’s commitment to the non-interference principle and provides ASEAN with the normative direction of regional security cooperation without deviating from its principle.

To complete ZOPFAN as the normative guidelines, ASEAN released the codified legal document, which remained faithful to its preceding documents. The Treaty of Amity and Cooperation in Southeast Asia, hereafter TAC, emphasizes ASEAN’s purpose to pursue peaceful regional stability (ASEAN 1976b). Deriving from ZOPFAN, TAC focuses on building intra-regional security cooperation to achieve regional resilience (Koga 2014; Weatherbee 2019).

The treaty states that there are six fundamental principles that ASEAN member states should heed to ensure successful intra-regional cooperation. Those are non-interference and mutual respect toward member states’ sovereignty (ASEAN 1976b). The principle of non-interference is regarded as the highest and most important principle in ASEAN as it prevents new conflict between member states and subversive movements that might occur (Jones 2012; Pradityo, Sidiq, and Kurniawan 2021). Then, it is reflected in Articles 10 and 12 of the treaty, stating that each nation cooperating within the region should always do so in a manner that would not endanger each other’s sovereignty to ensure regional stability and resilience (ASEAN 1976b).

ASEAN’s commitment to respect each member state’s sovereignty continues to Bali Concord I, published alongside TAC. The document states that in pursuing regional resilience, all member states should always act “in accordance with the principles of self-determination,
sovereign equality, and non-interference in the internal affairs of nations” (ASEAN 1976a). In doing so, ASEAN’s perception of regional security begins with each member state’s national stability with an inward-looking threat perception (Dewitt 1994; Pradityo, Sidiq, and Kurniawan 2021). This approach means that ASEAN member states are the primary actors in determining and defining regional security threats (Pradityo, Sidiq, and Kurniawan 2021, 158).

However, ASEAN’s perception of regional security threats and its approach, which is rather state-centric, have proven to be insufficient. At the end of the Cold War, there is a distinct shift in security threat perception (Caballero-Anthony 2016). It becomes apparent that the absence of military aggression between nations is not the sole parameter for security; instead, any threats that could potentially jeopardize one’s stability and security should be considered threats (Klein 2011). In terms of ASEAN, the institution’s earliest attempt at combating non-traditional security issues started in 1976. As stated on Bali Concord I, ASEAN member states should concentrate on regional cooperation to eradicate narcotics and illegal drugs (ASEAN 1976a). Nonetheless, by the mid-1990s, ASEAN was forced to acknowledge other forms of non-traditional security issues that would endanger regional stability (Emmers 2003).

In July 1996, two decades after Bali Concord I, ASEAN began to discuss another form of transnational crime that threatened regional stability at the highest regional diplomatic meeting, the ASEAN Ministerial Meeting (AMM) (Emmers 2003). After the Asian Financial Crisis in 1997, during which the number of pirate attacks rose drastically, ASEAN member states emphasized the urgency for regional cooperation in combating various transnational crimes, one of which is piracy (ASEAN 1997a; Emmers 2003). Within the same year, ASEAN reaffirms its commitment to eradicate transnational crimes in the region through necessary means through the ASEAN Declaration on Transnational Crime (ASEAN POA on CTC) (ASEAN 1997c). Going into force in June 1999, the ASEAN Plan of Action to Combat Transnational Crime (1999 ASEAN POA) endorses the six-point
framework of cooperation, which ASEAN would prioritize to curb transnational crimes in the region.

The discussion above shows that ASEAN is undergoing a shift in security threat perception. In the beginning, ASEAN focused on a state-centric security approach, but as various forms of transnational crime endangered regional development and stability, ASEAN adjusted its view on security to accommodate the non-traditional security issues in the region. Despite its limitations and rocky start, the action would promote and instigate maritime security cooperation in ASEAN to combat sea piracy in the region.

FRAMING

In this section, the authors will analyse how ASEAN raises and discusses the issue of sea piracy in the region using a transnational crime frame to highlight the urgency of incorporating maritime security norms in ASEAN.

In the 1990s, specifically around the mid-1990s, transnational crime begins to be the center of international security concerns. Unlike traditional security threats, which concerned military capabilities and capacity (Williams 2008; Caballero-Anthony and Emmers 2017), transnational crimes targeted states from aspects such as political, economic, and civil society (Emmers 2002, 2). ASEAN first raised the issue in the first and second ASEAN Regional Forums, held in Bangkok and Brunei Darussalam, respectively, stating that the region should further study and develop a cooperative mechanism about such issues, including maritime security and piracy (ASEAN 1994; 1995). As it became apparent that these newly found issues may threaten regional stability, the ASEAN member states called for urgent countermeasures against transnational crimes during the 29th ASEAN Ministerial Meeting (AMM) in Jakarta (ASEAN 1996). On 30th AMM, the member states reiterate and stress their commitment to sustaining regional cooperation against transnational crimes such as terrorism, narcotics, arms smuggling, piracy, and human trafficking (ASEAN 1997a). It is also agreed upon that preventive diplomacy might be a
possible mechanism to tackle possible crisis areas, such as maritime safety and piracy (ASEAN 1997b).

During the same period when ASEAN discussions on transnational crime were at their highest, the number of sea pirate attacks in the region escalated due to the Asian Financial Crisis (Chalk 1998). Consequently, it resulted in a growing concern for maritime safety, especially on Malacca Strait, as it serves as the region’s chokepoint and busiest sea lane. As a result, on the 31st AMM, ASEAN urged the member states to adopt concrete measures to counter the growing crimes in the region (ASEAN 1998a). Similarly, the ARF participant stresses their concern and urges the region to explore another form of maritime security cooperation, such as information exchanges, regional meetings on piracy and sea robbery, and coordinated surveillance of pirate activities (ASEAN 1998b). Following the ASEAN Plan of Action to Combat Transnational Crime, on the 32nd AMM and 6th ARF, ASEAN member states acknowledged the growing concern regarding transnational crime and the urgency of a cooperative approach to tackle sea piracy (ASEAN 1999b; 1999c). Through the 32nd AMM, ASEAN establishes the ASEAN Center for Combating Transnational Crime (ACTC) (ASEAN 1999b).
On the 7th ARF, the ministers of ARF member states recognised the severity of pirate attacks in the region and emphasized the importance of further bilateral, regional, and international cooperative efforts (ASEAN 2000). Similar ideas are also advocated on the 8th ARF with additional encouragement to implement the mechanism developed by the International Maritime Organization (IMO) and other initiatives to suppress piracy and arms robbery against ships. In the same ARF session, the meeting also encourages the region to work closely with the organisation concerning establishing contact points, information sharing, and joint coastguard training (ASEAN 2001). To strengthen ASEAN cooperation against transnational crime, ASEAN adopted the Work Programme to Implement the ASEAN Plan of Action to Combat Transnational Crime in May 2002 in Kuala Lumpur. The document elaborates on the six-point framework previously proposed by ASEAN POA on CTC 1999 (ASEAN 2002a; 2002b). The following year, ASEAN reaffirmed its commitment to eradicate sea piracy by adopting the ARF Statement on Cooperation Against Piracy and Other Threats to Maritime Security (ASEAN 2003b). The document states that there is an increasing need to further develop “regional cooperative […] including through cooperation and coordination among all institutions concerned” according to the relevant international maritime law and other legal documents about the issues (ASEAN 2003a, 269).

Figure 2 Norms nternational and Local Norms Mentioned in Framing Process

Source: elaborated from data.
In the ARF Statement on Cooperation Against Piracy and Other Threats to Maritime Security, ASEAN member states refer to several international maritime norms as their guiding principles. Those norms are namely the United Nations Convention on the Law of the Sea (UNCLOS), the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation in 1988, and its Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (ASEAN 2003a, 270). The document also mentions two International Maritime Organization (IMO) Resolutions, which are Resolution A. 922(22) on Code of Practice for the investigation of the Crimes of Piracy and Armed Robbery Against Ship and Resolution A. 923(22) on Measure to Prevent the Registration of “Phantom” Ships (ASEAN 2003a, 271). By incorporating those international norms, the member states believe that ASEAN can conceive an effective mechanism for combating sea piracy in the region.

Article 105 of UNCLOS 1982 states that upon capture, the States that seized the pirated ship might determine penalties and the following actions taken concerning the ship (UNCLOS 1982, 61). Like UNCLOS 1982, Article 7 of the SUA Convention 1988 states that the States that captured the pirates or the alleged pirates should take the offender’s custody according to its law (IMO 1988, 227). The same action applies according to SUA Protocol 1998. However, the condition applied should any crime occur on artificial islands or permanent installation attached to a sea bed for exploration or economic purposes (IMO 1988, 305). Meanwhile, Resolution A. 922(22) explains the steps that should be taken upon the initial report of piracy. Those steps are the preservation of the life of the injured, prevention of offenders from fleeing the crime scene, warning to other ships in the area, protection of the crime scene, and evidence gathering (IMO 2001a). In order to prevent more phantom ship registration, IMO urges the government of which the ships are about to register to check relevant documents, including IMO Ships Identification Number and other records about the ships (IMO 2001b).
As stated in many of its documents, declarations, and statements, ASEAN, as a regional institution, encourages its member states to pursue bilateral and multilateral cooperation to combat sea piracy in the region. The effort started in the early 1990s, long before the discussion on transnational crime peaked. In 1992, three bilateral agreements were signed between Indonesia-Singapore, Indonesia-Malaysia, and Indonesia-Malaysia-Singapore to curb pirate attacks in the Malacca Strait (Chalk 1998). In 1993, following the previous year’s agreement, Indonesia and Malaysia conducted training for joint patrols (Chalk 1998). Malaysia and the Philippines agree to conduct a joint patrol along their shared sea boundary to prevent pirates from swarming the area (Chalk 1998). Collectively, the ASEAN member states established the Regional Piracy Center (RPC) in 1992 under the International Chamber of Commerce International Maritime Bureau (ICC-IMB). The RPC is located in Kuala Lumpur and would serve as an information exchange center regarding pirate attacks (Chalk 1998).

By 2004, these bilateral agreements are unified under the name of Malacca Strait Patrols (MSP). The initiative involves a joint patrol by the respective Navy along the Malacca Strait and Singapore Strait according to the agreed conditions beforehand (Pradityo 2021). MSP programs comprise Malacca Straits Sea Patrol (MSSP), Eyes-in-the-Sky Combined Maritime Air Patrols (EiS), and MSP Intelligence Exchange Group (IEG) (Pradityo 2021). Later, in 2016, Indonesia, Malaysia, and the Philippines launched a similar model of cooperation to patrol the Sulu-Sulawesi Seas called Sulu Sulawesi Seas Patrol (SSSP). The initiative is a response and prevention of Abu Sayyaf Group activities in the region (Ikrami 2018).

GRAFTING

Following the ASEAN POA on CTC 1999, ASEAN established the ASEAN Ministerial Meeting on Transnational Crime (AMMTC) and the ASEAN Center on Combating Transnational Crime (ACTC) in June 1999. AMMTC acts as the highest policymaking unit, and the meeting is to be conducted every two years to review and coordinate
future activities of related sectoral bodies to respective issues (Agastia 2021; ASEAN 1999a). In conducting its task, AMMTC will be assisted by the Senior Officials Meeting on Transnational Crime (SOMTC), ASEAN Chiefs of National Police (ASEANAPOL), as well as other relevant and appointed sectoral bodies (ASEAN 1999a).

The early 2000s marked the institutional perspective shift regarding maritime security. With the rise of pirate attacks in the region, ASEAN highlighted the importance of taking definite measures to maintain maritime security (Agastia 2021). The region prioritizes maritime security mainly through ASEAN Regional Forum (ARF) meetings, specifically the ARF Intersessional Meeting on Maritime Security (ISM on M.S.) (Agastia 2021). Due to its security-centered nature, maritime security also becomes an essential agenda in the ASEAN Defence Ministers’ Meeting (ADMM) and ADMM-Plus, the ASEAN Maritime Forum (AMF) and its Expanded ASEAN Maritime Forum (EAMF) (Agastia 2021).

Figure 3 Grafting Result from International and Local Norms

Regarding sea piracy, UNCLOS 1982 and SUA Convention 1988 are the primary global norms used as guiding principles in devising anti-piracy cooperation in the region. All ASEAN member states have ratified UNCLOS 1982 and are bound to adhere to its rights and responsibilities, therefore providing a robust foundation for anti-piracy
initiatives (Collins and Hassan 2009). However, UNCLOS 1982 alone is insufficient to concoct an effective anti-piracy mechanism, as the law limits piracy to those attacks driven and committed on the high seas for private gain only (Collins and Hassan 2009, 94). Alternatively, the SUA Convention 1988 addresses attacks that are driven by other means, including those of political means, such as attacks committed by ASG in the Sulu-Sulawesi Seas and others that have yet to be codified by UNCLOS 1982. SUA Convention 1988 also eliminates the geographical limit of pirate attacks, which becomes relevant as most attacks in ASEAN occur on territorial water (Chalk 1998; Collins and Hassan 2009; Valencia 2005b).

As mentioned in the previous section, ASEAN acknowledges and accepts both UNCLOS 1982 and SUA Convention 1988 and its Protocol as the principal guidelines for formulating a pirates-suppression mechanism. In adopting the aforementioned global norms, ASEAN remains steadfast to its values, which are non-interferences and mutual respect for member states’ sovereignty (Valencia 2005b). This confluence is shown in the ARF Statement on Cooperation Against Piracy and Other Threats to Maritime Security (Section 4.a), which states that all anti-piracy cooperation should be conducted “on the basis of respecting territorial integrity, sovereignty, sovereign rights” of each member party involved and should be “in line with the respective applicable international conventions” (ASEAN 2003a, 271).

On the 9th ASEAN Summit, ASEAN produced a succeeding document of Bali Concord I, ASEAN Concord II, or Bali Concord II. The document states that ASEAN recognizes the urgency to solidify further and strengthen the cooperation between member states to achieve a comprehensive mechanism to tackle terrorism, piracy, and other transnational crimes (Nasu et al. 2019; Valencia 2005a). Thus, ASEAN established the ASEAN Security Community (ASC), which has been renamed the ASEAN Political-Security Community (APSC) as part of the ASEAN Community since then. Section A points 4 to 6 of Bali Concord II state that APSC would bring maritime issues to the forefront of regional security cooperation by utilizing the relevant
international law as well as ASEAN political documents such as ZOPFAN and TAC (ASEAN 2003c). Discussion about maritime cooperation shall be conducted in ARF with ASEAN as its main driving force (ASEAN 2003c).

While APSC is the turning point in maritime security cooperation in ASEAN, intra-regional cooperation within ASEAN existed before the creation of APSC. The earliest trace of intra-regional cooperation in ASEAN combating piracy could be found in the 1999 ASEAN POA. The document states that AMMTC should coordinate with possible mechanisms to be carried out by other ASEAN sectoral bodies to combat transnational crime (ASEAN 1999a). It is important to note that the 1999 ASEAN POA offers a general mechanism against transnational crime but has yet to propose a concrete guideline on regional response against piracy (Agastia 2021).

The subsequent 2002 ASEAN Work Programme provides the six-point framework of mechanisms to implement to combat transnational crime. The work program encourages information exchange between member states about any national and regional anti-piracy laws available on the ASEANWEB (ASEAN 2002a). The document also considers the possibility of developing a bilateral and multilateral legal arrangement in regard to the hot pursuit of the crime with the help of the ASEAN Secretariat and Chair of the Task Force (ASEAN 2002a). Other endorsed programs are joint training between ASEAN member states and Dialogue Partners, institutional capacity-building, and fostering extra-regional cooperation (ASEAN 2002a).

The 2003 ARF Statement on Cooperation Against Piracy and Other Threats to Maritime Security shares a similar spirit with the previous document. It encourages and endorses the participating member states to engage in bilateral and multilateral efforts to suppress and combat piracy in the region (ASEAN 2003a). On the 11th ARF, the ministers reemphasize the urgency for a regional framework to achieve a comprehensive cooperative framework to counter piracy in the region (ASEAN 2004). The following 12th ARF congratulates the plethora of operational cooperation, workshops, and the growth in
ASEAN maritime security arrangements. The meeting also noted that the region should adhere to ‘the basis of consultation and in accordance with international law” (ASEAN 2005). The 13th ARF commemorates the Batam Joint Statement between the littoral states of Malacca Strait, another accomplishment in anti-piracy cooperation. The meeting also welcomes the subsequent meeting that follows (ASEAN 2006).

As an effort to further promote regional maritime security cooperation and eventually the realization of APSC, the Vientiane Action Programme mentions the exploration of the ASEAN Maritime Forum (AMF) establishment (Agastia 2021; Rijal 2019; Nasu et al. 2019). Following that idea, a workshop on establishing AMF was held at Batam in September 2007. The workshop produced a concept paper adopted a year later, and in 2010, the inauguration of AMF was held in Surabaya (Agastia 2021). Following the establishment of AMF, there is a proposal to expand the forum to include ASEAN Dialogue Partners. The proposal was accepted and endorsed by ASEAN leaders, who stated that the expanded forum would “utilize opportunities and address common challenges on maritime issues” (Agastia 2021). In 2012, EAMF was inaugurated. The AMF and EAMF would act as a forum to discuss maritime security cooperation, including transnational issues like illegal fishing, smuggling, and piracy, while abiding by ASEAN principles (ASEAN Secretariat 2007).

During the ARF Roundtable Discussion on Stocktaking Maritime Security Issues held in 2007, the participants considered how ARF has discussed maritime issues plenty of times, sea piracy being one of the reoccurring issues, and calls for the need to implement the recommendation made (Agastia 2021; ASEAN 2008). The meeting agrees to establish the ASEAN Regional Forum Inter-Sessional Meeting on Maritime Security (ARF ISM on M.S.). ARF ISM on M.S. would become the venue for further discussion and planning of maritime security cooperation in the region while conforming to the ASEAN values of non-interference and mutual respect regarding other’s sovereignty (ASEAN 2008). Since its emergence, ARF ISM on M.S. has produced four Work Plans on Maritime Security, the most
recent being ARF Work Plan on Maritime Security 2020-2026. The Work Plan endorses member states to be involved in activities related to maritime security elaborated on the Priority Area (Agastia 2021). Since the first Work Plan, the Priority Areas remain consistent, which are shared awareness and exchange of information and best practices, confidence-building measures based on international and regional legal frameworks, and capacity building and enhancing cooperation of maritime law enforcement in the region (ARF 2022; ASEAN 2023).

To curb piracy, ASEAN has incorporated international maritime security norms within the region, as seen in the way ASEAN kept referencing UNCLOS 1982 and SUA Convention 1998 in their documents pertaining to maritime security cooperation. Issues concerning maritime security are sensitive as they are closely related to territorial integrity and nation sovereignty (Collins and Hassan 2009; Nasu et al. 2019). However, ASEAN recognizes the threat of the new maritime security issue to the region’s stability. Therefore, ASEAN finds the linkage between external global norms and ASEAN cognitive prior, which could be used as the basis for the institution to adopt the norm into the region.

PRUNING

Initially, ASEAN member states have always rather been disinclined to raise the issue of maritime security threats in regional discussions, stemming from the perception that piracy is an internal security issue, presumably due to the location where the offense occurs, and should be addressed domestically (Davenport 2017; Young 2005). Considering that ASEAN member states build their kinship through shared respect towards each other sovereignty, meddling with internal politics and security concerns that are not theirs would be considered “interventionist” (Davenport 2017, 83). However, as it becomes apparent that piracy and other maritime security threats move across state borders easily (Young 2005), ASEAN incorporates the two most notable international maritime laws, UNCLOS 1982 and SUA Convention 1988.
Table 1 Pruning Result for ASEAN Norms Against Sea Piracy

<table>
<thead>
<tr>
<th>Cognitive Prior</th>
<th>International Norms</th>
<th>ASEAN Norms Against Sea Piracy</th>
</tr>
</thead>
<tbody>
<tr>
<td>Non-interference</td>
<td>UNCLOS 1982 Art. 43 on cooperation to maintain Strait navigational and safety by States bordering the Strait</td>
<td>Information exchange, training, institutional capacity building, extra-regional cooperation of 2002 WP to Implement ASEAN POA to CTC</td>
</tr>
<tr>
<td></td>
<td>UNCLOS 1982 Art. 100 on duty to cooperate on the repression of piracy</td>
<td></td>
</tr>
<tr>
<td></td>
<td>SUA Convention Art. 5 – 7 on action and sanction towards offender</td>
<td></td>
</tr>
<tr>
<td>Respect towards sovereignty</td>
<td>UNCLOS 1988 Art. 111 on hot pursuit</td>
<td>Legal matters &amp; Law enforcement matters of 2002 WP to Implement ASEAN POA to CTC</td>
</tr>
<tr>
<td></td>
<td>SUA Convention Art. 12 on obligation to assist during capture</td>
<td></td>
</tr>
</tbody>
</table>

Source: Elaborated from various sources.

As mentioned, the ASEAN 2002 Work Programme establishes a six-point cooperation framework for combating transnational crimes, and sea piracy is one of them. The six points are information exchange, legal matters, law enforcement matters, training, institutional capacity building, and extra-regional cooperation (ASEAN 2002a). These points are carried out to the 2003 ARF Statement, specifically section 4 of the statement. Similar plans are also carried out in the ASEAN Maritime Outlook.

However, It should be noted that in adopting both UNCLOS 1982 and SUA 1988, ASEAN ensured that the action put into the framework would not violate their shared value. Article 111 of UNCLOS 1982 on hot pursuit states that as soon as piratical ships enter their own or other States’ territorial sea, the right of hot pursuit could not be carried out (UNCLOS 1982 Art. 111 pt. 3). Not to mention, point 5 of the same article states that only military or warships could conduct a hot pursuit which had it been carried out, would infringe the sovereignty of others (Young 2005). Therefore, ASEAN does not explicitly mention the right of hot pursuit in any of its documents, given the sensitivity of the issue of sovereignty.

Similarly, the trouble with SUA Convention 1988 lay in the same breath as with UNCLOS 1982. Article 12 of the convention states that
States are obligated to assist one another in criminal proceedings of the suspected pirate, and should it be deemed necessary, they should help obtain evidence by any means necessary (IMO 1988). This provision becomes problematic as it insinuates that more powerful naval power might undermine the regional forces. On a larger scale, it could compromise the security and sovereignty of smaller states as it implies the possibility of foreign naval power entering their territorial water (Collins and Hassan 2009).

Both norms, however flawed in their proposition, offer something more aligned with ASEAN values. UNCLOS 1982 and SUA Convention 1988 states that the provision of international cooperation should always be respectful of other States territory and should conform to treaties on mutual assistance existed between parties involved (IMO 1988 Art. 12 pt. 2; UNCLOS 1982 Art. 111 pt.3). Additionally, Article 43 of UNCLOS 1982 also encourages States bordering on strait or littoral states to cooperate in order to ensure safety passage on the strait (UNCLOS 1982 Art. 43 pt. 1).

The intuition incorporates those norms in ways that remain faithful to ASEAN values, which translates into the document pertaining to sea piracy cooperation. Among other things, ASEAN encourages member states to seek technical assistance from relevant international organisations and dialogue partners, especially regarding training and communication equipment for further regional capacity-building (Djalal 2005). The document also endorses bilateral and multilateral cooperation to be nurtured and possibly expanded (ASEAN 2002a). ARF Statement also denotes a similar proposal regarding regional cooperation through bilateral and multilateral means (ASEAN 2003a).

CONCLUSION

ASEAN’s shift of perception towards security marks the beginning of the institution’s attempts at combating transnational crimes in the region. Two decades after its initial attempt, ASEAN finally published the Plan of Action to Combat Transnational Crimes, one of the issues being sea piracy. To answer the research question, ASEAN incorporates
UNCLOS 1982 and SUA Convention 1988 into the regional security cooperation framework through dialogues and meetings on ministerial meetings supported by ASEAN. From 1994 to 2002, ASEAN had many discussions and meetings through different ASEAN bodies to concoct an anti-piracy cooperation framework. The meetings were held to ensure that the proposed framework stayed within ASEAN values, which were non-interference and mutual respect for sovereignty. Despite the sensitive nature of the issue and the rocky start of the journey, ASEAN managed to come up with a guideline that adheres to ASEAN values.

This article concludes that, specifically for this case, norm diffusion in ASEAN tends to take shape as extant norm adjustment. In which the preexisting local norms remain strongly present with additional points taken directly or a synthesized result from the global external norms. The Work Programme to Implement the ASEAN Plan of Action to Combat Transnational Crime, which came into force in 2002, was the principal guideline for anti-piracy mechanisms. The six-point framework includes information exchange, legal matters, law enforcement, training, institutional capacity building, and extra-regional cooperation. At first, the legal and law enforcement matters seem peculiar as they were not stated anywhere in UNCLOS 1982 or SUA Convention 1988. However, based upon the above analysis, the two sections attempted to explore the possibility of constructing a framework in which hot pursuit was feasible while conforming to the ASEAN value of mutual respect towards the sovereignty of other States.

REFERENCES


asean.org/arf-statement-on-cooperation-against-piracy-and-other-threats-to-security/.


