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**PIRACY IN SOUTHEAST ASIA:
CAUSE FOR CONCERN AND INTERVENTION**

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ABSTRACT

Maritime trade is unique within our Global Economy and is the very foundation on which it operates. As a critical corner piece, anything that undermines its efficiency or poses a risk to its continuance must be considered a significant cause for concern. Southeast Asia utilises more than ½ the world's shipping with the vast majority passing through the pirate infested waters of the Malacca Straits. Piracy in this area is a very serious problem with enormous potential for disaster to the vulnerable maritime shipping industry.

It is clear that piracy is a convoluted and difficult problem for Southeast Asia and any solutions must address all the factors, which are promoting or maintaining piracy as a viable option: factors such as culture, political insecurity and economics continues to promote piracy as a legitimate and viable option for desperate and opportunistic individuals. Lack of resources and an unstable government further exacerbates the pirate problem and manifests in corruption and an ineffective legal system. Sovereignty concerns and the internationalisation of the Malacca Strait encourages littoral nations to be hyper-sensitive and undermines the necessary co-operation and co-ordination both nationally and internationally to address this trans-national crime.

An integrated and co-operative enforcement approach is needed among all the littoral nations in order to respond effectively and timely to piracy attacks. Until maritime boundaries and sovereign issues can be finalised, this level of mutual co-operation will forever be just out of reach.

INTRODUCTION

MARITIME TRADE: UNIQUE, CRITICAL & VULNERABLE

Every year an estimated 5.5 billion tonnes – or a staggering 96 percent of world trade – goes by sea ... Seaborne trade has increased from a billion tonnes in 1960 to around 5.5 billion tonnes today. ... The current world bill [for shipping] is in excess of \$125 billion each year. Fifty per cent of the volume of international seaborne trade is energy.¹

Maritime trade remains a critical factor in the global economy and will remain a vital and essential component to world trade in the future. Previous analysis carried out by transportation communities have continuously proven that transportation of goods through the sea is the most cost effective method ever devised since it was first carried out in ancient times. All other methodologies to move goods from one area to another cannot compete on a per unit basis with sea transportation, due to the lack of any physical or legislative limits to the size of ships. This gives seaborne transportation the overwhelming ability to realise outstanding economies of scale compared to rail, truck or airborne alternatives.² For example, shipments in 2001 of 15,500 bottles of Scotch whisky from UK to Japan added only four US cents per bottle.³ Any threat to the Sea Lines Of Communications (SLOC) therefore has to be viewed as an international economic problem and not simply a maritime issue.

We live in a global society which is supported by a global economy – and that economy simply could not function if it were not for ships and the shipping industry. Shipping is truly the lynchpin of the global economy: without shipping, intercontinental trade, the bulk transport of raw materials and the import/export of affordable food and manufactured goods would simply not be possible.⁴

¹ Hugh McCoy, Chairman, The Baltic Exchange. “World Maritime Trade and the Role of the City of London.” in *Seapower at the Millennium* (Geoffrey Till, ed., Phoenix Mill, U.K.: Sutton, 2001) Chapter 7 “Maritime Trade”, 179

² Prof. Dr. Berthold Volk, “Growth Factors in Container Shipping,” available from http://maritimebusiness.amc.edu.au/papers/AMC3_GRO.pdf; Internet; accessed 23 February 2006, 6

³ Prof. Dr. Berthold Volk, “Growth Factors in Container Shipping,”..., 8

⁴United Nations Atlas of the Oceans, “Shipping - facts and figures,” available from: http://www.oceansatlas.com/unatlas/uses/transportation_telecomm/maritime_trans/shipping_world_trade/s_hipping_safe_and_friendly.htm; Internet; accessed 22 February 2006, n.p.

Canada is an exporting/importing nation in which maritime trade in 2000 was valued at \$100 billion, 1/8th of our total trade, and directly employs more than 30,000 people.⁵ Any threat to maritime trade has to be viewed as a national concern. Recent reports in the media detailing the operation of extensive and increasing piracy attacks have created public interest and concern, and there are important implications for policing policy and government intervention. Concern over piracy proliferation continues to increase, sparking governments to call for intervention and investigation with the most recent being the British House of Commons Transport Committee inquiry into the problem of piracy on the high seas, which was launched in January 2006.⁶

Southeast Asia consists of the countries of Brunei, Cambodia, East Timor, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand and Vietnam.⁷ The area of highest threat from piracy attack will be the focus of this paper and the term Southeast Asia will be de-scoped to: Indonesia, Singapore and Malaysia with the focus on the Straits of Malacca and the waters of Indonesia. Piracy in Southeast Asia accounted for more than 35% of the world-wide total and is a very serious problem with enormous potential for disaster.

The Straits of Malacca is the natural formed waterway between the main island of Indonesia, Singapore and Malaysia. It is the most important waterway in this region and

⁵ Transport Canada, "Government of Canada Announces Up to \$172.5 Million in New Marine Security Projects," <http://www.tc.gc.ca/mediaroom/releases/nat/2003/03-gc001.htm>; Internet; accessed 24 February 2006, n.p.

⁶National Union of Marine, Aviation and Shipping Transport Officers. "Piracy inquiry to be launched in the new year." <http://www.numast.org/ViewArticle.asp?AreaID=19&SubAreaID=45&PageID=59&ArticleID=7624&ElementID=&fromSearch=true>; accessed 21 February 2006, n.p.

⁷ *En.Wikipedia.org*; "Southeast Asia". available from http://en.wikipedia.org/wiki/Southeast_Asia; Internet; accessed 1 January 2006, n.p.

is the most direct, efficient and therefore cost effective route in maritime transit from the Indian and Pacific Oceans. Its strategic importance both nationally and internationally cannot be understated and it is equivalent to both the Suez Canal and Panama Canal combined, in terms of its importance from a world economic maritime perspective, with transit volumes twice the amount that transits the Suez Canal and three times the amount that goes through the Panama Canal.⁸ The International Chamber of Commerce (ICC), International Maritime Bureau (IMB) has annually stressed the importance of this sea route and has estimated traffic density of over 50,000 ships a year carrying one third of the world's trade.⁹ Additionally, it is critically linked to the world's busiest transit port, Singapore Harbour, which links Singapore to more than 700 ports in 130 countries world-wide and has more than 800 ships in the port at any one time.¹⁰

A crucial trade route for energy supplies to both Japan, South Korea and China, an estimated 11.7 million barrels a day pass along this course, a quarter of all world-wide oil shipments carried by sea.¹¹ In consideration of the ever-increasing needs of China's booming economy and resulting energy demands, the strategic importance of this strait will undoubtedly increase in the future. "It is no exaggeration to say that whoever

⁸ *En.Wikipedia.org*; "Strait of Malacca". available from http://en.wikipedia.org/wiki/Southeast_Asia; Internet; accessed 1 January 2006, n.p.

⁹ ICC International Maritime Bureau, *Piracy And Armed Robbery Against Ships Annual Report 1 January – 31 December 2005* (Essex: ICC Commercial Crime Services, Maritime House, 2005), 32

¹⁰ Maritime Ports, Middle/Far East Q-Z, "Maritime and Port Authority of Singapore (MPA)," <http://www.martv.com/PORTS/PEASTQ2Z.html>; Internet; accessed 4 March 2006, n.p.

¹¹ Energy Information Administration, "World Oil Transit Chokepoints," http://www.eia.doe.gov/cabs/World_Oil_Transit_Chokepoints/Background.html; Internet; accessed 23 January 2006, n.p.

controls the Strait of Malacca will also have a stranglehold on the energy route of China.”¹²



Figure 1: Straits of Malacca¹³

Although at the mouth of the 960 km long strait it is over 350 km wide, it narrows continuously and reduces to a width of only 20 km nautical miles for almost half its length followed by a further reduction to only 9 nautical miles at the southern tip. Additionally, those transiting further along the Phillips Channel of the Strait of Singapore, the seaway further reduces to a width of only 1.5-km. Due to the natural

¹² The Jamestown Foundation, “China’s “Malacca Dilemma”,” *CHINA BRIEF Volume 6, Issue 8* (April 12,2006) Journal on-line; available from http://www.jamestown.org/publications_details.php?volume_id=415&&issue_id=3686; Internet; accessed 13 April 2006, 4

¹³ Economist.com, “Shipping in South-East Asia, Going for the jugular,” Journal on-line; available from http://www.economist.com/displaystory.cfm?story_id=2752802; Internet; accessed 20 February 2006, n.p.

bottlenecking created by the surrounding islands, the Malacca Strait has been declared a World Oil Transit Chokepoint by the Energy Information Administration, the Official Energy Statistics from the U.S. Government due to volume of oil, number of vessels and risk associated with such a narrow channel.¹⁴ Additionally, the United Nations International Maritime Organisation (IMO) recognises this strait as being of ‘strategic importance and significance’.¹⁵ At the annual rate of 50,000 ships per annum (more than half the world’s fleet), 150 to a maximum of 900 (to date) vessels transit daily.¹⁶ Even if one were to equally space the vessels to minimise potential dangers, vessel density averages to 137 ships a day or one ship every 10 minutes, 24 hours a day. With such a high traffic area, combined with restricted waters, the potential for collision, grounding and environmental spill is extremely high. During a pirate attack these dangers are magnitudes greater with vessels transiting through congested sealanes without command or control.

Concurrent with the high traffic volume, shipping companies wanting to maximise profits, are demanding from the shipbuilding industry larger and heavier vessels in order to maximise economies of scale. Since it is commonly understood in the marine trade that the manoeuvrability of a vessel decreases as the vessel size and weight are increased, the plying of larger and larger vessels in restricted waters is a most

¹⁴ Energy Information Administration, “World Oil Transit Chokepoints,” . . . , n.p.

¹⁵ United Nations General Assembly, “Sixtieth session, Item 76 (a) of the preliminary list, Oceans and the law of the sea,” *Report of the Secretary-General* (4 March 2005); available from <http://daccessdds.un.org/doc/UNDOC/GEN/N05/257/59/PDF/N0525759.pdf?OpenElement>; Internet; accessed 21 February 2006, 23

¹⁶ Graham Gerard Ong, “Ships Can Be Dangerous, Too: Coupling Piracy and Terrorism in Southeast Asia's Maritime Security Framework,” in *Piracy in Southeast Asia: status, issues and responses*, ed. Derek Johnson and Mark Valencia, 45-77 (Singapore ISEAS Publications, 2005), 49

significant cause of concern.¹⁷ Stopping distances are directly related to a ship's momentum. This means that a bigger ship, regardless of speed, will take longer to stop and require greater stopping distances. Other factors such as length of the hull, type of prime mover, etc will also come into play, however, the point to be captured is that larger vessels require great distances to come to a stop. Take for example the "AGAWA CANYON" which collided with another vessel in 1988 as a typical example of stopping distances required. Fully loaded with 22 000 tonnes, at a speed of only 6.5 knots, its stopping distance was 1.2 miles and, at only 4.0 knots, 0.8 mile.¹⁸ This is illustrative of the great distances and large momentum even smaller ships generate. Another even more relevant example is the stopping distance for a tanker of 200,000 DWT moving at a forward speed of sixteen knots. With full stern power applied to stop the ship, it will take approximately three and a half miles to come to a stop and more than ½ an hour.¹⁹ As ship size increases and manoeuvrability decreases in restricted sealanes, the potential for more frequent and catastrophic collisions, groundings and environmental spills increases resulting in justifiable concern by littoral states. The IMO has also recognised these concerns and has been a major proponent of the "marine electronic highway project". A combined GEF/World Bank/IMO project specifically designed for the straits of Malacca

¹⁷ Ford Foundation, "Oil Spills and the Marine Environment: Papers Prepared for the Energy Policy Project of the Ford Foundation," (1974) Journal on-line; available from http://www.fordfound.org/elibary/documents/0216/084.cfm?print_version=1; Internet; accessed 3 March 2006, 52

¹⁸ Transport Canada, "Transportation Safety Board of Canada, Marine Investigation Report Collision Between the Self-unloading Bulk Carrier "AGAWA CANYON" and the Tanker "EMERALD STAR", Sault Ste. Marie, Michigan, United States 10 April 1998 Report Number M98F0039," http://www.bst.gc.ca/en/reports/marine/1998/m98f0039/m98f0039.asp?print_view=1," Internet; accessed 3 March 2006, n.p.

¹⁹ Ford Foundation, "Oil Spills and the Marine Environment:"..., 52

and Singapore in order to reduce collisions through use of digital navigation.²⁰ Pirate attacks further exacerbates these risks and is a grave concern.

Maritime trade is unique within our Global Economy and is the very foundation on which it operates. As a critical corner piece, anything that undermines its efficiency or poses a risk to its continuance must be considered a significant cause for concern. Southeast Asia utilises more than ½ the world's shipping with the vast majority passing through the pirate infested waters of the Malacca Straits. Piracy in this area is a very serious problem with enormous potential for disaster to the vulnerable maritime shipping industry. Piracy is a multipronged problem that requires a multipronged approach in order for it to be effective. Examination of the problem will be first undertaken in Chapter One, with emphasis on definitions, risk and justifications on why piracy cannot be ignored. In Chapter Two, examination of the many factors that promote and validate piracy as an option will be explored, followed by further analysis of the many factors which maintain it. Finally in Chapter Three, exploration of various methodologies currently available to combat piracy will be undertaken.

²⁰ United Nations General Assembly, "Sixtieth session, Item 76 (a) of the preliminary list, ... 23

CHAPTER ONE: CAUSE FOR CONCERN

In order to fully discuss/appreciate the problem of piracy in this area, it is necessary to have an overview of the geographic, political and economic climate and auxiliary factors of culture and population, which affect both directly and indirectly to piracy. As a trans-national crime, piracy needs to be attacked in a co-ordinated and co-operative manner by all nations to be effective. The overview provides the background conditions in existence, which impacts and prevents the necessary co-operation and co-ordination from being achieved.

Whosoever commands the sea commands the trade; whosoever commands the trade of the world commands the riches of the world, and consequently the world itself.²¹

If the strait were closed for any reason, more than half the world's fleet would need to sail around Indonesia (assuming it was not possible to use the strait of Sunda and Lombok due to the draft, DWT and navigational limitations), at a most economical speed of 15 kts, the transit around Indonesia would take 2 ½ days in lost time (with VLCC charging out at more than \$30,000 per day this would add an additional \$75,000 to the cost of delivery).²² The extra costs would be compounded by the additional fuel and salary costs. Additionally, with the increase transit time now required for more than ½ the world's ships, world-wide excess shipping capacity would drop dramatically resulting in a lack of availability for shippers. Corresponding supply and demand considerations

²¹ Respectfully Quoted: A Dictionary of Quotations, From Bartleby.COM, available from <http://www.bartleby.com/73/2044.html>; Internet; accessed 3 January 2006, n.p.

²² John S. Burnett, *Dangerous waters : modem piracy and terror on the high seas* (New York: Penguin Group (USA) Inc., 2002), 23.

would spark an obvious increase in shipping costs both for the voyage and around the world as excess shipping capacity would no longer be available.

The economic impact would be significant. As the world saw in the 1956 Suez crisis, impact of closure of a major sea route has global effects. With the closure and subsequent long re-routing of commerce ships around the Cape of Good Hope, availability of shipping became severe which immediately resulted in an explosion of freight rates and subsequent global rise in prices of all affected commodities. Upon reopening there was a backlash effect, which resulted in the ‘most prolonged recessions in shipping since World War II’.²³ This was at a time when shipping was only being conducted in modest amounts through the canal in comparison to today’s volumes through the Malacca Straits, if anything were to affect safe passage, the impact would be magnitudes greater due to the volume of shipping which would be affected. Unchecked, piracy has that potential.

Scope of Problem

The 18th-century English legal scholar William Blackstone defined a pirate as someone who has "reduced himself afresh to the savage state of nature by declaring war against all mankind..."²⁴

Piracy is described in legal literature as *Pirata Este Hostes Generis* (an enemy of all mankind) which preys on all passing ships regardless of nationality, a non-state entity (with the exception of the historical period in which the “Letter of Marquee” was

²³ Prof. Dr. Berthold Volk, “Growth Factors in Container Shipping,” ..., 3

²⁴ Douglas R. Burgess Jr., “The Dread Pirate Bin Laden,” *Legal Affairs Magazine*, (July/August 2005) available from http://www.legalaffairs.org/issues/July-August-2005/feature_burgess_julaug05.msp; Internet; accessed 23 February 2006, n.p.

utilised).²⁵ They pose a direct threat to persons and property against every nation on earth, which ship or work in the shipping industry. Piracy also contributes to the maintenance of other criminal activities by supplying goods to the black market and supporting the under-ground economy. They are directly linked to smuggling, human trafficking in support of illegal migration and most other illegal activities, which can be conducted at sea.²⁶ Pirates undermine legitimate governments by striking at will and force governments to redirect precious resources to patrolling and intervention. They continue and encourage corruption of state agencies and law enforcement thereby further destabilising governments. Increased shipping costs and insurance rates are passed to the consumer in terms of increased pricing affecting all of us. They risk major collision, grounding and environmental disaster. Major factors that allow piracy to continue are the permeable boundaries and lack of solidification of sovereignty and jurisdiction in the area allowing pirates to move in and out; uncontested and at will. Corruption and graft compound ineffective enforcement due to lack of training, infrastructure, ships and resources (government funding).

Concern and impact of piracy germinated into the creation of the IMB by the ICC in 1981 “to act as a focal point in the fight against all types of maritime crime and malpractice”.²⁷ The standing up of the IMB was quickly followed by the adoption of a resolution by the IMO November the same year encouraging all governments and

²⁵ Greg Chaikin, “Piracy in Asia: International Co-operation and Japan's Role,” in *Piracy in Southeast Asia: status, issues and responses*, ed. Derek Johnson and Mark Valencia, 122-142 (Singapore ISEAS Publications, 2005), 125

²⁶ Alex Perry, “Buccaneer Tales in the Pirates' Lair From island hideaways brigands plague Asia's shipping lanes as they have for generations,” *TIMEasia.com* Vol. 158 NO. 7/8 (20-27 August 2001); available from <http://www.time.com/time/asia/features/journey2001/pirates.html>; Internet; accessed; 5 March 2006, 2.

²⁷ ICC IMB, *Piracy And Armed Robbery Against Ships Annual Report...*, 2

organisations to “co-operate and exchange information” with the IMB to maintain and develop an action plan to combat maritime fraud.²⁸ Although it has been active in assisting law enforcement, its primary purpose is to assist in the determination of the scope and magnitude of maritime fraud (including piracy) in order to provide incentive for littoral and international countries to address the problems.

Piracy Defined

What is piracy? There are many different definitions that are utilised world-wide with varying acceptance and legal foundations. These definitions have critical impact in legal action and in determining the actual quantity of attacks that are being carried out. Some are clear, while others have confused the issue and have provided significant loopholes for pirates to escape conviction due to their restrictive determinate nature.

UNCLOS 1982

The 1982 United Nations Convention on the Law of the Sea (UNCLOS)

definition of piracy is contained in article 101 as follows:

Piracy consists of any of the following acts:

- (a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:
 - (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;

²⁸ ICC IMB, *Piracy And Armed Robbery Against Ships Annual Report...*, 2

(c) any act inciting or of intentionally facilitating an act described in subparagraph (a) or (b).²⁹

There are many loopholes with this definition due to its over-emphasis on the means of carrying out piracy attacks vice the action itself. The restrictive nature of paragraph (a), in which piracy must occur from a private ship or aircraft, immediately eliminates quasi-government vessels from being charged with piracy, as it is not a 'private' vessel. This definition also eliminates any attacks carried out by small boat/canoe/dingy as a pirate attack since they are not ships. The additional requirement that the attack not being within state territorial waters also eliminates the majority of pirate attacks from being reported as they occur usually relatively close to land where the pirates can quickly discharge their booty and disappear. Due to the restrictive nature and confusion caused by pirate attacks carried out using small boats and in territorial waters, no comprehensive understanding of the problem could be accomplished as enforcement agencies and governments would classify some cases as a pirate attack and others as an armed robbery. This has prevented the marine community and governments from understanding the scope and magnitude of the problem and how best to address it.

IMB DEFINITION:

Although stipulated for 'statistical purposes', the IMB definition for piracy focuses on the action rather than the means:

An act of boarding or attempting to board any ship with the apparent intent to commit theft or any other crime and with the apparent intent or capability to use force in the furtherance of the act.³⁰

²⁹ United Nations International Maritime Organization, "Piracy and armed robbery against ships," available from: http://www.imo.org/Facilitation/mainframe.asp?topic_id=362; Internet; accessed 21 February 2006, n.p.

³⁰ ICC IMB, *Piracy And Armed Robbery Against Ships Annual Report...*, 3

This definition is inclusive of whether the ship is berthed, at anchor or at sea and excludes petty theft unless the thieves are armed. The logic of this definition addresses the UNCLOS restrictive description in which both alongside acts and attacks in territorial waters are not considered ‘piracy’ as they happen within the jurisdiction of the host nation. This legal filter made piracy identification and assessment very convoluted and hid the scope and frequency of the problem as some cases were being recorded as armed robbery ashore vice piracy even when being carried out at sea within territorial waters. Additionally, the further restriction of the UNCLOS definition on piracy requiring ship-on-ship conflict is further addressed by the IMB definition to include attacks from docks and boats/rafts...essential to obtain the true full piracy picture within territorial waters.³¹

IMO DEFINITION

The IMO has since recognised the dilemma associated with their definition and has adopted in November 2001 the “Code of Practice For The Investigation Of Crimes Of Piracy And Armed Robbery Against Ships” which expands the UNCLOS definition to include:

Armed Robbery against Ships means any unlawful act of violence or detention or any act of depredation, or threat thereof, other than an act of ‘piracy’, directed against a ship or against persons or property on board such ship, within a State’s jurisdiction over such offensive.³²

³¹ Ong, “Ships Can Be Dangerous, Too:..., 53

³² United Nations General Assembly, “Fifty-seventh session, Item 25 (a) of the preliminary list, Oceans and the law of the sea,” *Report of the Secretary-General* (1 March 2002); available from <http://daccessdds.un.org/doc/UNDOC/GEN/N02/363/24/IMG/N0236324.pdf?OpenElement>; Internet; accessed 21 February 2006, 5

Although amendment of the UNCLOS did not occur, the addition of the further clause of “Armed Robbery against Ships” can now cover all criminal acts inside or outside territorial waters, alongside or at sea.

SUPPRESSION OF UNLAWFUL ACTS (SUA) 1988

Due to the great concern being expressed internationally with regards to the security and safety of ships and personnel, the United States proposed that the IMO put in place ‘measures to prevent such unlawful acts’:

The main purpose of the convention is to ensure that appropriate action is taken against persons committing unlawful acts against ships. These include

- the seizure of ships by force;
- acts of violence against persons on board ships; and
- the placing of devices on board a ship which are likely to destroy or damage it.

The convention obliges Contracting Governments either to extradite or prosecute alleged offenders.³³

The purposeful wide scope of this act was to address piracy in all of its forms (not just ship-on-ship, but any attacks from any vessel and even alongside), anywhere it occurs (not just the high seas but within territorial waters as well), as the obligation of all signatories to take action including seizing ships by force. Motivation behind the unlawful act is not relevant and therefore makes this Act applicable against all offenders whether for just private (piracy) or political (terrorism) gain. Although Singapore has signed up to this convention, Indonesia and Malaysia have not due to their concerns with respect to sovereignty and national boundaries.³⁴ If SUA 88 was implemented

³³ United Nations International Maritime Organization, “Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, 1988,” available from: http://www.imo.org/Facilitation/mainframe.asp?topic_id=200&doc_id=521; Internet; accessed 21 February 2006, n.p.

³⁴ United Nations International Maritime Organization, “Status of Conventions by Country,” available from: http://www.imo.org/includes/blastDataOnly.asp/data_id%3D13820/status.xls; Internet; accessed 21 February 2006, n.p.

internationally, it could be used by one nation to take action in another's territorial waters, which would be a direct threat to that nation's sovereignty, simultaneously demonstrating to the world the other country's inability to retain governance over its 'claimed' waters. Additionally, the obligation for governments to extradite has its own concerns and it allows signatories to prosecute pirates for actions committed under another country's jurisdiction.

A major amendment in the area of unlawful acts at sea was addressed by this document but the obligation section to extradite has delayed its acceptance by all countries. Many countries are not supportive of extradition of prisoners for a variety of reasons, which are beyond the scope of this paper. However, it was still a major move forward as it did not require the UNCLOS to be in force and thus was not restricted by whether the attack was within territorial waters or alongside for the host nation to take action.

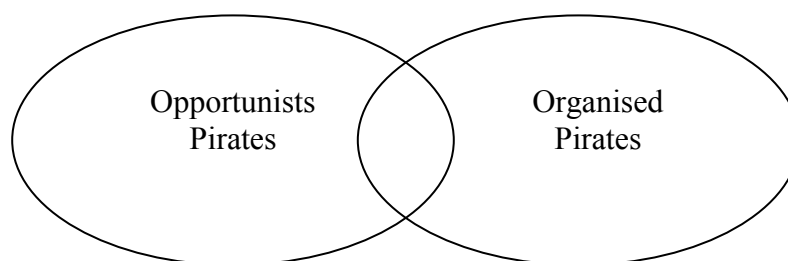
The major strength of the IMO is its requirement for achieving consensus from all participating parties; in this way, when a resolution is passed, it is much more likely to be enforced by everyone who participated in its creation. The major weakness of the IMO is its necessity for consensus, the amount of effort and time required to get anything passed is extensive. Even when consensus is reached within the IMO, it is still required to be ratified by the respective nations after the fact, which has caused some back-peddling and withdrawing of support once released. The US for example has yet to be a signatory on UNCLOS 82 even though it participated in its creation.

For the purposes of this paper, the IMB definition for piracy will be the foundation for discussion due to its inclusive nature. Whether piracy occurs within

territorial waters or the high seas, it should be treated the same and therefore needs to be defined the same way for a true picture to be developed.

Types Of Pirates

There is no clear consensus on categories and types of pirates operating in Southeast Asia. Mark Valencia postulates four types ranging from hit and run to hijackers.³⁵ Others believe there are three. All have in common two broad similarities, which can be utilised to simplify the type of pirate further. Regardless of the size of the organisation, they can be reduced to these two categories since the means and root causes to combat the different types are the same. It is proposed that piracy be divided into two categories; Opportunists and Organised with some overlap where either type could stray into the others category from time to time.



Opportunists Pirates (similar to petty criminals)

Fishermen, dockyard workers, unemployed, etc... this class of pirate make up a large percent of the attacks and are the least costly both financially and with respect to human suffering. They usually are either unarmed or armed with what is readily available (such as machetes, which they use normally, in their day to day work) and sneak onboard (alongside or at sea) to steal as much as they can carry without any

³⁵ Mark J. Valencia, "Piracy and Terrorism In Southeast Asia," in *Piracy in Southeast Asia: status, issues and responses*, ed. Derek Johnson and Mark Valencia, 77-103 Singapore ISEAS Publications, 2005, 80

overriding specific objectives or planning. Violence levels are normally low and they are easily deterred through overt and visible security watches or devices and through naval/coast guard obvious presence.

This type of pirate is an opportunist; in the normal course of a day, unless an opportunity presents itself, piracy will not be conducted. They are equivalent to the ashore criminal categories of Break and Enter up to Mugger. This kind of pirate has always existed and will always exist; underpaid with no future prospects, they will react to an opportunity whenever it occurs to make ends meet. The greatest danger occurs when they take control of a vessel in transit to have the ship's officers open the captain's safe, usually tying up or removing the bridge watchkeepers in the process. This situation results in the ship steaming unattended for significant periods of time.

Organised Pirates (similar to Mafia)

The more worrisome and increasingly active is the Organised Pirates. The Organised Pirate is methodical, has distinct objectives and will not be easily deterred once engaged. Planning and inside information is usually unquestionably demonstrated with the attacking and removing of precise cargo from specific containers in some cases. They have an effective intelligence network from dockyard workers to customs, police, military and government informers which provide them detailed intelligence on what cargo is being carried; which route the ship will be taking and when it will be departing so as to know exactly when and where to attack. These are the criminals who are engaged in piracy in the worst way from stealing specific container contents, hijacking of ships to steal the entire cargo and/or the ship itself, to kidnap and ransom of the crew.

Like the Mafia, eradication of these types of pirates must be a priority and they pose the greatest risk both economically and from a Human Suffering perspective.

Quantity and Trend

There is only one world-wide recognised authority for the statistical reporting of piracy incidents and that is through the IMB. A note of caution must be exercised however, and is fully mentioned in IMB reports, that the total quantity and frequency of pirate attacks is not being captured. There are many obstacles which have led to underreporting of incidents the magnitude of which varies from four to ten times the amount actually reported depending upon which source it is derived from. For example, investigative reporter John Burnett placed the actual number of attacks each year as ‘several thousand’.³⁶ Mr. Burnett stresses that the IMB figures, which is already recognised by everyone as not capturing all pirate attacks, only account for commercial shipping incidents and does not take into account the hundreds of pirate attacks perpetrated on tourists, fishermen, ferry passengers or yachtsmen whose mysterious disappearances are un-officially attributed to piracy.

Underreporting stems from a variety of reasons many of which are strictly monetary. For the ship owners, the delay and days lost in order to go into the nearest port to report the crime, and carry out of the investigation, results in increased shipping costs and late arrival penalties to the shipping company. Furthering the increased costs and reduction of net profit is the historical lack of response by the host nation to carry out any kind of investigation and the tendency to draw out the process in order to retain the vessel in port as long as possible for its own monetary gains (up to \$10,000 US/day in port costs

³⁶ John S. Burnett, *Dangerous waters: ...*, 10.

alone).³⁷ As a further cost factor, thousands of extra dollars are lost due to higher insurance costs associated with the incident. Even to transit this area now costs shippers more money in insurance with the recent declaration of the Malacca Straits as being a 'war-risk' zone by Lloyds in November 2005 which raised insurance rates by some companies by \$5,000 US/day.³⁸

Non-monetary reasons are also prevalent for not reporting incidents. Past experience with the nation in which the attack occurred has led in some cases to accusations that the crew was lying or were negligent, which somehow allowed the attack. This has not only been a government phenomenon however as insurance companies have also refused to settle claims and have actually taken to some shippers to court after piracy attacks, accusing the owner/crew of negligence for failing 'to take reasonable measures to avert or minimise the loss'.³⁹ Additionally, shipping companies must also balance the fact that with no viable cost effective transit route alternatives, the reporting of piracy in a nation's territorial waters could easily offend that nation, which may well make future transits less seamless and thus more costly.

³⁷ Karsten von Hoesslin, "The Implications of Illegal Maritime Activities for Canadian Security and Methods of Enhancing Surveillance and Monitoring in East Asian and North Pacific Waters," *Centre for Military & Strategic Studies/University of Calgary*; available from <http://www.cda-cdai.ca/symposia/2003/hoesslin.htm>; Internet; accessed; 20 February 2006, n.p.

³⁸ Jeffrey Chen, "Reversing the Joint War Committee's (JWC) War Risk Decision in the Malacca Straits: An Interim Review.", Singapore Institute of International Affairs; Journal on-line; available from http://www.siaonline.org/reversing_the_joint_war; Internet; accessed; 3 March 2006, n.p.

³⁹ David Martin-Clark, "DMC/INS/06/04 Bayswater Carriers Pte Ltd v. QBE Insurance (International) Pte Ltd," *Singapore High Court*, 29 September 2005; available from http://www.onlinedmc.co.uk/bayswater_carriers_v_qbe_insurance.htm; Internet; accessed; 15 March 2006, n.p.

Additionally, it has been suggested in some sources that certain shipping companies have made it policy not to report attacks.⁴⁰ Whether it is to ensure that schedules are met, reduce insurance costs, maintain customer confidence or some other unidentified factor, remains unknown.

Piracy, unfortunately, is a lucrative crime with cost estimates varying from \$16 billion⁴¹ to \$25 billion a year due to piracy/armed robbery at sea.⁴² With the complacency of Shipping Companies to accept incidents as just a part of doing business, underreporting continues to be a problem and undermines any ability to place emphasis and priority to deal with a very serious problem with an enormous potential for disaster.

Analysis of the IMB report reveals that reported piracy has dropped to 276 in 2005 compared to 329 in 2004. It is IMB's position that the drop in piracy attacks is attributed to 'the increased awareness and anti-piracy watches by masters in risk prone areas, increase in law enforcement patrols and international pressure on some governments to act.'⁴³ World-wide attention is also considered a factor. Caution must be excised however as further in the report it is acknowledged that there were no reported incidents for approximately two months in this area after the tsunami disaster. This could be attributed to pirates being adversely affected similar to the rest of the indigenous population but it is more likely that the active and continuous presence of military warships conducting disaster relief was the cause of the downward development. It is, therefore, misleading not to factor in this effect when discussing trend analysis. Once

⁴⁰ The Law Offices of Countryman & McDaniel, "The Serious Problem of Modern High Seas Piracy - Presentation At Port of Chicago - November 2000," November 2005 Update; available from http://www.cargolaw.com/presentations_pirates.html#2005-Update; Internet; accessed; 23 February 2006, n.p.

⁴¹ von Hoesslin, *The Implications of Illegal Maritime Activities for Canadian Security...*, n.p.

⁴² Burnett, *Dangerous waters:...*, 70

⁴³ ICC IMB, *Piracy And Armed Robbery Against Ships Annual Report...*, 16

factored in, it is obvious that there has been no appreciable change in the amount of incidents with the exception of the Malacca Straits, which is less than ½ of the 2004 figures. Indonesia and the Singapore Straits adjusted figures are in fact higher for 2005:

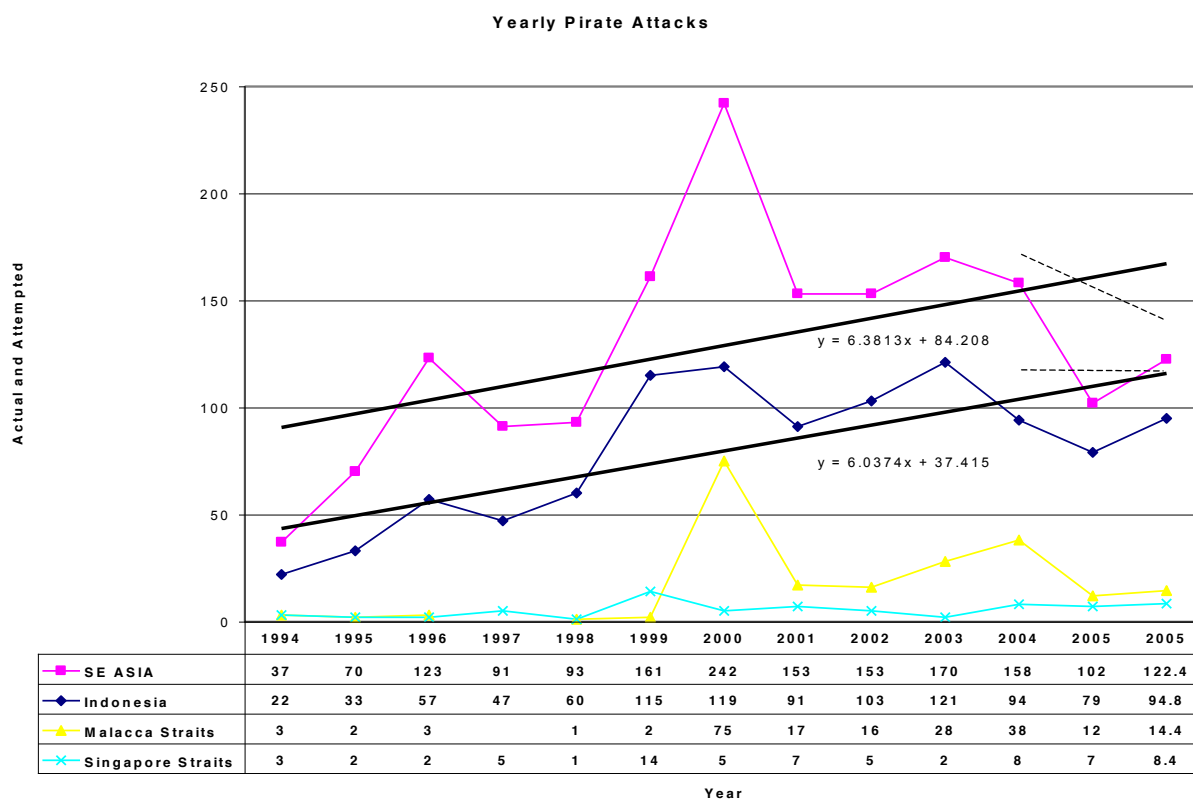
SE ASIA	2004	2005	2005
Cambodia			
Indonesia	94	79	94.8
Malacca Straits	38	12	14.4
Malavisia	9	3	3.6
Myanmar(Burma)	1		0
Philippines	4		0
Singapore Straits	8	7	8.4
Thailand	4	1	1.2
	158	102	122.4

Table 1: IMB Locations of Actual and Attempted attacks.⁴⁴

Note: In order to factor in the probable affects of the Tsunami, the actual data for the 10 month period was divided by 10 and multiplied by 12 months in order to get an approximation of the likely quantity of attacks which would have occurred.

Plotting of IMB data over the last decade clearly demonstrates a growing trend in piracy is occurring. Even with the recent reported drop in piracy in this area, it will take consistent yearly reductions to affect the trend line. As is illustrated quite effectively in the graph, sharp reductions over a one-year period have been achieved before, with little overall effect because they were not sustained.

⁴⁴ ICC IMB, *Piracy And Armed Robbery Against Ships Annual Report...*, 5



Overall, Indonesia still leads the world in number of attacks perpetrated with Somalia (at 35 incidents) a distant second at less than half the total of Indonesia's actual reported data. In fact, Indonesia accounts for almost 30% of the world's total piracy and armed robbery incidents which have occurred in 2005, a trend which has continued since 1996.

IMO and the International Maritime Bureau of the International Chamber of Commerce indicate that, while there has been a decrease in the overall number of incidents, the level of violence has escalated, resulting in higher number of crewmembers killed or taken hostage.⁴⁵

⁴⁵ United Nations General Assembly, "Sixtieth session, Agenda Item 75, Oceans and the law of the sea," *Report of the Secretary-General* (15 August 2005); available from <http://daccessdds.un.org/doc/UNDOC/GEN/N05/461/37/PDF/N0546137.pdf?OpenElement>; Internet; accessed 21 February 2006, 17

Regardless of the Tsunami effect, particularly troublesome is the continuation of the movement for piracy to become much more violent and the rapid increase of extortion, hijackings and hostage taking which has become too prevalent. The escalation of piracy into the higher criminal acts in terms of both violence and hijacking or kidnapping definitely warrants more intervention and action by the international community to address this problem.

Hijacking has doubled in 2005 over the 2004 figure to 23 and has almost reached the 2002 reported high of 25. Incidents of being fired upon have also risen over 2004 by close to 50% with 19 incidents and have included the use of machine guns and RPGs in some cases.⁴⁶ Hostage taking has almost tripled 2004 figures at 440 for 2005, an unfortunate new high for the last decade. Assaults, injured, killed and missing, however, have all decreased from 2004 but nevertheless totalled 42 people.

Potential Damage (Economic/Environmental)

Additional justification for action to be taken to eliminate piracy comes from both a navigational, environmental and economic perspective. In almost all cases in which ship's crew are kidnapped, it is the master and other ship's officers who are taken, leaving the vessel to carry on as best it can with whatever experienced crew are left to navigate in these restrictive waters. This situation presents a real and present danger to navigation and high risk of collision or grounding of vessels when inexperience/untrained crew are all that remains onboard. Combined with the upward trend to build larger and less manoeuvrable vessels as previously discussed, the level of risk becomes severe. Additionally, there has been many recorded cases in the past of pirates boarding steaming

⁴⁶ ICC IMB, *Piracy And Armed Robbery Against Ships Annual Report...*, 10

vessels and confining ship's crews to compartments or tying them up while they carry out their robbery and escape. Records of vessels travelling for up to 70 minutes without anyone in the bridge have been recorded.⁴⁷ The danger of a massive collision or grounding under these conditions is extreme.

Analysis of attacks shows that more than one-quarter of incidents involve vessels with potentially polluting or hazardous cargoes and firearms have been used by pirates attacking ships carrying dangerous cargoes. In one such case, involving NUMAST members, an officer was used as a 'human shield' during a running gun battle between pirates and police onboard a liquefied gas tanker that was discharging a cargo of butane and propane.⁴⁸

Exacerbating this unacceptable situation is the realisation that in many cases it is highly volatile cargo vessels and tankers which are being exposed to the risk and in some cases being shot at during the attacks. Any collision or grounding by any vessel is cause for concern from a navigational and environmental perspective, but combined with volatile or poisonous cargo, the impact would be disastrous on the ecology. A large spill could destroy sensitive ecological climates and fish stock, which is essential to those whose livelihood depends on it. It would fall on the Southeast Asian nations to deal with the disaster both economically and environmentally as best they can.

As previously discussed, the economic impact would also be massive and it has been stated that any disruption of traffic along the straits would cripple regional and international trade.⁴⁹ The cost of re-routing in terms of fuel, time, salaries etc, would be huge; the domino effect of lack of availability and loss of sea shipping capacity would also impact the world economy to an unknown level. Additionally, Singapore is the most

⁴⁷ National Union of Marine, Aviation and Shipping Transport Officers, "In the firing line," Journal on line; available from <http://www.numast.org/docimages/1516.pdf>; Internet; accessed 21 February 2006, 4

⁴⁸ NUMAST, "In the firing line," ..., 4

⁴⁹ Ong, "Ships Can Be Dangerous, Too:...", 49

important maritime hub in Southeast Asia for redistribution of cargo from large tankers/container ships to coastal and smaller ships. It therefore does not make re-routing a viable option if the ships must dock at Singapore to unload/reload cargo since the ships in question would in most cases probably have to circumnavigate Indonesia completely under these circumstances to arrive at Singapore. Considering that the majority of piracy now occurs at the southern-most portion of Indonesia, it would be illogical to re-route for a major piracy problem in the Malacca straits to pass through a worst piracy area in south Indonesia.

Further Piracy Intervention Justification

With wide varying priorities contrasted with limited resources, significant justification for increasing priority and resource allocations to combat piracy is necessary. Two further arguments will be provided to justify government action and intervention; Industry's Risk vs. Consequence Analysis and impact on Human Suffering.

RISK VS. CONSEQUENCES ANALYSIS

One of the recognised methodologies to determine appropriate levels of response and prioritisation of resources is through analysis of Risk vs. Consequence analysis. In simplest terms, the consequence of an event occurring is categorised by the impact it will have on areas deemed important. The consequence is then matched to a probability of the event occurring, which will then determine in relative terms, whether something must

be done, should be done or can be ignored. Below is a typical tabulation used in industry, which will be applied to the piracy dilemma:⁵⁰

Level	Description	Consequence types		
		People	Environment	Property
1	CATASTROPHIC	Several fatalities	Time for restitution of ecological resources > 5 years	Total loss of system and major damage outside system area
2	SEVERE LOSS	One fatality	Time for restitution of ecological resources 2-5 years	Loss of main part of system. Production interrupted for months
3	MAJOR DAMAGE	Permanent disability, prolonged hospital treatment	Time for restitution of ecological resources < 2 years	Considerable system damage. Production interrupted for weeks
4	DAMAGE	Medical treatment Lost time injury	Local environmental damage of short duration (< 1 month)	Minor system damage. Minor production influence
5	MINOR DAMAGE	Minor injury Annoyance Disturbance	Minor environmental damage	Minor property damage

As already discussed, violence due to piracy is on the rise and fatalities have occurred almost every year; additionally, the ecological consequences of a major disaster due to either grounding or collision would be catastrophic. Piracy therefore would be ranked as a level 1 or catastrophic event, the highest possible rating. Matched to the classification of the event, the probability of occurrence must now be determined.

Although there are specific and complicated mathematical modelling which could be used to try to quantify this probability, they are all based on assumptions programmed in by the programmer based on his/her level of knowledge, experience and capabilities. Modelling by definition does not exactly copy actual events and a degree of subjectivity always comes into play. For our purposes, probability will be based on a subjective assessment, without modelling, of Low, Medium or High. Based on the fact that piracy

⁵⁰ Marvin Rausand, "Some Basic Risk Concepts," *Department of Production and Quality Engineering, Norwegian University of Science and Technology*, (4 May 2005) Presentation on-line; available from <http://www.ntnu.no/ross/srt/slides/basic-risk.pdf#search='Some%20Basic%20Risk%20Concepts'>; Internet; accessed 22 February 2006, slide 20, n.p.

continues at a rate of 8.5 attacks per month (102 incidents in Southeast Asia/12 months), and this area has the highest amount of attacks annually world-wide, the probability of being attacked is assessed as Medium to High in relation to the rest of the world.

However, based on the quantity of incidents relative to the volume the risk on any one individual ship being attacked drops to 0.24% (102 incidents in Southeast Asia/traffic volume of 50,000 vessels), and thus the probability is assessed as Low. Combining the two assessments gives an arguable overall assessment of Medium for this area.

The table below can be used to determine what response, if any is required. An evaluation of Red means the situation must be mitigated, Orange; should be reduced, Yellow; action should be considered and Green; contingency plans in the event of occurrence should be completed but no further action is required. Matching the consequence to the probability:

Level	Consequence	Probability		
		High	Medium	Low
1	CATASTROPHIC	Red	Red	Orange
2	SEVERE LOSS	Red	Orange	Yellow
3	MAJOR DAMAGE	Orange	Orange	Yellow
4	DAMAGE	Yellow	Yellow	Green
5	MINOR DAMAGE	Green	Green	Green

A level 1 Catastrophic consequence event with medium probability means the situation must be mitigated. Based on these assessments, it is justified that Piracy is an area that must receive more attention and resources to be conquered.

HUMAN SUFFERING

This evaluation has recently been reflected in the decision of the Joint War Committee of Lloyd's in London to list the Malacca Straits as a 'war risk zone' for insurance purposes.⁵¹ Although there is great controversy with this decision from the shipping associations and littoral countries that sees this as an opportunity for the insurance companies to raise profits, it does also reflect the escalation of violence and hostage taking as a serious cause for concern:⁵²

Seafarers consider that the international community and the international shipping industry have failed to provide effective responses to the growing threats posed by piracy and armed robbery attacks on merchant ships. They believe that the absence of any concerted and coordinated international action to tackle the problem means that merchant shipping is becoming an increasingly attractive target not only to traditional 'pirates' and armed robbers, but also to terrorists. They consider it essential for the international community to urgently demonstrate a 'zero tolerance' approach to piracy and armed attacks on shipping.⁵³

There have been 340 people killed with 16 people missing in the last decade due to piracy. Additionally, over the same period, 451 people were injured during the attack, 206 were assaulted and a staggering 3,128 people taken hostage world-wide. Based on these figures alone, piracy needs to be eliminated as a threat to all seafarers.

⁵¹ Lee Hong Liang, "Bravehearts Securing the Peace for Shipping," *Bunkerworld*, (November 2005), available from http://www.glenmmarinegroup.com/news/bw_mag_article.pdf#search='Bravehearts%20Securing%20the%20Peace%20for%20Shipping'; Internet; accessed 24 February 2006, 12

⁵² Bernama.com, "Piracy Cases Not Linked To Terrorism," *Malaysian National News Agency* (22 March 2006); available from

<http://www.bernama.com/bernama/v3/news.php?id=187254>; Internet; accessed 23 March 2006

⁵³ United Nations General Assembly, "Sixtieth session, Item 76 (a) of the preliminary list, ... 27

CHAPTER TWO: FACTORS THAT PROMOTE & MAINTAIN PIRACY

Factors That Promote

Pirates have been glorified in western culture as somehow being the ‘swashbuckling scallywags’ who champion against some greater (and more evil?) government or country to the betterment of all mankind. This view can be seen on a daily basis at all levels within our society whether through the widespread selling of pirate toys and outfits to children, to its glorification in movies such as the recently released Disney movie “Pirates of the Caribbean” and in frequent release of romantic adventure books and dedicated web sites. The effect that piracy adulation has had on the population is the popularisation of an occupation which should have remained despicable to all mankind but has somehow been accepted as okay, if only in a fantasy context. The average person, however, if drawn into a rational discussion about modern day piracy, would quickly return to the traditional western view held that piracy is not acceptable in any form and should be outlawed. How would our attitude change, however, if we had a tradition of proud piracy heritage?

In Southeast Asia, this is exactly the situation. Not only are pirates not considered necessarily a bad occupation it is actually grounded into their history as a prestigious occupation carried out by princes and folk heroes. There are many recorded heroes of the past in which Maritime Raiding was a legitimate way in which fortunes could be made at sea. Prince Raja Ismail for example was highly respected and considered a hero to his people based on the fortune he accumulated as a maritime raider/pirate.⁵⁴ A history and

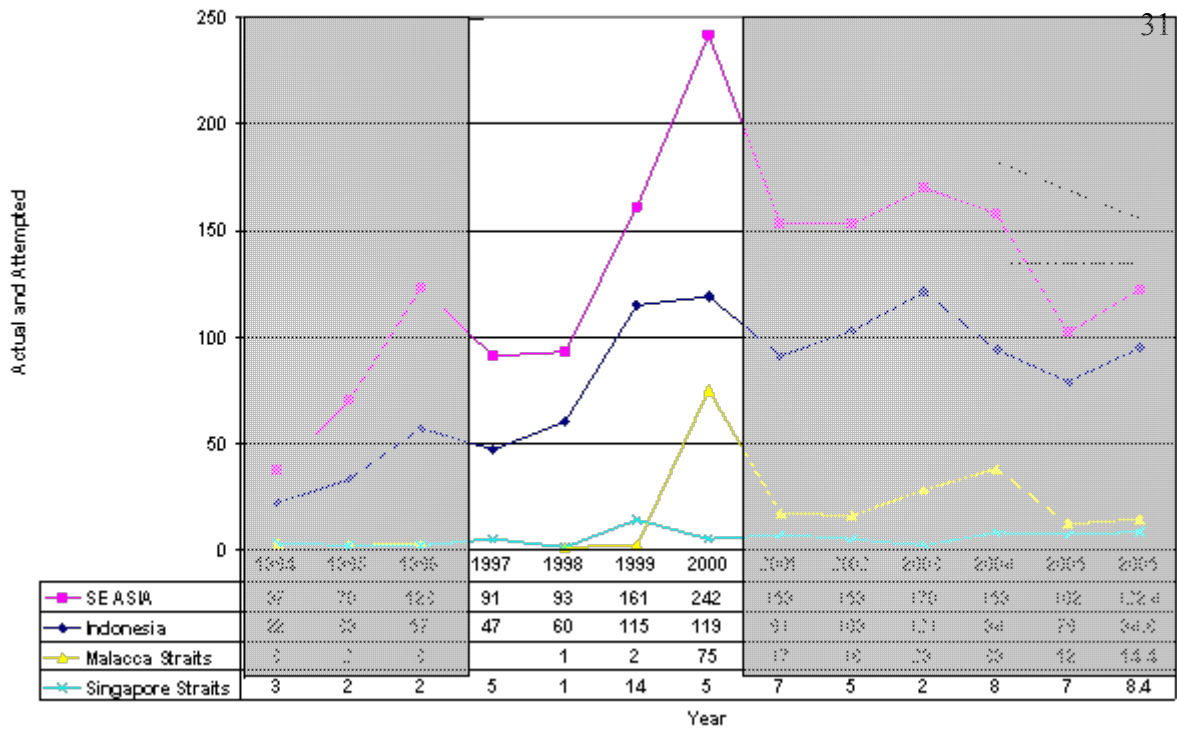
⁵⁴ Adam J. Young, “Roots of Contemporary Maritime Piracy in Southeast Asia,” in *Piracy in Southeast Asia: status, issues and responses*, ed. Derek Johnson and Mark Valencia, 1-34 Singapore ISEAS Publications, 2005, 9

tradition of Piracy when combined by the romanticising of the occupation, eliminates in some cases the moral and ethical reasons, which should prevent it being considered a viable way of life. A societal and cultural divide exists in this area which is foreign to western ideals and may still be active in providing the key economic and infrastructure support required for piracy to continue unabated; safe havens, pawning, technical and moral support. When the perpetrators don't believe a crime is being committed, it produces a major dilemma and problem in convincing them to stop.

The Effect of Economics (poverty)

Similar to crime ashore, those areas with low economic potential, high unemployment and poverty will have a higher crime rate than the economically viable areas and contributes equally as a catalyst in recruiting both Opportunist and Organised pirates. The direct link between economics and piracy was unmistakably demonstrated following the 1997-1998 Asian Economic Crisis in which Southeast Asian countries were devastated by economic collapse as can be seen in the following graph. Immediately following the crisis, piracy escalated from 93 attacks in 1998 to 161 in 1999 and then a further jump to 242 in 2000; in other words, there was a 250% increase.

Yearly Pirate Attacks



The political insecurity which also resulted from the economic collapse moreover fostered the conditions required for piracy to flourish; government instability and competing priorities allowed piracy to drop out of the limelight, underpaid law enforcement personnel wanting to augment their salaries were more susceptible to bribes and corruption. Poorly paid Port officials and workers provide necessary intelligence to pirate organisations to make ends meet.

With high Poverty (Indonesia for example has 52.4% of the population earning \$2 US or less a day, Malaysia has 9.3% at less than \$2 and 15.5% below their nation poverty line) and unemployment (10% in 2005) combined with traditional industries being undermined through over fishing and loss of arable soil, the situation becomes desperate

exacerbating the human situation.⁵⁵ With no alternatives available and the promise of immediate returns, piracy becomes a much more viable option.

Factors that maintain

In many incidents, piracy is carried out from fishing vessels no different than those, which are going about their legitimate business. By immersing within a fleet, which happens to be operating close to the traffic lane being used by the cargo ships, a pirate boat can achieve tactical surprise and be able to get near their target vessel.

Another advantage for the pirates is their equally beneficial ability to blend in after the attack making identification and arrest impossible in the event that pursuit by government vessels occurs. Additionally, the utilisation of fast and shallow boats combined with intimate knowledge of the archipelagic area, allow pirates to readily lose pursuers in the maze of islands.

Lack of resources

Navies in Southeast Asia, with the exception of Singapore, are old, not well maintained and severely under resourced for the area in which they are required to patrol. The area around the Malacca straits of Southeast Asia is archipelagic consisting of 30,000 islands, with Indonesia alone containing 17,508 islands with only 6000 being inhabited.⁵⁶ This allows for diverse and plentiful areas in which piracy/smuggling can occur without prying eyes and makes effective maritime patrolling both time intensive and costly. It is also a source of illegal migration and habitation by frequent transient populations within

⁵⁵ United Nations Human Development Report 2005, "Human development indicators," available from: http://hdr.undp.org/reports/global/2005/pdf/HDR05_HDI.pdf; Internet; accessed 22 February 2006, pages 227, 228

⁵⁶ Central Intelligence Agency, "Indonesia," *The World Factbook* (2006) available from: <http://www.cia.gov/cia/publications/factbook/print/id.html>; Internet; accessed 24 February 2006, n.p.

the area. For example, Indonesia can patrol only about 1/3 of their 6 million km² archipelagic, territorial and Exclusive Economic Zone (EEZ) waters⁵⁷ with the assets they currently maintain.⁵⁸ Estimates of a minimum requirement of 300 vessels are required vice the 115 which are currently available of which only 25 are operating at sea at any given moment; ...this provides large sections of their waters neither controlled or monitored allowing pirates to act at will.⁵⁹ Air surveillance assets are also limited and must cover such a vast area, that coverage cannot be maintained. Additionally the cost and infrastructure necessary to maintain air assets are prohibitive to only the most successful economic powers.

An effective deterrent to both Opportunist and Organised Pirates is on scene presence and the utilisation of surveillance techniques. Without suitable resources to provide the necessary infrastructure and equipment necessary, piracy will not be deterred.

Repercussions of the Asian financial crisis are still being felt throughout Southeast Asia with continued high unemployment, fragile banking sector, endemic corruption, inadequate infrastructure, poor investment climate and unequal resource distribution.⁶⁰ The lack of financial resources prevents the necessary training and equipment to be purchased in order to provide on scene presence and intervention necessary to be an effective deterrent to piracy. For example, defence spending in Indonesia decreased by 65% 'because of communal and ethnic unrest in the Moluccas,

⁵⁷ Hasjim Djaiai, "Combating Piracy, Piracy in Southeast Asia: status, issues and responses," in *Piracy in Southeast Asia: status, issues and responses*, ed. Derek Johnson and Mark Valencia, 143-159 Singapore ISEAS Publications, 2005, 145

⁵⁸ Mark J. Valencia, "Piracy and Politics in Southeast Asia," in *Piracy in Southeast Asia: status, issues and responses*, ed. Derek Johnson and Mark Valencia, 104-121 Singapore ISEAS Publications, 2005, 105

⁵⁹ Djaiai, "Combating Piracy...", 145

⁶⁰ CIA, "Indonesia," *The World Factbook* (2006) ..., n.p.

Irian Jaya, and Aceh in 2002 which directly impacted the ability of its Navy to continue to carry out territorial/anti-piracy patrols.⁶¹

Competing priorities

Although many commitments and promises are made by the respective governments in the area to work together to deal with the problem, it is only those governments with a firm and stable political and economical base which can, and do, implement anti-piracy operations on a continuous basis. The reality for the other states is the lack of resources and the other competing problems that must be dealt with in their respective countries does not allow for the necessary resources to be spent on the piracy problem. Internal and external challenges are widespread from independence/guerrilla movements to rampant poverty, chronic unemployment to illegal immigration, unlawful fishing to uncontrolled smuggling, lack of basic infrastructure to poor health care and endemic corruption. In the face of these competing priorities, it is obvious that the governments may indeed want to do more and recognise piracy as a problem, but they are not going to be able to apply much if any resources to solving it.

Additionally, there are regular natural disasters occurring which undermines both the political and economic situation. The 2005 tsunami, which was just the latest of natural disasters, resulted in the death of 131,000 people and a cost of \$4.5 billion in damages and losses.⁶² Annual natural hazards such as flooding, droughts, earthquakes, volcanoes and forest fires are a continuous stress on both the economy and the government. Deforestation, water pollution from industrial wastes, sewage and air

⁶¹ Valencia, "Piracy and Politics in Southeast Asia,"..., 105

⁶² Central Intelligence Agency, "Malaysia," *The World Factbook* (2006) available from: <http://www.cia.gov/cia/publications/factbook/print/my.html>; Internet; accessed 24 February 2006, n.p.

pollution are also constant issues requiring government intervention. The priorities and concerns of the government therefore are overwhelming in many significant areas requiring great attention and resources. With such competing priorities, the attention and resources available to combat piracy are considerably reduced and contributes to its persistence.

Sovereignty concerns

Seafood is the staple diet for a vast majority of this area and has been estimated as making up 75 – 80% of its protein of some 500 million people.⁶³ Additionally, fishing is a large and traditional occupation for a substantial proportion of the population in all these countries, which has made confrontations prevalent in this region over territorial and EEZ waters and sovereignty a major concern of all the Southeast Asia nations.⁶⁴ Additional pressure and sensitivity to sovereignty and claims of what is encompassed by the EEZ has arisen with the discovery of large oil and natural gas fields in the region. Overlapping claims of sovereignty and rights has led to open conflict as recently as March 2005 over concessions to the Ambalat oil block.⁶⁵ Highly controversial and sensitive, the effect on the winning nation for future economic prosperity has made many nations hypersensitive to any encroachment on their actual or perceived sovereignty over the territory:

...maritime boundary disputes and offshore territorial claims, account for a third of all potential regional conflicts.⁶⁶

⁶³ Dr James Boutilier, "World Maritime Area Case Studies" (lecture, Canadian Forces College, Toronto, ON, 9 March 2006).

⁶⁴ David Rosenberg, "Why a South China Sea website?", (no date) Presentation on-line; available from <http://community.middlebury.edu/~scs/why.html#top>; Internet; accessed 22 February 2006, Appendices to "Why a South China Sea?" Table 7. Recent Military Clashes in the South China Sea, n.p.

⁶⁵ CIA, "Indonesia," *The World Factbook* (2006) ..., n.p.

⁶⁶ Chaikin, "Piracy in Asia: international Co-operation and Japan's Role," ..., 122

Since independence, all states in Southeast Asia have fought against each other for sovereignty over their respective territories without resolution. Both land and maritime boundaries in the region remain unresolved and are major issues. Additionally, due to the large dependency on the sea as a main stay of national economies (most notably fishing) and the possible future exploitation of the other natural resources (e.g. oil, gas, etc), sovereignty over these areas continues to be a major cause of concern for these nations which they must guard unwaveringly. State co-operation necessary to attack piracy becomes much more difficult without unmistakable boundaries and sovereignty being established. Additionally, secessionists, squatters and illegal migrants create further areas of conflict and disputes between the respective countries undermining their ability to address the common piracy issues. This lack of common will in actual fact may encourage piracy and other destabilising activities to challenge/sap the strength of other countries.

Hypersensitivity to sovereignty has obviously made co-operative and combined operations problematic as each country must ensure that whatever actions are undertaken does not negatively impact (even remotely) their claims to sovereignty over those waters. The recent statements by Deputy Prime Minister Najib Razak at the official inauguration of the new coast guard emphasised the concerns of security and sovereignty:

While acknowledging that maritime security required international and regional cooperation, Najib stressed that security-boosting measures "must not impinge on the territorial integrity and national sovereignty" of countries in the region.⁶⁷

⁶⁷ Agence France Presse, "Malaysia wants Malacca Strait Removed from Blacklist," *Acheh-Eye.com* (March 21, 2006); available from http://www.acheh-eye.org/a-eye_news_files/a-eye_news_english/news_item.asp?NewsID=3216; Internet; accessed; 22 March 2006, n.p.

Although there have been many bilateral and trilateral agreements for combined patrols between the three nations, they are uncommon and still do not allow hot pursuit in the others' territorial waters. This was clearly articulated in the policy statement made by the Malaysian Maritime Enforcement Co-ordination Centre: "Under no circumstances would we intrude into each other's territory. If we chase a ship and it runs into the other side, we let the authorities there handle it".⁶⁸ With the unsettled and conflicting claims over maritime borders, the fear of precedent setting and undermining of rights and claims by allowing another state to take enforcement action, hot pursuit will not be realised. The complex physical geometry of the existing states has resulted in multiple and overlapping claims over territorial and Exclusive Economic Zones which plays well for Pirates who can utilize these conflict areas to best advantage against each of the states to avoid capture.

Hot pursuit

Article 111

Right of hot pursuit

3. The right of hot pursuit ceases as soon as the ship pursued enters the territorial sea of its own State or of a third State.⁶⁹

As stipulated in the UNCLOS 1982 clause of Article 111, hot pursuit does not exist once a pirate has passed into another's territorial waters. In the Malacca Straits with its overlapping and confusing territorial water boundary situation, pirates are able to execute a successful escape from whichever country is pursuing them by simply

⁶⁸ Valencia, "Piracy and Terrorism In Southeast Asia,"..., 94

⁶⁹ United Nations International Maritime Organization, "United Nations Convention on the Law of the Sea of 10 December 1982," available from: http://www.un.org/depts/los/convention_agreements/texts/unclos/UNCLOS-TOC.htm; Internet; accessed 23 August 2005, n.p.

transiting into the other countries territorial waters. This problem has been known for decades and despite many bilateral and trilateral agreements between Singapore, Indonesia and Malaysia, the right of hot pursuit is still not allowed, or takes so long for the respective country to approve, that it becomes untenable. When combined patrols have been carried out with much fan fare, the participants spent as much time ensuring the other patrol vessels stayed within their waters as looking out for pirates.⁷⁰

Competition and lack of trust between nations continues to undermine the effectiveness of the patrols. Additionally, due to the lack of constant and consistent patrols, pirates are not hindered in carrying out their attacks. As Au Hok-lam, Hong Kong's regional marine police commander stated:

We may wonder why there are still gaps in the way we cooperate with each other, but it is these gaps that are ruthlessly exploited by the criminal underworld... We all know that professional rivalries and jealousies exist, but criminals do not care about national and regional jurisdiction or about the limitations that are imposed upon those fighting their activities. They have no problem cooperating with each other.⁷¹

The lack of critical agreements with respect to maritime boundaries coupled with a chequered past of conflicts with neighbouring states has made a united response to the piracy problem inconclusive. As long as piracy response is disjointed and flawed, pirates will continue to exist.

Additionally, there is real concern from outside nations disputing all claims in the area as a means to assure unhindered navigation. The US, for example, considers the

⁷⁰ Valencia, "Piracy and Terrorism In Southeast Asia," ..., 88

⁷¹ Jakarta Post, "Maritime guardians strive to plug holes in crackdown on pirates," The Jakarta Post.com (22 March 2006); available from <http://www.indonesia-ottawa.org/information/details.php?type=news&id=2313>; Internet; accessed; 23 March 2006, n.p.

Malacca Straits of ‘vital national security importance’ due to its strategic location to Naval deployment to the gulf:

Without these rights, it(the US Navy) would have had to have circumvented Australia to remain in international waters at all times, adding some 5,800 nautical miles and 15 days to the trip (assuming a speed of 15 knots). Additionally, restrictions on transit through Malacca would add millions of dollars to the cost of shipping between Australia and Japan. ...Nonetheless, it is vital to U.S. and global commerce that these sea lanes remain open with minimal state restrictions and interference.⁷²

Stipulation of minimising a state’s ability to ‘restrict and interfere’ with passage of foreign vessels through a state’s own territorial waters cannot help but be considered a challenge of that state’s sovereignty over those waters. With nations like the US and their policy of Freedom of Navigation program justifies littoral states paranoia over sovereignty:

Since 1979, U.S. military ships and aircraft have asserted navigational rights against **excessive claims** (emphasis added) of more than 35 countries, at the rate of 30 to 40 per year.⁷³

Additionally there are many who have also called for the Malacca Straits to be classified as an “international strait” and therefore would allow user nations to take a more proactive and hands on approach when threatened by piracy.⁷⁴ This is exactly the concern that the member states have for this area; if classified an international strait, they will lose sovereign and economic rights to littoral waters, which are essential to their well being. The US and Indian navies have conducted 24 joint escort missions escorting

⁷² Donna J. Nincic, “Sea Lane Security and U.S. Maritime Trade: Chokepoints as Scarce Resources,” in *Globalization and Maritime Power*, ed. Sam J. Tangredi, 143-171 U.S. Government Printing Office, Washington, D.C., Institute for National Strategic Studies Publications, December 2002; available from http://www.ndu.edu/inss/books/Books_2002/Globalization_and_Maritime_Power_Dec_02/09_ch08.htm; Internet; accessed 11 August 2005, n.p.

⁷³ Nincic, “Sea Lane Security and U.S. Maritime Trade:..., n.p.

⁷⁴ Ong, “Ships Can Be Dangerous, Too:..., 65

LNG and Oil vessels through the Malacca straits in the past as a show of force and deterrence to pirates.⁷⁵ These missions are viewed as a direct threat to the governess and sovereignty of the littoral states and a blatant attempt to impose US and Indian political will. As Indonesia's navy chief Admiral Bernard Kent Sondakh explained in an interview:

If Indonesia were seen as incapable of safeguarding its seas, there would be a pretext for foreign intervention, he said, citing the internationalisation of the Suez Canal issue in the mid-1950s.⁷⁶

One clause in UNCLOS 82 specifically obligates the littoral nation to maintain the security of the strait, whether it is determined to be EEZ or territorial waters.⁷⁷ In the event that a nation cannot meet its responsibilities, then that nation risks its recognised sovereignty and control over those waters to other nations. If a littoral state is not able or willing to ensure maritime security over their waters then it risks losing them. As a result, inability to ensure maritime security places increased pressure on low-resourced countries to do more but at the same time makes them less able to request or even accept foreign support. By accepting or requesting assistance, the littoral state is not able to meet its requirements and therefore undermines their sovereignty over their waters even though that is precisely why they are requesting aid...a quintessential dilemma.

By justifying littoral concerns over sovereignty in the region through calls for internationalisation, the utilisation of programs such as the Freedom of Navigation and military-like escort missions prevents the littoral nations from co-operating on an

⁷⁵ Valencia, "Piracy and Politics in Southeast Asia,"..., 114

⁷⁶ Agence France Presse, "Indonesian Navy Chief Sees Foreign Interests Behind Sea Piracy Accusations," *spacewar.com* (19 July 2004); available from <http://www.spacewar.com/2004/040719034435.25nox1i7.html>; Internet; accessed; 3 April 2006, n.p.

⁷⁷ Young, "Roots of Contemporary Maritime Piracy in Southeast Asia,"..., 22

international basis to resolve the piracy issue. While it can be argued that there is benefit from these activities in pressuring the nations to act, its negative effects in terms of working to a common goal makes the benefits untenable.

Unstable government

The populations in Southeast Asia are not homogeneous and are made up of a wide varying group of ethnic origins such as Chinese, European, Japanese, etc and indigenous populations. Religions are also diverse with the majority being Muslim but also Buddhism and Christianity are widely present depending on the country and area. With high poverty and unemployment, combined with traditional industries being undermined through over fishing and loss of arable soil, the situation becomes desperate exacerbating the human situation.⁷⁸ The lack of homogeneity and economic situation has promoted significant unrest in Malaysia and Indonesia, which has culminated into succession and overt guerrilla action in many countries with corresponding political unrest. Additionally, religious polarization in the Islamic Nations of Indonesia and Malaysia, coupled with poor economic performance, has made the area a popular target for terrorist cells.⁷⁹

Civil unrest and tentative holds on power has undermined the government's ability to draw on much needed support from western nations due to the possible negative blow back from the populations.⁸⁰ Heavy Muslim population centres make extracting support from western nations highly unpalatable as many see the war on terror as a possible anti-Muslim crusade. With western aid not available, the Southeast nations are

⁷⁸ UN Human Development Report 2005, "Human development indicators,"..., 227

⁷⁹ John S. Burnett, *Dangerous waters:*..., 286

⁸⁰ Valencia, "Piracy and Terrorism In Southeast Asia,"..., 88

forced to look to each other for mutual support, but cannot due to the deeply held suspicion and hostility to neighbouring Asian nations because of their chequered past of invasion, occupation and war. This inexorably leads to a roadblock leaving the individual nations no alternative but to fend for themselves.

Exacerbating the political situation and directly linked to the economic situation, a culture of corruption and non-interference or complacency with criminal organisations has developed throughout the government and security forces (with the possible exception of Singapore) due in part to them being 'grossly underpaid'.⁸¹ Augmentation of basic salaries through the spoils of illegal activities being carried out, including piracy, is a way of life for some law enforcement and regulatory agencies to the extreme that military supported militias have even been implicated in piracy attacks.⁸² It is self evident that corruption in government and enforcement agencies will encourage piracy continuation. An endemic and critical problem, corruption makes the capturing and successful prosecution of pirates difficult if not impossible.

Lack of prosecution coupled with the meagre sentences given out when conviction does occur, eliminates the deterrent effect for pirates to change their ways. Part of the issue which, unfortunately, can be successfully argued is whether piracy actually occurred due to the restrictive nature of the UNCLOS 82 definition as previously discussed. This would lead to doubt in the prosecution case that piracy actually transpired making conviction much more difficult. Additionally, legal jurisdiction in each case would be uncertain due to the overlapping territorial boundaries in which the pirates are operating. Depending on where they are captured will depend on which state

⁸¹ von Hoesslin, *The Implications of Illegal Maritime Activities for Canadian Security...*, n.p.

⁸² Chaikin, "Piracy in Asia: international Co-operation and Japan's Role,"..., 128

is responsible for taking legal action and under that state's laws and regulations. States are reluctant to prosecute crimes that were committed in another's waters and there exists conflicting regulations among the littoral nations which makes convictions even more difficult. Furthermore, the sentencing of pirates has not historically been severe in the 20th century, which does not have the desired effect that is required by law enforcement agencies to be an effective deterrent.⁸³ This lack of ability to prosecute would have an undermining effect on the morale of law enforcement agencies, which may be a factor in the rampant corruption which is reported in the area and also be a symptom of further corruption in the halls of justice. Lack of successful convictions and the awarding of minor penalties when convicted, undermine enforcement effectiveness and has no deterrent effect on those contemplating or continuing piracy.

One nation in particular has been able to significantly influence piracy prevention without posing a direct challenge to littoral nation sovereignty. Japan has taken a leadership role in the battle against piracy as a result of having had more than 140 ships attacked and as a means to ensure oil delivery critical to its economy remains unhindered.⁸⁴ Like the IMB-PRC, Japan has convened and chaired many international conferences on piracy and used its influence in international organisations like the Association of Southeast Asian Nations (ASEAN) to try to address the issue with all parties.⁸⁵ Although there is still mistrust (due to both Japan's history and occupation in the region plus Japan's insistence, like the US, in freedom of navigation in the area) by

⁸³ Ong, "Ships Can Be Dangerous, Too:...", 53

⁸⁴ Valencia, "Piracy and Politics in Southeast Asia,"..., 106

⁸⁵ *The Association of Southeast Asian Nations (ASEAN) is a political, economic, and cultural organisation of countries located in Southeast Asia. Formed on 8th August, 1967,* *En.Wikipedia.org*; "Association of Southeast Asian Nations," available from <http://en.wikipedia.org/wiki/ASEAN>; Internet; accessed; 22 September 2005, n.p.

many of the Southeast Asian nations about the initiatives, Japan has advanced further due to her use of Coast Guard vice Naval ships in pursuit of joint patrol and training opportunities.⁸⁶ Without the perceptions associated with Naval vessels being used in territorial waters, nations have been more willing to work together and accept training, technical and financial assistance. Japan has been able to foster relations with all three nations and has significantly advanced the agenda for pro-active measures over the past five years. With Singapore, Japan has carried out active patrolling and anti-piracy drills. In Indonesia, Japan provided technical and financial assistance for creation of an Indonesian Coast Guard (ICG) which opened the door for other nations (like the US) to provide vessels and financial assistance.⁸⁷ In Malaysia, Japan has also been a major player in creation of a Malaysian Coast Guard, modelled after the Japanese Coast Guard, with the consolidation of its 11 maritime law enforcement agencies.⁸⁸

Another major factor in Japan's ability to make inroads where other countries have been stalled or actively discouraged is through the philanthropic organisation of Japan's Nippon Foundation. The Nippon Foundation has been actively involved in strait safety and security for 35 years, having spent nearly \$230 million, it has continued its program with the recent donation of a training patrol vessel to Malaysia's newly formed coast guard.⁸⁹ Critical to its acceptance by littoral countries is the Foundation's donations ability to meet the nations principle that it is the littoral states' 'right and responsibility' to protect the straits with some assistance from countries like Japan.⁹⁰

⁸⁶ Valencia, "Piracy and Politics in Southeast Asia,"..., 109

⁸⁷ Chaikin, "Piracy in Asia: international Co-operation and Japan's Role,"..., 137

⁸⁸ Valencia, "Piracy and Politics in Southeast Asia,"..., 107

⁸⁹ Donald Urquhart, "Japan foundation gives M'sia training ship," *The Business Times*, 23 March 2006, n.p.

⁹⁰ Urquhart, "Japan foundation gives M'sia training ship,"..., n.p.

It is evident, through the use of non-aggressive elements of the coast guard (Japan's coast guard can only use force if the vessel being attacked is Japanese); Japan has been able to make positive progress in the fight against piracy.⁹¹ Those nations which insist on using military assets, such as the US and India, have not been as successful. While Singapore has been an ardent supporter to foreign naval ships patrolling in their waters, both Malaysia and Indonesia are adamantly opposed. Although Malaysia and Indonesia are willing to carry out exercises and training with foreign navies, they will not allow actual joint patrols for jurisdiction and sovereignty reasons.

Costs and who will pay

Another factor which must be considered is who is actually benefiting from the respective countries precious resources being spent to combat piracy? The vast majority of the 50,000 vessels transiting through are actually not benefiting the neighbouring countries in this region (Singapore as the notable exception as a major distribution hub for the region) and are just using the straits as the most cost effective and direct route between two destinations. Without direct benefit to the nation, and in comparison to the large costs associated with effective presence and control, it is little wonder that governments are reluctant to expend precious resources. As an alternative, governments have considered charging of tolls to offset patrol costs viewing the straits as no different than the Panama or Suez canals and therefore entitled to compensation for security which is also part of the costs charged to transit these canals. This position was supported by the recent announcement by the director of the Nippon Foundation:

⁹¹ Valencia, "Piracy and Politics in Southeast Asia,"..., 111

The high cost of maritime safety in high-risk areas should not be borne exclusively by the country or countries in the immediate area. Rather, we need to explore a new system by which users of the area share this expense...⁹²

With some shipping companies already expending up to \$100,000 US for armed escort, the potential for governments to be able to finance more extensive anti-piracy measures is definitely a possibility.⁹³ However, the requirement to have to charge for security implies the nation cannot properly finance and thus ensure maritime security. This raises the question of whether the littoral governments are able to meet their UNCLOS 82 responsibilities for security and thus poses, once again, a risk to their sovereignty. One methodology currently being pursued to address the cost issue is the recent organisation of littoral nations Joint Air Patrols to share costs and increase coverage over the straits.⁹⁴ It is too early to determine whether this initiative will be effective, but its performance will be directly proportional to how much time it can stay on station and what capability the air asset will be able to achieve. Of major importance will be whether it will be able to overcome the political and sovereignty issues which have been plaguing international co-operation in the region. Or will it degenerate into a token gesture similar to what has already been seen by the ineffective combined maritime patrols?

⁹² Mohamed Razlan Rashid Ali And Sakina Mohamed, "Melaka Strait Needs International Participation, Says Expert," *Malaysian National News Agency*, (21 March 2006); available from <http://www.bernama.com/bernama/v3/news.php?id=187159>; Internet; accessed; 23 March 2006, n.p.

⁹³ Karl Malakunas, "Armed Escorts In High Demand On Sea," *The Peninsula, Qatar's Leading English Daily* (May 2005) available from <http://www.thepeninsulaqatar.com/features/featuredetail.asp?file=mayfeatures102005.xml>; Internet; accessed 24 February 2006, n.p.

⁹⁴ AFP, "Malaysia wants Malacca Strait Removed from Blacklist," ..., n.p.

Terrorist connection

There is much in the press and literature on whether there exists or will exist a direct connection between piracy and marine terrorism. Arguments abound on what makes up a terrorist vice a pirate and how they are different, if at all. Graham Gerard Ong like many researchers argue that they are the same thing and it is just a matter of time.⁹⁵ Others, like Mark J. Valencia, argue however that there are some fundamental differences that preclude them from being classified in the same light.⁹⁶ The primary motivation for pirates is fiscal; like criminals everywhere, it is the economic reward weighted against the risk, which determines whether they will strike, or not. If the risk/security is too high, or the rewards not lucrative enough for the risk, no action will be taken. If the risk is low, or the pay off so appealing to not be ignored, the attack will go ahead. In view of this discrimination on whether an attack will be mounted or not speaks to some logic in what action will be undertaken. As a result, it seems highly unlikely therefore for pirates to get knowingly involved with terrorists at any price. Having witnessed the reaction within the airline industry following 9-11, it is obvious that to participate in a maritime terrorist attack, the pirates would expose their industry to a mighty clamp down of similar proportion which would effectively put them out of business for years and possibly forever. It follows therefore that not only would pirates not support maritime terrorists, it is likely that they would probably try to stop terrorist action if given the opportunity, not from a sense of civic duty, but in order to ensure they can continue to conduct maritime raiding:

⁹⁵ Ong, "Ships Can Be Dangerous, Too:...", 46.

⁹⁶ Valencia, "Piracy and Terrorism In Southeast Asia,"..., 84

Noel Choong, head of the IMB's Piracy Reporting Centre, agreed there was no evidence of pirate-terrorist links and said: 'The pirates are only looking for financial gains, as shown by recent pirate attacks.'⁹⁷

There is however some validity in the argument that pirates could be used in support of terrorist attacks especially if the terrorists ensured the pirates were not informed of the ultimate outcome of the action. Additionally, it could exist even now, that some of the higher end organised pirate attacks might be eventually supporting a terrorist action in some area of the world via the monies garnered through pirate attack. This situation of course would depend on who is ultimately running the pirate organisation and for what purpose. Human intelligence and organisation infiltration of these organised gangs is critical to determine this kind of detailed information. It must be stressed however, that the majority of criminal organisations view their way of life as a business and terrorism is simply bad for business.

That is not to say that Maritime Terrorism is not possible as was amply displayed in the March 2004 Abu Sayyaf bombing of a passenger ferry in the Philippines and the abortive Jemaah Islamiyah plot to attack US warships in Changi Naval Base in Singapore.⁹⁸ Terrorism in Southeast Asia is not a new phenomenon and has been ongoing for decades (Abu Sayyaf for example has been in existence since the 90's), it is the maritime portion which maybe developing more prominently.⁹⁹ However, "Unlike piracy in Southeast Asia, no substantive acts of maritime terrorism as an extension of

⁹⁷ AFX News Limited, "Malaysia urges Lloyd's to remove Malacca Strait from security threat list," Forbes.com (29 August 2005); available from <http://www.forbes.com/business/feeds/afx/2005/08/29/afx2194577.html>; Internet; accessed 24 March 2005, n.p.

⁹⁸ Elizabeth Speed and Frédéric Chartrand, "Regional Trends, East Asia and the Pacific," Department of National Defence Policy Group (August 2004); available from http://www.forces.gc.ca/admpol/eng/doc/strat_2004/3-4_e.htm; Internet; accessed 1 January 2006, n.p.

⁹⁹ Ong, "Ships Can Be Dangerous, Too:...", 49

terrorism itself have been carried out in the region to date.”¹⁰⁰ The US response to the possibility of Maritime Terrorism was the development of the Regional Maritime Security Initiative (RMSI) which basically called for international naval patrols and engagement wherever terrorist and other transnational threats were present. Admiral Thomas Fargo, US PACOM described the Southeast Asian area as a growing worry due to the “ungoverned littoral regions”.¹⁰¹ Although Singapore was quick to agree to the initiative, both Malaysia and Indonesia were equally quick to oppose it as a threat to their sovereignty, legitimised by the Admiral’s assertion that their littoral regions were ‘ungoverned’ and by implication, not under their sovereign control. Many countries are very leery on what the implications will be if pirates are classified as terrorists and see it as an open invitation for foreign navies to patrol indiscriminately in their territorial waters.

For the law enforcer, however, there rises a further complication: how do they know whether the attack currently responding too is simple piracy or actual terrorism? Do you respond differently? Should they respond differently? Singapore’s position is to treat them the same:

If there's a crime conducted at sea, sometimes we do not know whether it's pirates or terrorists who occupy the ship so we have to treat them all alike... So in other words if it's piracy we treat it just like terrorism because it is difficult to identify the culprits concerned unless you board the ship.¹⁰²

One would expect however that the actual identity of the culprits as pirates or terrorists would, in the normal scheme of things, dictate a different response, not the same response. In the event of piracy, it is a law enforcement issue with the level of

¹⁰⁰ Ong, “Ships Can Be Dangerous, Too:..., 50

¹⁰¹ Speed and Chartrand, “Regional Trends, East Asia and the Pacific,”..., n.p.

¹⁰² Ong, “Ships Can Be Dangerous, Too:..., 46

armament and training appropriate at that level. For a terrorist incident, the level of armament and speciality training required would be a magnitude up the scale and require an escalated response. The cost and resources expended to treat every case of piracy as a terrorist incident and to be able to respond timely to every case within your territorial and EEZ waters (6 million km² for Indonesia) would be astronomical and well beyond the reach of most Southeast Asian nations.

There are advantages, however, in convincing the international community that Maritime Terrorism and Piracy are the same thing. The Singapore response does have an advantage of only one organisation responding to all incidents, which eliminates duplication of maintaining a maritime piracy enforcement branch and a maritime terrorist branch. Savings in administration and infrastructure could be used to offset the cost of always providing the most aggressive response for every incident but it is unlikely to offset the entire cost. However, the major advantage to resource-restricted countries would be the ability to readily accept aid and support internationally without the challenge to governess and sovereignty of their littoral waters, but as backing in the global war on terrorism. Southeast Asian countries in dire need of monies to augment their naval/marine response units to the piracy problem would now be able to access the virtually unlimited resources of the US (in comparison to Indonesia for example) without losing face or undermining their sovereignty claims. The utilization of Global Terrorism as a means to obtain resources not available from a Piracy/Sovereignty perspective could be a favourable scenario in which all parties ultimately achieve the common goal that has been severely undermined over the years due to lack of firm territorial boundaries. Southeast Asian countries can co-ordinate and co-operate from a Global War On Terror

perspective, legitimately setting aside (without setting sovereignty challenging precedents) territorial issues in the pursuit of transnational criminals/terrorists. Additionally, this perspective would allow face saving access to equipment, monies and other resources without implication of 'lack of governess' and possible resulting sovereignty challenges. Pledges of support in various forms such as capacity building, grants and communications, have been made in the past from Japan, India, EU, China, Korea and US to name a few.¹⁰³ There are some indications that this is exactly the situation being exploited by Indonesia with the combined anti-Maritime terrorism exercise held with the US March 12 to 18 of this year, 2006¹⁰⁴ and the March 10 reported aid allocation of \$1.4 million to increase security in the straits.¹⁰⁵

¹⁰³ Bernama.com, "China, Korea Keen To Preserve Security In Malacca Strait," *Malaysian National News Agency* (22 March 2006); available from <http://www.bernama.com/bernama/v3/news.php?id=187419>; Internet; accessed 22 March 2006, n.p.

¹⁰⁴ English.people.com.cn, "Indonesia, U.S. navies conduct counter-terrorism exercise," *People's Daily Online* (15 March 2006); available from http://english.people.com.cn/200603/15/eng20060315_250582.html; Internet; accessed 16 March 2006, n.p.

¹⁰⁵ Smh.com.au; "Rumsfeld calls for new Indonesian ties," *The Sydney Morning Herald* (10 March 2006); available from <http://www.smh.com.au/news/World/Rumsfeld-calls-for-new-Indonesian-ties/2006/03/10/1141701678259.html>; Internet; accessed 11 March 2006, n.p.

CHAPTER THREE: COMBATING PIRACY

The shipping industry has invested in many options as a means to address piracy, which emphasises deterrence, both overtly and covertly, as their primary response. The creation of the IMB Piracy Reporting Centre (IMB-PRC) is the shipping industry's most important contribution to dealing with piracy whose very existence acts as an effective deterrent to piracy world-wide and especially in Southeast Asia where it is located. Much more than just a reporting centre when a distress call is received, it has also been instrumental in directing Coast Guard and Naval vessels to the last reported location of vessels under attack and has thus been effective in piracy intervention. It also has been prominent in assisting law enforcement agencies in the recovery of a number of hijacked vessels throughout the world through the use of confidential informants. Additionally, its weekly piracy reports provide detailed information to mariners where the latest attacks have occurred and what areas should be avoided. Through its continued weekly updates and annual report, it has provided necessary statistical information to allow ship owners, operators and governments to apply pressure and attention to piracy as a current maritime issue. Finally, it has been a champion for raising the profile of piracy throughout the world by arranging international conferences and releasing press reports about pirate attacks. The IMP-PRC is a major success story completely funded through non-government organisations, which ensures impartiality and independence from government influence and censoring.

Not all government intervention is negative however, as seen by the US lead initiative for the International Ship and Port facility Code (ISPS) which was accepted and distributed world-wide by the IMO. Part of the initiative includes the fitting of

Automated Identification System (AIS)¹⁰⁶ onboard ships as standard equipment which will be used to identify and track vessels. Although it is sold as a ‘deterrent’ to pirate attacks, it is highly unlikely that it will have any effect on opportunist pirates who do not hijack the entire vessel but spends as little time as possible onboard. It is feasible that it could be used for finding hijacked vessels once those tracking the vessel ashore realise that the vessel is not following its prearranged course. However, considering the amount of vessels that are going to be fitted, it is highly unlikely that any single ship track divergence will be detected so quickly that a pirate attack could be determined and intercepted. Additionally, it is much more likely that organised pirates will know of the existence and location of the devices and shut them off as soon as boarding thus hiding their movements from that point on. It would take constant monitoring of the vessel location to realise that the device has been disabled and, once again due to the volumes involved, highly unlikely in a short period of time. Although this system could be used to track a ‘lost’ vessel after a considerable time (assuming the system is not disabled), it will only assist in recovery of the vessel after the fact and not assist in the protection of the crew or cargo. Therefore, from a ‘deterrent’ perspective, it is difficult to contemplate what deterrence it is producing.

In a similar vein, SHIPLOC is also a relatively new product now available that when activated by ship’s crew, it will send an alert that it is under attack so that Coast Guard or Naval vessels can intercept and hopefully secure a rescue.¹⁰⁷ Because it is not

¹⁰⁶ Transport Canada, “Government of Canada Announces Up to \$172.5 Million in New Marine Security Projects,” . . . , n.p.

¹⁰⁷ P. Mukundan, “The Scourge of Piracy in Southeast Asia: Can Any Improvements be Expected in the Near Future?,” in *Piracy in Southeast Asia: status, issues and responses*, ed. Derek Johnson and Mark Valencia, 143-159 Singapore ISEAS Publications, 2005, 41

‘on’ all the time, and can be located in many different areas, this system is much more likely to be effective as its activation is entirely silent and alerts the shore establishment only in emergencies. Unless the pirates are aware that a system is fitted onboard, intervention and recovery of the vessel is much more likely to occur. The availability of Coast Guard or Navy assets and their location in relation to the scene of attack will be the determining factor on the speed of response and possibility of capturing the pirates. This was amply demonstrated during the Fourth International Meeting on Piracy and Phantom Ships held in Kuala Lumpur, Malaysia, in June 2001 in which the IMB PRC received for the first time a real-time alert via the SHIPLOC system of an ongoing hijacking on 19 June.¹⁰⁸ Since the vessel was in international waters when attacked, a waiting game ensued which lasted for several days until it entered a nation’s territorial waters. Even then, unfortunately, the lack of co-operation of the Indonesian Navy with the Malaysian authorities to intercept the hijacked vessel resulted in further delays. It would not be until June 27th that the Indonesian Navy finally captured the vessel, even though its exact position was being tracked continuously for eight days.¹⁰⁹ This episode highlights the importance for all nations to co-operate and provide timely response to pirate attacks and also emphasises the limitation of the system that timely response is not guaranteed.

Real-time positioning data of merchant vessels can be a valuable tool for shipping companies to better determine delays due to weather and increased accuracy of expected port arrival and cargo delivery times. For either of these systems, their effectiveness as a deterrent to piracy is questionable. It is more likely to be used as justification for pirates

¹⁰⁸ John S. Burnett, *Dangerous waters:...*, 274

¹⁰⁹ Mark Bruyneel, “Reports in 2001: April – June,” (12 July 2001), available from <http://home.wanadoo.nl/m.bruyneel/archive/modern/2k1repub.htm>; Internet; accessed 1 January 2006, n.p.

to torture the crew to determine where these devices are located onboard and then be deactivated, rather than allowed to be knowingly left on.

SECURE-SHIP is a much more visible and active deterrent to piracy and consists of fitting 9000-volt fences to parts of the ship most susceptible to pirate boarding.¹¹⁰ When tampered with, an alarm and lights go off ship-wide to alert the crew to an attack. It is a non-lethal system especially adapted to a marine environment; however, it cannot be used on volatile cargo vessels for obvious reasons. Although an excellent initiative in order to address the pirate threats, Insurance companies have ironically taken a different view and have raised rates on those vessels that employ such systems. The Insurance Company's logic being that if you need the system then you are travelling in higher risk areas of the world and therefore must pay a higher premium. Although there is some logic in the Insurance Company's thinking, this adversarial approach undermines the Shipping Company's pro-active attitude to deal with piracy and makes vessels more vulnerable to attack. Considering that the Insurance Companies will have to pay out when an attack occurs, it is baffling why Insurance Companies are not encouraging these types of devices to be fitted to protect their policies.

A more proactive and offensive initiative has been the development and employment of Private security forces to provide shipping companies their own security:

Firms that offer "armed riding crews" may place your vessel in extreme danger, and will in the least, likely cause the seizure of the vessel and arrest of the crew. There are no unilateral laws or international conventions that allow a vessel to employ armed personnel in a private capacity.¹¹¹

¹¹⁰ Mukundan, "The Scourge of Piracy in Southeast Asia: . . . , 41

¹¹¹ MaritimeSecurity.com, "Welcome to MaritimeSecurity.com™. The first web based maritime security, piracy, anti-terrorism information site," *Special Ops Associates Inc. Maritime Security Service* (14 July 2005); available <http://www.maritimesecurity.com>; Internet; accessed 26 February 2006, n.p.

A very lucrative and growth industry around the world has developed in the hiring of Private Security Forces to provide armed escort vessels and/or armed personnel onboard commercial vessels travelling through piracy prone waters. With the lack of resources of littoral states to provide constant deployment of maritime security forces, some maritime shipping companies (notable the greater profit companies such as oil and gas) have signed lucrative contracts for private security (up to \$15,000/day).¹¹² This has been the traditional response to piracy in the past and formed a basis for the creation of some navies like the Bombay Marine of the East Indies Company.¹¹³ Many littoral states are openly opposed due to the legal issues involved with the use of force and sovereignty implications of using Private Security Forces. Additionally the IMO also opposes arming ships to counter piracy in all its forms due to the risk of escalation:

Carriage of arms on board ships may encourage attackers to carry firearms thereby escalating an already dangerous situation, and any firearms on board may themselves become an attractive target for an attacker.¹¹⁴

Firearms carried for even self defence is not supported internationally and is illegal in many countries. Additionally, one needs to wonder about the proficiency of a merchant sailor to use a firearm and what training, if any, they would need to possess before becoming proficient. The mariner union of the UK, NUMAS, has been adamant in their rejection of crews becoming armed. As discussed previously, with crew already being used as human shields during a gun battle on a vessel of highly volatile cargo, the

¹¹² Liang, "Bravehearts Securing the Peace for Shipping," ..., 10

¹¹³ British Muslim Heritage, "The East India Company," *WWW.MASUD.CO.UK*; available from http://www.masud.co.uk/ISLAM/bmh/BMH-IRO-east_india_co.htm; Internet; accessed; 23 March 2006, n.p.

¹¹⁴ Malakunas, "Armed Escorts In High Demand On Sea," ..., n.p.

risks to the crew can quickly escalate out of control when arms are being used.¹¹⁵ This makes arming of vessels an untenable solution.

It is clear that shipping companies are placed in a difficult position; requiring safe passage through the straits in order to ensure profits but knowing from past experience that littoral states are not able to guarantee the safety of their ships, cargo or crew. Faced with having to do something, those with the most financial resources are hiring their own protection while others are paying out after the fact for release of their hijacked personnel. The remainder of the shipping companies without the necessary financial resources leaves their personnel, cargo and vessel to fate. Employment of private security forces or arming the crew does not contribute to reducing piracy but could provide an effective deterrent if visibly and obviously demonstrated, similar to having a security guard ashore. It will not contribute to solving the problem but will encourage pirates to strike at less defended vessels. As mentioned earlier, implementation of user fees would be a more advantageous utilisation of the monies spent and could be used to make a more secure and safe transit for all vessels and not just the select few who can afford it.

¹¹⁵ ICC IMB, *Piracy And Armed Robbery Against Ships Annual Report...*, 10

CONCLUSION

The detailed examination of piracy's background, and potential for disaster to maritime shipping, clearly demonstrated that piracy cannot be ignored and poses a serious risk to the area (and globally) from a human, economic and environmental perspective. Using standard industrial risk analysis, even with a medium or low probability, the catastrophic consequences of not taking action is unquestionably not acceptable and requires active intervention and resources. It is clear that piracy is a convoluted and difficult problem for Southeast Asia and any solutions must address all the factors, which are promoting or maintaining piracy as a viable option: factors such as culture, political insecurity and economics continues to promote piracy as a legitimate and viable option for desperate and opportunistic individuals. Lack of resources and an unstable government further exacerbates the pirate problem and manifests in corruption and an ineffective legal system. Sovereignty concerns and the internationalisation of the Malacca Strait encourages littoral nations to be hyper-sensitive and undermines the necessary co-operation and co-ordination both nationally and internationally to address this trans-national crime. Combating piracy has been discussed however it does not address the root issues and will not contribute to the elimination of piracy in the long-term. More needs to be done if piracy is to be attacked effectively and this can only occur by attacking piracy at its very foundation.

As previously discussed, economics is a major underlying cause for piracy proliferation. Emphasis on providing an acceptable economic alternative to the cycle of poverty would allow the opportunist pirates to have meaningful employment and thus not have to, or want to, commit piracy. Economic reform is a long-term commitment

requiring much foresight and planning for it to be effective and enduring. It is fully appreciated that this will not eliminate the problem of piracy, as there will always be people who seek an easier way, but it would eradicate most of the opportunist pirates whom operate without long-term commitment.

Additionally, economic recovery will create the necessary resource base required for enforcement agencies to be funded to the needed level essential to combat piracy. New equipment, training, recruitment, on scene presence and timely intervention are only possible if government resources are allocated in sufficient quantities, which can only be achieved in a robust economy. Additionally, with the augmentation to basic pay of government and enforcement personnel, endemic corruption can be tackled, shoring up government and societal infrastructure essential for a stable government.

Hand in hand with economic recovery is the need for a legitimate and stable government. Without law and order, chaos will remain rampant and crime in all its many forms will continue to flourish. Corruption within the government and its many arms is also undermining acceptance and pride in the government structures which prevents the population from coming together as a people to deal with the many pressing issues of which piracy is just one. Additionally, separatist and guerrilla action further draws away precious resources and undermines government legitimacy. Elimination and settlement of separatist and guerrilla movements is a critical milestone for achieving government stability and legitimacy.

A legitimate and stable government is absolutely required for the society to develop a national identity and the social norms of law and order. Cultural amalgamation and assimilation must be a consideration in addressing the tradition of piracy within some

areas. The people must come to accept and be welcome as contributors to the nation state; what it stands for and holds up as ideals. By linking this political and personal mindset with economic reform, movement away from the acceptance of piracy as an acceptable alternative would slowly develop and become a thing of the past. Recent reports in newspapers reflect possible progress, as quoted in Asia Pacific News there is some optimism developing:

"The people of Indonesia seem to be coming together around religious tolerance, ethnic diversity and democracy. And so it's a place that is making real strides forward and I'm looking forward to the trip there."¹¹⁶

As Adam Young points out in his article "Roots of Maritime Piracy in Southeast Asia": "Economic development would also progressively incorporate maritime populations into the state, and give them a stake in maintaining legitimate power structures."¹¹⁷ Incorporation of these people into the state would have two benefits, addressing the cultural identity issue as well as the economic issue. By having them develop a stake in the legitimate society through employment in an honest job, they will also change mindsets on what piracy is about and its legitimacy and validity as an occupation. There are some positive indicators that long-term improvements are being implemented with the recent US commitment of US\$150 million in education grants to almost 1,000 Indonesian schools over the next five years to increase educational and

¹¹⁶Agence France Presse, "Counter-terrorism tops agenda as Rice visits 'success story' Indonesia," *MediaCorp News* (14 March 2006); available from http://www.channelnewsasia.com/stories/afp_asiapacific/view/197715/1/.html; Internet; accessed; 17 March 2006, n.p.

¹¹⁷ Young, "Roots of Contemporary Maritime Piracy in Southeast Asia,"..., 26

cultural exchange.¹¹⁸ This could be the first critical step in long-term eradication of opportunist pirates.

Within Southeast Asia, combating piracy goes beyond a law enforcement issue and into cultural, economic and political dimensions. Attempts to combat piracy are not merely the job and responsibility of the government but of all members of the society as well, requiring the population and government to work together. Removal of the glorification associated with piracy and its support infrastructure will greatly advance progress on eliminating the problem. Economic viability and legitimate alternative employment will address a root cause for piracy continuance. Endemic corruption will be reduced and possibly eliminated with increased salaries for government and enforcement personnel trying to make ends meet. Political stability and legitimacy (in the eyes of the population) will foster a national will, which could be used to address the piracy problem in all its forms.

A further critical and essential response that must be put into place for effective enforcement is for littoral nations to allow the carrying out of hot pursuit into any countries territorial waters in the pursuit of pirates. One solution to resolve the controversy preventing this from occurring would be to create a trilateral consent agreement with one officer from each country onboard each patrol vessel to liaise with the respective governments in the event that hot pursuit is required and ensure sovereignty is not compromised. Multi-country crewing would ensure that each government retains

¹¹⁸ Sujadi Siswo, "US pleased with Indonesia's cooperation in combating terrorism," *MediaCorp News* (14 March 2006); available from <http://www.channelnewsasia.com/stories/southeastasia/view/197759/1/.html>; Internet; accessed; 17 March 2006, n.p.

control within their sovereign waters and eliminates the pirates' ability to avoid capture simply by crossing into another territorial waters. Streamlined and timely approval from ashore is essential to ensure continuity of pursuit. Assigned or pooled vessels from each of the littoral countries strategically positioned for maximum effect and presence in the straits is also required. Although the resource demand on littoral countries could be greatly reduced if a wider international approach was taken, this has been repeatedly thwarted in the past due to sovereignty hypersensitivity. An excellent initiative was tabled to support just such action, for the mutual benefit of all, through the creation of ASEAN patrols which would be utilised within the straits and provide a significant and co-ordinated deterrent and response program. Although many ASEAN members supported the idea, once again the issue of sovereignty and governance prevented full acceptance due to the spectre that this incentive would be used as a blatant attempt to once again 'internationalise' the straits to the detriment of the littoral states.¹¹⁹ Since ASEAN, like the UN, is consensus driven the initiative was defeated even though ASEAN has as a foundation, respect for member country's sovereignty, territorial integrity and domestic laws, which should have eliminated the sovereignty challenge.

Critical to enforcement therefore is the resolution of maritime boundaries. The on-scene pursuit vessel's confusion or even confrontation on whose authority is necessary would be completely disrupting and prevent any kind of continuous pursuit. Establishment and finalisation of the regions maritime boundaries is a critical step in eliminating piracy and the underlining constant sovereignty worries of the major nations, which has prevented them from co-operating fully. UNCLOS 1982 provides a resolution mechanism through one of four bodies to bring to a close these types of issues; they are

¹¹⁹ Valencia, "Piracy and Terrorism In Southeast Asia,"..., 87

the International Tribunal of the Law of the Sea, the International Court of Justice, an arbitral or special tribunal.¹²⁰ Any of which could be used to resolve the ongoing boundary problem. Southeast Asian nations should be encouraged to take their case to the International tribunal for resolution.

An all Southeast Asian operations centre needs to be developed and implemented with a comprehensive mandate and control of any country assets in a time of emergency to be able to respond effectively and timely. In order to provide the level of intelligence necessary in order to control the response, a combined maritime picture needs to be created from all available intelligence sources and fused into a Recognised Maritime Picture. To achieve this level of co-operation and authority, border solidification will be essential to allow the member nations to work together and no longer be trapped into stalemate due to sovereignty concerns. Regional and International support to the less robust nations will allow them to have the assets necessary to provide on scene presence and deterrence:

For the Malacca Strait, the three Strait states and the principal users could enter an agreement under Article 43 of the 1982 UNCLOS to co-operate by securing the obligation of Strait states to suppress and prevent piracy and terrorist attacks on vessels in the Strait and the obligation of user states to provide the Strait states with the technology, equipment, and training to do so.¹²¹

Additional enforcement issues abound with Southeast Asian countries having conflicting enforcement regulations, which need to be explicitly understood by enforcement officers or preferably de-conflicted through negotiations among the countries.¹²² The difficulty as previously explained with the UNCLOS 1982 definition of

¹²⁰ UN IMO, "United Nations Convention on the Law of the Sea of 10 December 1982," ..., n.p.

¹²¹ Valencia, "Piracy and Terrorism In Southeast Asia," ..., 96

¹²² Djaiai, "Combating Piracy...", 156

piracy and the entrenched restrictions/limitations it places on member states, is the only international law which has been signed by all parties. Application of UNCLOS 1982 has raised problems in convicting pirates in various countries and more widespread and common definition such as the Suppression of Unlawful Acts (SUA) 1988 would resolve these problems. Unfortunately, only Singapore is a signatory at this time due, once again, to sovereignty concerns.¹²³

As stipulated earlier, economic recovery and job availability is the key to Opportunist Pirates and when combined with visible deterrence patrols, will substantially reduce and possibly eliminate this portion of the problem. However, for the Organised Pirate, economic recovery will have little impact. These pirates, like the Mafia, are carrying out piracy as a way of life and would not be interested in alternative honest work no matter how appealing. As long as lucrative returns can be made, they will not be deterred; thus, other means must be sought.

If any success in capturing organised pirates is to occur, human intelligence through paid informers or undercover operatives is required in the same manner which is used to attack organised crime ashore. Identification of whom and how attacks are being carried out, where their bases of support are located, when and where they will attack next and who is ultimately in control of the organisation can only be determined through this methodology. Responding to each attack without going to the source will ultimately leave the initiative to the pirates and will allow it to continue when and how the pirates see fit. Only by attacking the problem at the source can the attacks be stopped.

Simultaneous infiltration plus a crack down on shore support (base of operations, fencing, black market, etc) will be the only way to achieve the desired results. As long as

¹²³ UN IMO, "Status of Conventions by Country," ..., n.p.

there is a ready market for the pirates to sell their goods, there will always be encouragement for piracy to continue. Additionally, pursuit of the organisation as a complete entity is the only way in which elimination can be achieved. Removal of only a few practitioners, and not the organisers, will not noticeably affect piracy continuation. Incarcerating of the top leaders however will reach to the core of the organisation and have a domino effect throughout the layers of operatives effectively eliminating the organisation. Effective law enforcement both ashore and at sea are necessary in order to address this problem combined with effective intelligence gathering and assimilation.

An integrated and co-operative enforcement approach is needed among all the littoral nations in order to respond effectively and timely to piracy attacks. Until maritime boundaries and sovereign issues can be finalised, this level of mutual co-operation will forever be just out of reach. The assistance by outside nations to recognise the sovereignty of the littoral states would overcome the suspicion and distrust littoral states have in accepting outside aid and would open them up to greater co-operation to solve the piracy problem. Calls for internationalising the straits and use of naval vessels to force right of passage will only reinforce the littoral countries' suspicions that their sovereignty is being challenged and make them less willing to work in collaboration.

It is apparent that the majority of the countries involved do not have the capacity or resources to provide the on sea presence necessary to deal with the piracy problem but at the same time do not have the resource/economic base to enhance their capability. Simultaneously, they are prohibited from drawing on outside nations for support (whether financial or naval/coast guard patrols) in the fear that it will be used to challenge their sovereignty. It is also apparent that their concern over sovereignty is not misplaced,

without reign over their EEZ they will not be able to ensure resources critical to their very survival (fishing remains a mainstay for much of the population) are governed to protect their people. Additionally, the possible future benefits of undersea mining for oil and gas must be maintained to ensure a remote possibility for economic recovery in the future. With the need for sovereignty definitely understood, the call by nations to 'internationalise' the straits and the aggressive posturing of other naval vessels to support 'right of passage' legitimately gives the littoral nations justifiable cause for concern. Utilisation of the Global Terrorism threat should be encouraged by those littoral states needing resources which cannot be accessed any other way without threatening their sovereignty.

Piracy in its many forms will always exist to some extent. The realistic goal therefore is to bring it back under control such that it once again becomes a rare occurrence.

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