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Abstract

[extract] There is nothing new about maritime crime in Southeast Asia. It has a long history, and the maritime criminals of today are mainly descendants of the marauders, pirates, and bandits of yesteryear. However, changes to the extent and nature of maritime crime have occurred over the years. The decline in fish stocks and loss of access to traditional fishing grounds, along with general economic problems, have led to unemployment and loss of income in coastal villages throughout the region. This has, in turn, forced some villagers to turn to piracy, sea robbery, and other forms of maritime crime. However, these villagers are often just "foot soldiers" organized by opportunistic businessmen or criminal gangs.

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Confronting Maritime Crime in Southeast Asian Waters:

Re-examining 'Piracy' in the 21st Century

Sam Bateman[*]

There is nothing new about maritime crime in Southeast Asia. It has a long history and the maritime criminals of today are mainly descendants of the marauders, pirates, and bandits of yesteryear. However, changes to the extent and nature of maritime crime have occurred over the years. The decline in fish stocks and loss of access to traditional fishing grounds, along with general economic problems, has led to unemployment and loss of income in coastal villages throughout the region. This has, in turn, forced some villagers to turn to piracy, sea robbery, and other forms of maritime crime. However, these villagers are often just the "foot soldiers" organized by opportunistic businessmen or criminal gangs.

Most criminal groups—including so-called pirates—engage in several different types of criminal activity. There is no strict demarcation between people involved in piracy and those involved in other forms of maritime crime. Many are non-professional criminals, such as fishermen and traditional barter traders, engaged in low-level crime, making money by, for example,

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smuggling cigarettes from Indonesia to Malaysia to avoid paying excise taxes. The networks involved are not large, and tend to be family or village oriented. Smuggling has been going on for generations and continues to the present day, especially where people on both sides of modern borders share the same ethnicity and family ties.

Transnational organized crime has also increased across Southeast Asia. Processes of globalization, convenient international travel, information processing, electronic transfers of funds, and ready access to secure communications have facilitated transnational crime just as much in Southeast Asia as they have elsewhere in the world. Due to the archipelagic geography of the region and the difficulties of policing sea routes and maritime borders, the sea is the main medium for the illegal movement of people and goods. Hence, organized crime in Southeast Asia invariably has a significant maritime dimension.

"Legitimacy" for maritime crime is sometimes provided by political or religious causes, as well as by the developments in globalization that might facilitate transnational collusion between different radical groups and separatist movements. What might have been purely local causes in the past can now more readily take on a global dimension. In many instance also, colonial lines of demarcation cut across traditional family and ethnic groupings, and much of today's illegal activity at sea, particularly smuggling

and illegal people movement, is only "illegal" by virtue of contemporary, rather than traditional, border controls and trade regulations.

Recent concerns with maritime crime in Southeast Asia has been with piracy and armed robbery against ships. Such activities have provoked international interest as they are assessed as threats to the free movement of shipping and seaborne trade. They have also led to speculation that because piracy and sea robbery occur in the region, there could be a higher risk of maritime terrorist attack. However, there are few grounds to conflate piracy and maritime terrorism.[1] With hindsight also, it may be argued that the risks posed by piracy and sea robbery to international shipping in the region have been exaggerated.

The focus on measures to reduce risks of piracy and sea robbery in the region has served to distort the picture with maritime crime more generally. It ignores the links between different kinds of maritime crime and that the perpetrators of different criminal activities at sea are often one and the same. It has also led to a concentration on patrolling at sea, which at best is a deterrent measure, rather than on policing activities onshore. This chapter examines the "bigger picture" by examining all forms of maritime crime in Southeast Asia, rather than just focusing on piracy and sea robbery, and suggests some possible actions to deal with the entire range of maritime crime.

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[1] Adam Young and Mark J. Valencia, "Conflation of Piracy and Terrorism in Southeast Asia: Rectitude and Utility," *Contemporary Southeast Asia,* Vol.25, No.2, August 2003, 269-283.

Maritime Crime in Southeast Asia

People in the coastal villages of Sumatra, Java, Malaysia, the Riau Islands, and the Sulu Archipelago have a tradition of what is regarded by modern standards as maritime criminality. They have long been involved in piracy, smuggling, piracy, and trafficking in commodities and people. International borders in these areas were unknown in the past, although there would have been long-standing recognition of where the limits of traditional lands, waters or rights existed.

The practice of smuggling, trafficking, and seeking employment away from home areas has not stopped, merely because colonial and post-colonial administrations have established national borders. In addition, in many areas, the people on both sides of a modern border—for example, between Sumatra and peninsula Malaysia, or between Sabah and the southern Philippines—may be closely related, speak the same language, and have far more in common with each other than the administration in their faraway national capitals.

There is still a tradition of unregulated cross-border movement by local people wherever border demarcation is uncertain and the means of enforcing it are weak. For example, a family group wishing to visit relatives across the sea may not bother about the formality of border controls, and understandably may take "gifts" along with them. Much of this activity is

relatively harmless but it can assume more dangerous proportions, particularly when drugs or arms are involved.

Smuggling and the movement of people both have a long history in Southeast Asia. It is frequently regarded as an extension of the historic trading arrangements between neighbours that is still conducted through the barter trading system. It is particularly prevalent in the Sulu Sea area and the Malacca Strait. Effective bilateral or trilateral cooperation in the area appears limited. There are difficulties in intercepting and arresting people engaged in smuggling and illegal border crossings.

Smuggling in the Sulu Sea area has been increasing rapidly, particularly from the Philippine side. It involves cigarettes, illegal immigrants, sex trafficking, and other valuable commodities, including drugs. There is also widespread smuggling of subsidized diesoline and kerosene from Malaysia to Indonesia, particularly through Penang.[2] Other smuggled goods include alcohol and motorcycles. Traditional fishermen might undertake the smuggling, but the real masterminds are located on shore and keep themselves at "arms length" from the illegal activity.

Illegal people movement in the region may be either short-term for family reunions or other social visits, or long-term mainly to seek work. Malaysia is particularly concerned about illegal migration by sea across the

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[2] Diesel is a very profitable commodity to smuggle from Malaysia to Indonesia. At this stage, due to subsidies, diesel in Malaysia costs about 1/8 that in Indonesia. As a result, there is a healthy diesel smuggling operation from peninsula Malaysia to Sumatra. Malaysian-based Taiwanese fishing boats and Malaysian fishing vessels are believed also to refuel other fishing vessels at sea.

Malacca Strait from Indonesia or down the Strait from Thailand, Myanmar, or Bangladesh.[3] With strong and long-standing traditional family links across the Malacca Strait and the Sulu Sea, people moving across colonial boundaries do not regard themselves as illegal immigrants. There is much traditional movement of people by sea between southern Philippines and Sabah, as well as the movement of people between Sumatra, Malaysia, and southern Thailand. These movements may be exploited both by criminal and terrorist groups.

Registration of aliens is a significant problem in the Philippines, where there are many Indonesians, particularly in islands around Mindanao. There are known links between these people and smuggling and terrorist activities. The Philippines also has illegal immigrants from China and India who may be involved in the sale of smuggled goods, financial crimes, and other forms of criminal activity. All types of smuggling in the Philippines are inter-related. Cross border regulation (including the regulation of ferry traffic), particularly in the Sulu Sea region, is weak. People move illegally into the Philippines from East Kalimintan through Sandakan and the Sulu archipelago to Zamboanga and elsewhere in Mindanao; and from Manado in North Sulawesi through the Greater Sunda Islands to General Santos and Cotabato in Mindanao.

Drug and Arms Trafficking

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[3] Sumathy Permal, "Trafficking in the Strait of Malacca," *Maritime Studies 156,* September/October 2007, 6.

Trafficking in drugs by sea remains a major source of income for many transnational organized criminal groups. Myanmar remains the major source country for opiates—principally heroin—in Southeast Asia, but small amounts are also produced in Laos.[4] Cannabis is trafficked in the region, especially to Malaysia. Sometimes this has involved land routes, but more frequently it has involved transfers at sea, or simply floating the product ashore. Cannabis is also widely smuggled in the Philippines. The New Peoples' Army (NPA) is active in cultivating cannabis, especially in the northern Philippines.

There is an increasing problem in the region with the manufacture and trafficking in methamphetamines ("ice") and other amphetamine type stimulants (ATS) from Myanmar and other Asia-Pacific countries, including China, India, and North Korea. "Ice" has replaced heroin as the most lethal drug in the region, and its manufacture and use is increasing. *Shabu* (crystalline methamphetamine hydrochloride or *ice*) is the major drug of choice in the Philippines, with drug factories in the central Philippines, mainly resourced from China or Taiwan. This is a worrying trend because the physiological impact of "ice" is far more serious than that of heroin, cocaine, cannabis, ecstasy, or other ATS. Ephedrine and pseudoephedrine, which are

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[4] Some 90% of the world's opium production is grown in Afghanistan, mainly in Helmand Province. However, most of this product, in the form of heroin, is trafficked through Iran, the Caucuses, Central Asia and the Middle East into Russia and Europe. It appears that very little Afghan heroin is trafficked into Southeast Asia and beyond.

major precursor chemicals for the manufacture of methamphetamines and other ATS, are manufactured in China and India, and moved mostly by sea.

Small arms trafficking in Southeast Asia is "an integral part of broader transnational crime that includes terrorism, drug trafficking, money laundering, piracy and human trafficking."[5] Small arms are widely available in the region and trafficking by sea is the preferred means of movement. Past conflicts in Indochina have provided a major source of small arms and light weapons. Thefts of weapons from military bases and police stations are common, particularly in Indonesia and the Philippines, and small arms are also manufactured both legally and illegally in the region, particularly again in the Philippines.

Due to Thailand's geographical characteristics, its role in the Cambodian conflict, and its relatively open society, Thailand is "an ideal point of origin and transit in the trafficking of small arms."[6] Because of the troubles in Aceh, the GAM was a major recipient of small arms and light weapons smuggled across the Malacca Strait from Thailand. Arms have also flowed to the Tamil Tigers (LTTE) in Sri Lanka through southern Thailand.[7] A former Indonesian military officer was arrested in the United States in 2006 in

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[5] Rizal Sukma, "The Problem of Small Arms in Southeast Asia: An Overview," in Philipe Jusario Vermonte (ed), *Small is (not) beautiful: The problem of small arms in Southeast Asia,* Jakarta: Centre for Strategic and International Studies, 2004, 9.
[6] Thitinan Pongsudhirak, "Small Arms Trafficking in Southeast Asia: A Perspective from Thailand," in Vermonte, *Small is (not) beautiful*, 60.
[7] Ibid., 67-68

connection with arms smuggling to the LTTE in Sri Lanka.[8] Sri Lanka remains concerned about Indonesia being a conduit for the smuggling of firearms from Southern Thailand to the LTTE.

The Philippines has plenty of weapons available. These include domestically produced small arms and weapons stolen or "sold" from the Armed Forces of the Philippines (AFP). The domestic arms manufacturing industry produces weapons both legally and illegally, with some illegal exports to criminal groups in Japan and Korea. The trade is managed by criminal syndicates and is largely carried by sea in containers rather than by small boat. A common route for terrorists, firearms, and explosives coming into Indonesia from the Philippines, through Sabah, is via Palu in Central Sulawesi, and then to Surabaya in Java (probably by boat) or onwards to Jakarta or other destinations in Indonesia.

The proliferation of small arms and light weapons is a major factor underpinning the incidence of maritime crime in Southeast Asia. Illegal trafficking occurs across the Malacca Strait and the Andaman Sea from southern Thailand into Aceh, Bangladesh, India, and Sri Lanka, and is also prevalent into and out of the Philippines. Measures to control trafficking in small arms might assist in reducing the levels of violence used in acts of piracy and sea robbery. Given the proliferation of small arms and light

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[8] Brian White, "Six indicted in arms brokering for Tamil Tigers and Indonesia," *Associated Press,* 29 September 2006.

weapons in Southeast Asia, it is not surprising to find that pirates and armed robbers are making greater use of them.[9]

The Threat of Illegal Fishing

Illegal, unregulated, and unreported (IUU) fishing has become a serious problem in the region, especially for Indonesia. With the depleted fish stocks in the region, many coastal villagers have lost their basic means of livelihood, and are tempted into illegal activity. With the devolution of powers to regional governments in Indonesia, there is less central oversight of fisheries enforcement.[10]

The fishing industry in Malaysia is more sophisticated than that in Indonesia. As the fish stocks in the area are seriously depleted, Malaysian fishermen are tempted to cross into Indonesian claimed waters to exploit the fish stocks there, using their larger vessels and more sophisticated techniques. This exposes them to harassment, extortion, and arrest by Indonesian law enforcement officials who may be acting corruptly, as well as engaging in some "bush justice." The experience of the Hutan Melintang fishing community suggests that the rate of these predations with the robbery and

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[9] Sam Bateman, Catherine Zara Raymond, Joshua Ho, *Safety and Security in the Malacca and Singapore Straits—An Agenda for Action*. (Singapore: Institute of Defence and Strategic Studies, May 2006), 25-26.

[10] Dirhamsyah, "Maritime Law Enforcement and Compliance in Indonesia: Problems and Recommendations," *Maritime Studies 144,* September/October 2005, 9.

informal detentions of Malaysian fishermen and fishing vessels by Indonesian law enforcement personnel has not declined.[11]

Illegal activity could involve the village or district *tauke* (towkay) system. *Tauke* is a Chinese (Hokkien dialect) word for "boss" or "business proprietor." Within each kampong, there is a recognized business leader, and the *taukes* manage the local fishing and other production sharing systems in Malaysia, Indonesia, and elsewhere in Southeast Asia, including in Aceh and the Riau Islands. *Taukes* are invariably of Chinese ethnicity, reflecting the long involvement of ethnic Chinese in managing fishing activities in the Malacca Strait.[12] They are usually the masterminds behind smuggling and other illegal maritime operations, even while they use the local villagers as "foot soldiers," thus keeping themselves at "arms length" from the illegal activity.

While the *tauke* is not necessarily the headman of the kampong, he effectively controls the "business" activities undertaken in the kampong. Some—but certainly not all—*taukes* have criminal associations, and they become the link through which more sophisticated organized crime might operate in, for example, people smuggling, cigarette or diesel smuggling, illegal fishing or piracy. It is very difficult to counter the criminal role of the *tauke* because they have a very powerful position in the kampong and act as

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[11] J.N. Mak, "Pirates, Renegades, and Fishermen: Reassessing the Dynamics of Maritime Piracy in the Malacca Straits," Paper presented at the Royal Australian Navy Sea Power Conference 2008, Sydney, 29-31 January 2008, 17.

[12] John G. Butcher, *The Closing of the Frontier – A History of the Marine Fisheries of Southeast Asia c. 1850-2000*, (Singapore: Institute of Southeast Asian Studies, 2004), 80-83.

the link between the poor and the wealthy, the fishermen and the businessmen, and possibly, the criminals and the military.

Piracy and Armed Robbery at Sea

Although many types of maritime crime may be increasing, including smuggling of goods and people, piracy and armed robbery against ships in Southeast Asia has actually gone down significantly in recent years. For example, the "phantom ship" phenomenon, when a ship is hijacked and subsequently given a false identity and documentation prior to being sold or used for further trading, has been largely solved with the introduction of ship identification numbers (SINs) and continuous synoptic records (CSRs) by the International Maritime Organization (IMO). Because of these international reforms, it has become much more difficult to give a ship a false identity.

As mentioned above, the number of reported piracy attacks in the region has trended steadily downwards from 2004 to the present. Table 1 shows the number of attacks (actual and attempted) in Southeast Asia for each year from 2000 to 2007. The large number of attacks in 2000, particularly in the Malacca Strait, may be attributed to two main factors. First, it may have been a consequence of the economic downturn of the late 1990s with more people turning to sea robbery for income, and secondly, several high profile

pirate attacks in the late 1990s might have drawn increased attention to piracy,

and this may have led to some increased reporting of incidents.

Table 1
Piracy in Southeast Asia – Actual and Attempted Attacks
2000-2007

Location	2000	2001	2002	2003	2004	2005	2006	2007	Total
Cambodia/Vietnam	6	8	12	15	4	10	3	5	63
Indonesia	119	91	103	121	94	79	50	43	700
Malacca Strait	75	17	18	28	38	12	11	7	206
Malaysia	21	19	14	5	9	3	10	9	90
Philippines	9	8	10	12	4	0	6	6	55
Singapore Strait	5	7	5	2	8	7	5	3	42
Thailand	8	8	5	2	4	1	1	2	31
Myanmar/Burma	5	3	0	0	1	0	0	0	9
South China Sea	9	4	0	2	8	6	1	3	33
TOTAL	257	165	167	187	170	118	87	78	1229

Source: IMB, *Piracy and Armed Robbery against Ships – Annual Reports,*
Table 1

Reservations should be noted about the statistics from the International

Maritime Bureau (IMB). On the one hand, there could be some under-

reporting of attacks. Both the IMB and the International Maritime

Organization (IMO) have noted the reluctance by some shipmasters and ship

owners to report incidents due to concerns that any investigation might disrupt

the ship's schedule, and insurance premiums might increase. Under-reporting

may also occur because attacks on local craft, such as fishing boats, barges

and small barter vessels may not be reported to the IMB.[13] This under-

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[13] Mak, 4.

reporting might, for example, partly explain the lack of reported attacks in the Philippines in 2005, as shown in Table 1.

On the other hand, over-reporting is also possible. Many incidents constitute either unsuccessful attempts to board or petty theft—of small items such as paint, mooring ropes, or outboard motors—from vessels in port or at anchor. These may previously have gone unreported, but are now reported due to the publicity given to this form of maritime crime and greater awareness of the reporting channels available. The IMB statistics may also be inflated by the propensity of ships to report any close approach by a small craft as an "attempted attack," and by the lack of follow-up by the IMB to determine whether an attack was in fact an actual attack.[14]

There are several reasons for the improved situation. National and regional responses, including increased patrolling and surveillance, have been important, although operations at sea mainly have a deterrent effect and few pirates or sea robbers are actually caught at sea. Tighter government control and local policing onshore are other factors that have contributed to the improved situation, as well as greater awareness generally in the shipping industry of the importance of security, following the introduction of the

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[14] According to the IMB, the feeder container ship *Sinar Merak* was attacked on 22 January 2007 in the Malacca Strait after leaving Belawan for Singapore. However, subsequent investigations by Singapore security agencies revealed that the two persons found onboard the *Sinar Merak* were actually innocent Indonesian fishermen who were survivors of a small craft that was run down by the container ship manoeuvring aggressively to avoid a suspected attack. Nevertheless, the IMB continues to show this incident as an actual attack in the Malacca Strait. ReCAAP Information Sharing Centre, *Report for January 2007,* Singapore, 11.

International Ship and Port Facility Security (ISPS) Code adopted by the IMO in 2002.

The vast majority of attacks in the region are on vessels at anchor, in port or entering or leaving a harbor. For example, of the 78 actual and attempted attacks in 2007, 52 were on vessels that were not at sea. These attacks are usually of a minor nature and are best countered by more effective policing by port authorities, including active patrolling of ports and anchorages. Some international involvement through assistance with building the capacity of local authorities may be useful.

Most high value seaborne trade in Southeast Asia is carried in larger vessels transiting the region, while the majority of successful attacks occur almost entirely on small vessels; most attacks are on smaller, more vulnerable vessels carrying trade within the region, or on local fishing and trading vessels, as well as cruising yachts. Larger vessels gain considerable protection from their size and speed. Most modern merchant ships engaged in international trade travel at speeds in excess of fourteen knots, and it is both difficult and dangerous for small craft to attempt to approach them at this speed.

With the exception of security in some ports and anchorages, piracy and sea robbery in the region appears to be under control. The measures taken by regional countries both at sea and onshore have largely been effective although security in ports and anchorages in some countries, and policing

generally against maritime crime, could still be improved. There are no grounds for the operational involvement of non-regional countries in providing security at sea against piracy and sea robbery in Southeast Asia. Nevertheless, contributions from non-regional countries would still assist in building the capacity of regional countries to provide security in ports, anchorages, and littoral waters.

Maritime Terrorism

In Southeast Asia, the vulnerability of the maritime sector to attack by terrorists has been of concern due to the economic importance of the sector; the incidence of piracy and sea robbery in the region; and the presence of terrorist groups with either a history of attacking maritime targets or possibly an intent to launch such attacks. Also, as target hardening occurs on land, maritime targets might become more attractive to terrorist groups.

Possible scenarios in Southeast Asia range from highly speculative and most unlikely to credible.[15] The more spectacular scenarios tend to be based on inadequate knowledge of the operating environment. Most commonly postulated is the notion that the Malacca and Singapore straits could be physically blocked. The traffic separation scheme (TSS) in the vicinity of One Fathom Bank off Port Klang in the Malacca Strait is 0.6 nautical miles wide

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[15] Sam Bateman, "Maritime Terrorism: Issues for the Asia-Pacific," *Security Challenges,* Vol.2, No.3, October 2006, 77-92.

and this is often identified as an area where the strait could be blocked. However, the distance from coast to coast outside the TSS is much greater and would still allow the passage of most vessels. The most likely cause of diverting traffic away from the straits would be if the shipping community considers the straits insecure, perhaps due a threat like sea mining, rather from than the physical blocking of passage.

The more catastrophic scenarios highlight possible attacks on liquid natural gas (LNG) or liquid petroleum gas (LPG) tankers, either through the planting of devices onboard or by the use of a tanker as a mobile weapon to strike secondary targets. Such attacks seem improbable due to the technical complexities involved, and the opportunity and expertise required for such an attack. Although such a scenario is unlikely, its potential is given disproportionate focus due to the results such an attack might produce.

The main maritime terrorist threat in the region is usually seen as coming from Al-Qaeda and its associated groups in Southeast Asia, particularly Jemaah Islamiyah (JI), and the Abu Sayyaf Group (ASG). These groups have camps in the southern Philippines where they train together and share expertise. Group members routinely move between Sabah, Indonesian Borneo, and these camps by speedboat, local craft, and ferries. The ASG in the Philippines has already shown that it can conduct bomb attacks against ships. It claimed responsibility

for the *Superferry 14* attack,[16] and was blamed for the bomb attack on the ferry *Dona Ramona* in August 2005, as the ship was about to depart from Zamboanga.[17]

These attacks show that ferries, and potentially cruise liners, are vulnerable to attack. With passenger ships and ferries, it is not so much the bomb that might do the damage but rather the fire and panic that can follow an explosion with so many people in a relatively confined area.[18] Measures to defeat attacks against ferries are a national responsibility involving for example, better screening of passengers and their luggage and enhanced security onboard.

The potential for cooperation between pirates and terrorists is often overstated with writings that emphasize possible linkages between pirates and terrorists.[19] Piracy and maritime terrorism might involve a similar *modus operandi* by the attackers, but piracy is conducted for private ends while terrorism has political motives. In assessments of the risk of maritime terrorism, pirates have been seen as having skills and expertise that might be attractive to a

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[16] The *Superferry 14* sank in February 2004 near Manila after a bomb explosion and fire onboard. It constitutes the most serious act of maritime terrorism so far in terms of loss of life with 116 people killed or missing. Other attacks on ferries in Southeast Asia include the February 2000 bombing of the Philippine ferry *Our Lady Mediatrix,* which killed forty people; and the December 2001 bombing of the Indonesian ferry *Kailifornia*, which killed ten. John F. Bradford, "The Growing Prospects for Maritime Security Cooperation in Southeast Asia," *Naval War College Review*, Summer 2005, Vol. 58, No. 3, 67.

[17] "Ferry Blast Injures 30 in Southern Philippines," *The New York Times* online, 28 August 2005.

[18] Sam Bateman, "Ferry Safety: A Neglected Aspect of Maritime Security?" *IDSS Commentaries 31/2006,* (Singapore: Institute of Defence and Strategic Studies, 3 May 2006).

[19] For example, Graham Gerard Ong, "Ships Can Be Dangerous, Too: Coupling Piracy and Terrorism in Southeast Asia's Maritime Security Framework," in Derek Johnson and Mark Valencia (eds), *Piracy in Southeast Asia: Status, Issues, and Responses*, (Singapore: Institute of Southeast Asian Studies, 2005), 45-76.

terrorist group, but these are not particularly specialised and are readily available. There are many former naval personnel, fishermen, and commercial seafarers in Southeast Asia with knowledge and experience that could be used by a terrorist group.

Regional Solutions to Maritime Crime

Rather than seeing each of the different types of maritime crime mentioned in the preceding sections in isolation, the real challenge is to understand their root causes and to choose appropriate responses in a more holistic manner. Measures to control maritime crime in the region should not be focused solely on piracy prevention and the risks of maritime terrorism. Recognizing the interests of all stakeholders, they should also encompass other illegal activities at sea, such as the prevention of trafficking in arms, drugs, and people, as well as the operational dimensions of maritime safety, search and rescue (SAR), and marine environmental protection.

There are relatively few agreed maritime boundaries in Southeast Asia. Of the nearly sixty maritime boundaries required in the region, less than 20% have so far been settled. Indonesia is one regional country that has very assiduously pursued agreements on maritime boundaries with its neighbors. In sharp contrast, the Philippines has no agreed maritime boundaries with any of its neighbors. Very few exclusive economic zone (EEZ) boundaries have been

drawn in the region. The lack of maritime boundaries complicates enforcement against crimes at sea generally, while the lack of EEZ boundaries makes enforcement against illegal fishing difficult.

Little progress is being made with delimiting outstanding maritime boundaries in Southeast Asia. Reaching agreement on them is both necessary and difficult. Trilateral negotiations, and perhaps even multilateral negotiations, are required because some end points for the boundaries need to be agreed between three or more countries.[20] Regional countries should move expeditiously to resolve existing maritime boundary disputes to ensure that jurisdiction can be exercised properly at sea. If boundaries cannot be resolved, countries should be prepared to enter into some form of provisional arrangements for the maintenance of law and order in the disputed area without prejudice to their positions in the boundary negotiations. Bilateral agreements between neighboring countries are essential for the reduction of illegal migration and smuggling.

Because most likely maritime boundaries lack an historical basis, local cultural, social, and economic circumstances must also be recognized in border areas. Freedom of traditional movement and trade should be respected

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[20] When several countries are opposite and/or adjacent to each other, a bilateral boundary between any two of them will inevitably reach a point where it intersects with the claim of another country (or countries). This is the situation in most seas of Southeast Asia and in the Gulf of Thailand. A commonly applied principle is to terminate the agreed boundary near the point of intersection (a theoretical tripoint), and then leave the precise position of the tripoint to subsequent trilateral negotiations. Victor Prescott and Clive Schofield, *The Maritime Political Boundaries of the World,* 2nd ed., (Leiden: Martinus Nijhoff Publishers, 2005), 312,

in agreed border control arrangements rather than simply classifying these activities as smuggling or illegal people movement.

National Maritime Law Enforcement

Maritime jurisdiction and enforcement are extremely complex issues, particularly in areas where maritime boundaries are not agreed. This is a special problem in key regional hotspots for maritime crime, such as the Malacca and Singapore straits, and the Sulu and Celebes Seas. Crimes at sea are often transnational, with more than one national jurisdiction involved. A state's criminal jurisdiction varies with the legal type of jurisdiction. This might be as a flag state over vessels flying its flag, as a coastal state over waters under national jurisdiction, as a port state over vessels in its internal waters, as an archipelagic or straits state, as a state of nationality of people or organizations engaged in illegal activities, or as a state exercising jurisdiction on the high seas as permitted by international law.

Regional countries face difficulties in combating illegal activities at sea due to a shortage of trained personnel, a lack of modern equipment, the obsolescence or inadequacy of much national legislation, and the weak maritime law enforcement capability of national agencies.[21] Problems also arise from the lack of interagency coordination and duplication of effort

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[21] The situation in Indonesia is discussed in detail in Dirhamsyah.

between agencies; some regional countries, notably Indonesia and the Philippines, have a number of different agencies dealing with some areas of maritime security without adequate arrangements for coordination. Lastly, any form of investigation or intelligence collection in the coastal areas where criminal networks exist will be fraught with many difficulties, including personal risk to the police involved.

As the largest archipelagic state in the world, Indonesia is very much aware of the extent of its maritime interests and of the need to protect its maritime sovereignty and to maintain law and order at sea. However, its efforts have been thwarted by the lack of capacity to conduct security operations, and by the lack of coordination between the various government agencies that have responsibility for some aspect of maritime enforcement. At least ten agencies have been identified as involved in maritime security management with nine authorized to conduct law enforcement operations at sea.[22] The situation has been further complicated since the collapse of the Suharto Government by government reforms, including the autonomy laws that involve devolution of authority to provincial governments, including some responsibility for law enforcement at sea. Mak considers that "the Indonesian decentralization process has led not only to more autonomy for

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[22] Ibid., Table 1, 3.

agencies such as the military and the police, but also to a greater lack of accountability."[23]

Malaysia has been most successful in recent years in dealing with piracy and sea robbery. It has largely overcome the difficulties of maintaining law and order in a large and diverse maritime area that includes parts of the Malacca Strait, the South China Sea, and the Sulu and Celebes Seas around East Malaysia. Unresolved obstacles to Malaysia's security efforts include the lack of a full suite of maritime boundaries around East Malaysia, and of an EEZ boundary with Indonesia in the Malacca Strait. The lack of the latter boundary means that what Indonesia might regard as enforcement against illegal fishing by Malaysian vessels might be regarded as piracy by Malaysia.

The Philippines is a large archipelagic country, which faces major problems in providing and maintaining control in its more remote island groups, particularly in the southern part of the country. Numerous small inlets and islands and a weak navy and coast guard add to the difficulties of providing an acceptable level of maritime security. The Philippines is particularly concerned about the illegal trade in small arms and light weapons, illegal migration, piracy, cross-border kidnappings, smuggling of narcotics, as well as precursor chemicals for narcotics and explosives.[24] Fighting maritime crime is a task mainly for the Philippine Coast Guard (PCG), although it

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[23] Mak, 18.
[24] Jesse M. Pascasio, "Developing a Sub-Regional Maritime Security Arrangement," Paper for Fourth Meeting of CSCAP Study Group on Capacity Building for Maritime Security Cooperation held in Kuala Lumpur, 27-28 May 2006, 3.

suffers in the competition for resources with other elements of the Philippine Armed Forces.

Multilateral Law Enforcement

Considerable progress has been made in Southeast Asia over recent years in developing regional responses to the threats of piracy and sea robbery, although cooperative measures to deal with other forms of maritime crime are less well developed. Cooperative operational arrangements in the Malacca and Singapore straits, such as MALSINDO (Malaysia, Singapore, Indonesia) to coordinate naval patrols, the "Eyes in the Sky" project to provide cooperative air surveillance, and a joint coordinating committee to oversee these arrangements are well established. However, the littoral states, especially Indonesia and Malaysia, remain firm that there is no role for the user states in patrolling the straits.[25] Embryonic operational cooperation is also developing in the Sulu and Celebes Seas between Indonesia, Malaysia, and the Philippines. However, problems of governance, inter-agency coordination and the lack of resources remain, especially in Indonesia, the Philippines, and Thailand.

Another significant development is the IMO-sponsored meeting process on security, safety, and environmental protection arrangements in the

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[25] Ary Hermewan, "Malacca coast patrol to stay local," *The Jakarta Post,* 26 August 2007.

Malacca and Singapore straits. This began with the Jakarta meeting in September 2005 and continued with meetings in Kuala Lumpur in September 2006 and in Singapore in September 2007. It provides a regular forum for dialogue between stakeholders, comprising the littoral countries, the user states, relevant international organizations, and the international shipping industry. The most recent meeting in Singapore agreed to establish a "Cooperative Mechanism" for navigational safety, security, and environmental protection in the straits, comprising a forum for regular dialogue, a committee to coordinate and manage specific projects, and a fund to receive and manage voluntary financial contributions from the shipping industry and user states.[26]

The ASEAN Chiefs of National Police (ASEANAPOL) meetings deal with the preventive, enforcement and operational aspects of cooperation against transnational crime, including piracy and all forms of smuggling, as well as matters relating to terrorism. However, the sharing of information and joint operational policing activity against maritime crime in the region remains underdeveloped. This is partly due to a lack of trust and common accord between ASEAN countries and their dialogue partners, especially where issues of sovereignty or domestic sensitivities over organized crime and corruption may be involved. This is often the case as transnational crime investigations can easily conflict with the ASEAN principle of "non-

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[26] "Milestone agreement reached on co-operation over the Straits of Malacca and Singapore," *IMO Briefing 29/2007,* 18 September 2007.

interference in the internal affairs of one another."[27] Interstate cooperation against crime invariably requires some surrendering of sovereignty. Also, in some countries, corrupt officials may be directly or indirectly involved in the criminal activities, and thus will be reluctant to risk exposure through inquiries by external investigators. The lack of extradition treaties between regional countries is another fundamental problem.

Despite much rhetoric, there has been some hesitancy at the Track One level in dealing too specifically with transnational organized crime in Southeast Asia. At the Track Two level, the Council for Security Cooperation in Asia-Pacific (CSCAP) has had working groups and study groups dealing with some aspect of transnational crime. These groups have produced at least two memorandums dealing with transnational crime, which have helped in drawing attention to particular issues.[28]

Problems of Securitization and Governance

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[27] Amitav Acharya, "Preventive Diplomacy: Concept, Theory and Strategy," in Desmond Ball and Amitav Acharya (eds), *The Next Stage—Preventive Diplomacy and Security Cooperation in the Asia-Pacific Region,* Canberra Papers on Strategy and Defence No. 131, (Strategic and Defence Studies Centre, Australian National University, Canberra, 1999), 106.
[28] "The Relationship Between Terrorism and Transnational Crime," *CSCAP Memorandum No.7,* July 2003, and "Trafficking of Firearms in the Asia Pacific Region – The Way Ahead: Building on Regional Cooperation," *CSCAP Memorandum* unnumbered, May 2004.

Piracy and sea robbery have largely been securitized in the region.[29] The threats have become the medium for new initiatives for collective and common security. But in effect, securitizing the problems of transnational crime has elevated them to the political level where grand statements can be made but little action occurs. As Emmers has observed, ASEAN "has failed to act upon the issue of transnational crime due to domestic factors, including the role of corruption, vested interests and a lack of resources, but also because of its own consensus model and in-built resistance to institutional reforms."[30] The ASEAN principle, already mentioned, of non-interference in each other's affairs might be added to this list of factors.

Securitizing the threat has also led to an environment of increased military spending whereby capabilities are acquired ostensibly to fight terrorism and piracy whereas the real purpose is more purely military. When developing countries in the region should be pursuing programs to drive down poverty and social unrest and remove root causes of piracy and terrorism, they are being pressed to increase defence spending to provide greater security, especially at sea. These militarized approaches have high opportunity costs and set back development initiatives that might alleviate root causes of criminal activity and

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[29] The process of securitisation has its origins in the Copenhagen School of Strategic Studies and the writings of people such as Barry Buzan and Ole Waever. It relates security to survival and establishes five categories of comprehensive security: military, environmental, economic, societal and political. Ralf Emmers, "ASEAN and the securitization of transnational crime in Southeast Asia," The Pacific Review, Vol. 16 No. 3, 2003, 419-438.
[30] Ibid., 420.

social unrest. A law enforcement response to maritime crime is preferable to one based on the projection of military power.

Lack of good governance is evident both in the causes of a breakdown in law and order at sea and in the ability of governments to deal with disorder when it occurs. And it seems that the further away is the seat of national government, the greater the problems of governance, including graft and corruption. These factors lead to increased maritime crime. For example, the barter trade between the southern Philippines and neighboring countries is unregulated, considerable quantities of dutiable goods are smuggled across borders, there is no patrolling of any strength in border areas, appropriate security legislation and regulations are not in place, and there is no effective national system for tracking small vessels used for criminal activity or stolen from other jurisdictions.

Levels of governance over particular areas prone to criminal activities are other factors that have influenced the extent and nature of maritime crime in Southeast Asia. For example, between the World Wars, American authorities appear to have exercised fairly effective control in the Sulu archipelago. More recently however, lower standards of governance have led to an apparent upsurge in maritime crime in this area, notably armed robbery, kidnappings, and smuggling. Social unrest, nationalism, and political extremism, as well as porous and inadequately controlled maritime borders, add new dimensions to the situation.

Conclusions

A re-examination of the contemporary situation with piracy and sea robbery in Southeast Asia has shown that the people involved in piracy and other illegal activity at sea in Southeast Asia are often the same, even though the offences involved might be different. They range from local fishermen or unemployed villagers, to the on-shore criminal infrastructure supporting piracy and maritime crime, and the offshore financiers, facilitators, and beneficiaries of such activities. Countries outside the region, like the United States, have tended to promote military solutions to the problems of piracy and sea robbery when more emphasis should probably be placed on civil law enforcement against maritime crime generally.

Rather than seeing piracy and sea robbery in isolation, these crimes should be regarded as part of a continuum of maritime crime that also includes the various types of smuggling, illegal fishing, and unlawful pollution of the marine environment. For this reason, the prevention of maritime crime is primarily a matter of civil law enforcement onshore, rather than one requiring a military response at sea. Piracy and sea robbery attacks should be subject to the same criminal investigation procedures as other forms of criminal activity.

Of course, greater efforts are required to promote cooperation to deal with transnational organized crime in the region. External assistance should be increased to assist regional countries in the following areas:

- To improve security in ports, anchorages, and port approaches where the vast majority of incidents of sea robbery occur;

- To adopt stronger measures to control trafficking in small arms and light weapons in the region;

- To address governance and inter-agency coordination, particularly in Indonesia, the Philippines, and Thailand;

- To investigate the on-shore infrastructure supporting maritime crime, as well as the financing, facilitation, and beneficiaries of maritime crime; and

- To resolve maritime boundaries within the region as soon as possible to ensure that jurisdiction might properly be exercised at sea. Assuming sea boundaries cannot be resolved, provisional arrangements for law enforcement in the disputed areas should be entered into on a bilateral basis and without prejudice to the boundary negotiations.

The developing countries of the region, particularly the large archipelagic states of Indonesia and the Philippines, lack the capacity to deal with maritime crime in the extensive waters under their national jurisdiction, including in ports and anchorages. They have other priorities of poverty alleviation and development and should not be encouraged to increased expenditure on military forces rather than on other forms of development. They require assistance to build their capacity to deal with maritime crime but

this should be directed more towards civilian agencies concerned with maritime crime and port security rather than towards the military. Finally, there remains a fundamental need for international cooperation to redress the fundamental causes of piracy and maritime criminality in the region, such as depressed social conditions, poverty, and unemployment.