Introduction: Research on Southeast Asian piracy

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INTRODUCTION
Research on Southeast Asian Piracy

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Overview

Over the past decade, considerable attention in the media has been devoted to the problem of maritime piracy, particularly as it has been manifested in the waters of Southeast Asia. This renewed attention to piracy reflects reports of a resurgence in armed attacks on vessels at sea by the International Maritime Organization (IMO) and by the International Maritime Bureau (IMB). Surprisingly, while the upsurge in piracy has attracted considerable attention from governments, military experts, and the media, the record of academic publication on piracy in the region is relatively sparse.

The intent of the series of which this volume is the first instalment is to foster new and innovative academic research and writing on the topic of piracy, particularly in Asia. As a foundational volume, this book has the function of bridging the existing efforts piracy studies and the new programme of research and publication that will underpin the series on piracy. The first task of this volume is thus to provide an overview of current knowledge and key themes in Southeast Asian piracy studies in order to provide a reference resource for those working on the topic. The second task is to indicate, in a preliminary manner, important new avenues for research, including those as yet untraveled.

In its role of providing an overview of the field, the volume has brought together contributions that are grounded in the core concerns of

piracy studies. As most non-journalistic material on contemporary piracy is from the perspective of international organizations or by academics writing in the context of international relations, this volume is composed of mainly contributions from these two areas. Writing on contemporary piracy returns repeatedly to definitions of piracy, the incidence of piracy, the forms of piracy, and the methods for its suppression. The papers that follow are not exceptions to this pattern. In order to reinforce the centrality of these concerns and to provide a useful reference point, we begin with a review.

Definitions and Concerns in Contemporary Piracy Studies

What is Piracy?

The word pirate derives from the Greek "peirates", which was the label for an adventurer who attacked a ship.[1] Central to any definition of piracy is the association with the sea. This is brought out clearly by the English criminologist Vagg, who states that piracy is equivalent to robbery or banditry with the sole difference that it occurs on water.[2] In practice, piracy is similar to banditry, which is armed robbery using violence or the threat of violence in remote areas outside of effective government control. Thus much contemporary piracy takes place in areas, particularly in developing countries, where authorities are unable or unwilling to intervene.

In contemporary discussions of piracy, the International Maritime Organization and the International Maritime Bureau have a dominant role in defining piracy and setting the counter-piracy agenda as they are the key international organizations involved in anti-piracy activities. The IMO is a specialized organization within the United Nations that has the mandate to develop international standards for promoting safe and environmentally sound shipping activities. The IMB, a part of the International Chamber of Commerce (ICC), established the Anti-Piracy Centre (APC) in Kuala Lumpur, Malaysia, for the explicit purpose of reducing the incidence of piracy. In defining piracy, both organizations emphasize that piracy involves an attack on a ship. This focus on ships runs counter to historical usage that included attacks on settlements by maritime marauders. In the past, pirate activities were directed as much to coastal raiding as to attacks on ships. Raids for booty and slaves

triggered the depopulation of entire coastlines.[3] With the political, economic, and military development of coastal areas, such raiding gradually declined to the point where it has practically ceased. While coastal raiding might at some point again become an issue, current political conditions make the IMO-IMB focus on ships reasonable.

Although the IMO and the IMB agree that piracy involves an attack on a ship, their definitions of piracy differ significantly in other ways. The IMO follows the 1982 United Nations Convention on the Law of the Sea (1982 UNCLOS), which in its article 101 declares piracy a criminal act. The 1982 UNCLOS definition of piracy contains five elements. First, piracy must involve a criminal act of violence, detention, or depredation. Second, piracy must be committed on the high seas or in a place outside the jurisdiction of any state. This aspect of the definition flows directly from the idea of *mare liberum*, or open sea, propounded by Hugo de Groot in 1609. De Groot considered the sea to be *res communis*, or the joint property of humankind, serving as the basis of free trade between nations. Piracy endangers the mare liberum and is considered *hostis humani generis*, or an enemy of the common interest of humanity. The concept of mare liberum thus became a key part of maritime common law. This restriction of the definition of piracy to acts on the high seas means that an alternative term has to be created for attacks against ships within territorial waters. The IMO thus defines criminal attacks with weapons on ships within territorial waters as armed robbery and not as piracy. States themselves may or may not have laws that equate acts of armed robbery within their own territorial waters with piracy.[4] The third element of the 1982 UNCLOS definition of piracy is the two-ship requirement. Pirates need to use a ship to attack another ship, which excludes mutiny and privateering from being acts of piracy. Fourth, piracy needs to be committed for private ends, which excludes the acts of terrorists or environmental activists from being piracy. Fifth, attacks by naval craft fall outside the bounds of piracy because pirate attacks have to be committed by the crew or passengers of privately owned vessels.

The IMB defines piracy as "an act of boarding or attempting to board any ship with the intent to commit theft or any other crime and with the attempt or capability to use force in furtherance of that act".[5] This definition makes no distinction between attacks on the high seas and in territorial waters. The two-ship requirement is abolished, which means that attacks from a raft or even from the quay are acts of piracy. The IMB definition

does not require that the act of piracy be committed for private ends. Attacks on a ship for political or environmental reasons qualify as piracy. The Achille Lauro incident in 1985 was thus piracy according to the IMB definition.[6] Even the acts of government navy vessels could in certain circumstances conceivably be deemed to be piracy. While choosing either the IMO or IMB definition is not necessary here, we favour the more inclusive IMB definition of piracy. It is true, however, that the distinction between high seas and territorial seas must be considered when conceiving responses to piracy.[7]

The Magnitude of Contemporary Piracy

It is impossible to determine the precise magnitude of contemporary piracy, whether according to the broader IMB definition or the narrower IMO version. Both organizations register pirate attacks according to their own definitions of piracy and publish reports on an annual basis. As attacks have to be reported to the IMB (directly) or to the IMO (indirectly), data on the frequency of piracy attacks depends entirely on the collaboration of crew and captain of the victim vessel, owners/operators, flag states and coastal authorities. Victim vessels can report directly to the IMB, coastal authorities and owners and or operators Flag State. All of them can report indirectly to the IMO (IMO MSC/Circ. 662/p. 7 appendix 1). Each of these groups has specific reasons not to want to register pirate attacks.[8]

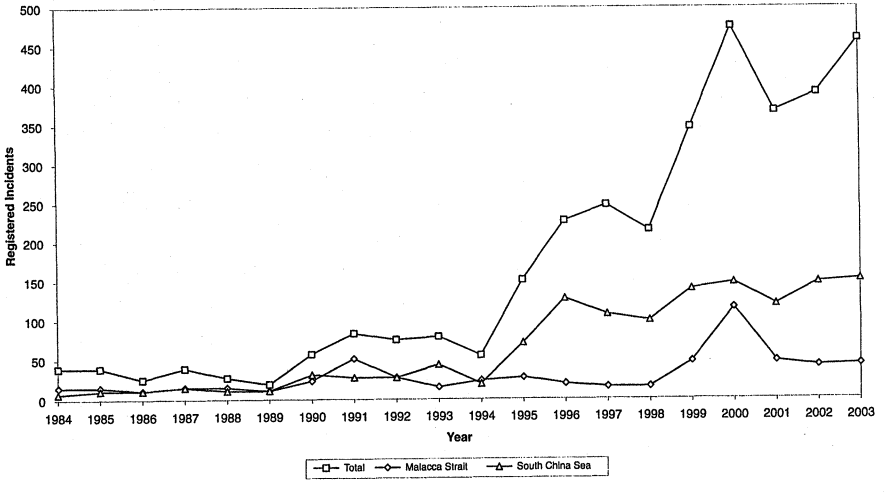
For crew and shipping companies, an important reason underpinning the failure to report pirate attacks is the fear of complex reporting procedures. A delay of just one day can cost EUR 10,000 of extra harbour fees and fuel costs.[9] Shipping companies also fear having to pay import duties for the cargo stolen from them.[10] They also often doubt the integrity and competence of local authorities. In such situations they consider it senseless to report their losses because no investigation will be made to track down the pirates or lost cargo.[11] Mistrust is fed by the suspiciously accurate information pirates often have about ship layouts and cargo; information that could quite possibly have come from local authorities who inspect ships and possess detailed information on who and what is present on board.[12] Finally, shipping owners or operators may be reluctant to make such reports due to concern for their commercial reputations. However, one important reason to report pirate attacks to the local authorities is the requirement to do so by insurance companies. Readiness

to report pirate incidents thus varies between countries as does the ability and willingness of local, regional, and national authorities to co-operate with the IMB or IMO. Local authorities are sometimes themselves hesitant to contact the IMO or IMB for fear of the economic consequences of their region being declared a high-risk zone.

Victims can report directly to the IMB, owners/operators, flag states and coastal authorities, all of them can report indirectly to the IMO. Owners or operators may still be reluctant to make such reports due to concern for their commercial reputations. Authorities and owners and operators are aware, however, that the benefits of reporting incidents of piracy to the IMO and IMB allows the latter to post warnings about dangerous areas or to distribute information on stolen cargo and vessels (IMO MSC/Circ. 662/p. 7 appendix 1).

Figure I.1 represents an overview of all the incidents of piracy and armed robbery registered by the IMO in the period 1984–2003. It shows an increase in the number of registered piracy attacks between 1994 and 2000,

FIGURE I.1
Incidents of Piracy and Armed Robbery, 1984–2003



Source: IMO. 2004. Reports on acts of piracy and armed robbery against ships, annual reports 2001 and 2003. London.

a trend which was paralleled in the South China Sea and in the Malacca Strait. These are the most piracy prone areas in the world, with the waters of Indonesia being recognized as the most dangerous in the world.[13] As Mukundan and others in this volume demonstrate, the toll of piracy in terms of injury and death for mariners is serious.

Contemporary Forms of Piracy

Pirate operations vary according to local conditions, the availability of targets, and the competence of the pirates involved. Geography has a large influence on pirate tactics. Attacks on the high seas outside territorial waters are relatively rare because of the greater distances involved and the need for powerful and expensive speedboats. Sea areas dotted with islands, rocks, and reefs form an ideal setting for pirates using the "hit and run" or "Asian" method because they provide hiding places and narrow sea-lanes slow ships down, making them easier targets.[14] Pirates conducting a hit and run attack board a steaming vessel, plunder it, and carry off whatever they have been able to lay their hands on. The geography of Indonesia is particularly propitious for this type of attack. An example of a hit and run attack is that on the oil tanker the Valiant Carrier, as has been vividly described by the journalist Burnett.[15] Attackers boarded the vessel while it was steaming off the coast of Sumatra, foolishly lit a fire on deck, and beat up crewmembers and the captain before disembarking without having managed to steal anything.

The best opportunities for small-scale pirate attacks are offered in and around harbours. Due to congested harbours, ships have to wait a long time, sometimes even days, before entering port. While waiting, they are prey to pirates in small boats. Ships are also vulnerable to being boarded when docked. In both situations, money, cargo, and personal belongings of the persons on board are at risk of theft.[16] Generally, such attacks are by petty criminals and relatively random and disorganized. This type of piracy is particularly common in Africa and South America.[17]

Professional pirates who operate on a long-term basis require much greater organizational sophistication. One important reason for this is their need to procure and operate the modern equipment and fast speedboats employed in attacks on large vessels at sea. Equally critical is their need to secure reliable access to markets and, as much as possible, gain the compliance of local authorities.[18] Bribery is the classic route to

achieving these goals. In extreme cases, officials may even collude with pirates by providing information on vessels and cargoes in their areas of jurisdiction.[19] Southeast Asian pirates are the world's most organized, sometimes being linked to criminal organizations, which provide established linkages to market and government.[20] Umbrella criminal organizations may also inform pirates about interesting targets.[21] In some circumstances, as discussed by Ong and by Valencia in this volume, pirates may have connections with warlords and political movements that may have connections with terrorists.[22] For professional pirates, theft of cash, personal belongings, and shipboard electronics are usually of secondary interest. Their primary target is the cargo or even the entire vessel, for which they can earn a much greater return.

When pirates steal an entire vessel, their movement is restricted to those few "ports of refuge" which turn a blind eye to their illegal activities. In such places, the identities of ships are transformed: external appearances are altered, they are given new names, and are newly registered in a flag state before leaving the port. A makeover of this order allows the new "phantom ship" to be used quasi-legally or sold for criminal activities.[23]

Table I.1 presents the number of piracy attacks in international and territorial waters and in harbours (1999–2001). Forty-five per cent of all the attacks registered in 2001 were attacks on ships at anchor. A minority of 21 per cent were classified as traditional attacks, or attacks on the high seas, outside of territorial waters. The number of traditionally defined acts

TABLE I.1
Registered Pirate Attacks by Area, 1999–2001

Year	International Waters		Territorial Waters		Harbours	
2003	102	24%	88	21%	232	55%
2002	49	13%	72	19%	262	68%
2001	79	21%	125	34%	166	45%
2000	136	29%	224	48%	111	23%
1999	38	12%	201	65%	70	23%

Source: IMO. 2002 and 2004. Reports on acts of piracy and armed robbery against ships, annual report 2001 and 2003. London.

of piracy declined significantly with the ratification of 1982 UNCLOS and its provisions enlarging territorial waters from 3 to 12 nautical miles. As a result, the strict definition of piracy in the 1982 UNCLOS Article 101, limiting it to attacks on the high seas, misses the greater number of similar such attacks within territorial waters.

Responses to Piracy

The efficacy of anti-piracy efforts is shaped by the international institutional context. Of key importance in shaping responses to piracy is the legacy of 1982 UNCLOS, which has in effect nationalized the responsibility to react to the larger percentage of piracy cases that occur within territorial waters. The investigation, capture, prosecution, and punishment of pirates who commit crimes within national maritime boundaries thus depend on diverse national systems.[24] Indeed, attacks on vessels committed within the jurisdiction of a coastal state are only considered piracy if the national penal code criminalizes them as such.

Although piracy is criminalized by Article 101 of 1982 UNCLOS, responsibility for the pursuit and punishment of pirates who operate in international waters also falls upon national navies and national courts. The navies of all countries are entitled to seize a ship taken by pirates and arrest them according to 1982 UNCLOS Articles 105 to 107. At present the prosecution of pirates depends on national courts, the rulings of which vary considerably. This may change should the new International Criminal Court begin to try piracy cases, as it arguably could do.[25]

There are several instances of regional co-operation for the suppression of piracy. At a regional level, countries are working together to combat piracy. In the Caribbean, Dutch, French, American, British, Jamaican, and Venezuelan naval units and coastguard vessels are working together to confront drug trafficking and piracy.[26] A similar regional effort to combat piracy is proposed for the South China Sea but due to limited budgets, overlapping jurisdictions, sovereignty concerns, and a lack of effective extradition procedures, its implementation is lagging.[27] Finally, occasional joint patrols of the Japanese coastguard with those of India and Malaysia were instituted following an anti-piracy conference in Tokyo in 2000.[28]

National and regional efforts to control piracy are of course supported by significant international informational resources from the IMO and

IMB. Both provide invaluable data gathering services and co-ordination activities. Among its most important contributions to maritime security, the IMO has helped improve inter-ship communication systems and has developed piracy response protocols for crew. Currently it is developing the International Ship and Port Facility Security Code (ISPS Code), which contains detailed security related requirements for governments, port authorities, and shipping companies.

Contributions

The reference value of this volume is brought out particularly by papers of Young and Mukundan. Young's paper provides the historical background to piracy in Southeast Asia, a context that he argues is insufficiently considered in understanding the prevalence and characteristics of piracy in the region. He argues that more attention to the context in which piracy occurs, and has developed, would help reorient responses to the underlying causes of piracy such as economic and political marginalization. As professionals with long experience working in the area of ocean security, Mukundan and Djalal's papers provide useful ground-level perspectives. Mukundan, as Director of the International Maritime Bureau, is privy to the most up-to-date statistical and policy matters concerning piracy. His contribution to this volume thus provides a unique official perspective on piracy in Southeast Asian waters. Djalal, a career civil servant in the Indonesian government with considerable diplomatic experience brings his insider's view to bear on piracy in the region.

Beyond providing a solid foundation for the analysis of maritime piracy in Southeast Asia and elsewhere, the second programmatic task of the volume is to identify key themes and research questions that will stimulate a concentrated attempt to consolidate and expand the scope of academic work in this area. The first of such topics examined in depth in this volume is the conflict between the widely acknowledged need for regional collaboration in counter-piracy activities in Southeast Asia and the great realpolitik political barriers to such co-operation. While this is a theme touched on to some degree by all authors, it is the primary focus of the contributions in the fifth and sixth sections of the book by Valencia, Chaikin, and Djalal. Valencia reviews the range of political initiatives to control piracy in the region. He highlights the political challenges of

expanding regional co-operation and argues that the most viable approach may be to continue to support ad hoc responses supported by extensive contacts between states at the informal, or Track Two level. Chaikin argues that after years of neglect of the oceans within international relations, awareness has grown in recent decades of the need to engage in the building of co-operative international regimes for addressing such problems as piracy. A foundation has been laid through ASEAN and other institutions in this regard but considerable work remains to be done. Chaikin focuses on the importance of Japan in the maritime security equation in Southeast Asia and suggests that Japan is well positioned to take a leadership role, provided it continues to base its strategy on the use of its civilian coast guard rather than the military. Djalal's contribution is a detailed report on the current status of negotiations for the suppression of piracy in Southeast Asia, with particular emphasis on the concerns of Indonesia, from the perspective of a policy maker with deep knowledge of the intricacies of inter-state relations in the region. He concludes with a series of recommendations for the strengthening of state capacities for the suppression of piracy that could be implemented with enhanced international support and co-operation. Indonesia in particular would benefit from international assistance which builds the country's law enforcement capacity while respecting its territorial sovereignty.

Greatly heightened concern with security in recent years has strongly influenced writing on piracy and has provided the impetus for the second theme to be examined in depth in this volume: the utility of linking piracy with terrorism. Ong argues forcefully that considerable advantage will be gained in the efforts to combat piracy in Southeast Asia if an explicit conceptual link can be made between piracy and terrorism in the minds of policymakers in the region. Doing so could provide the necessary impetus to break the current impasse around several key issues pertinent to piracy suppression. Valencia's article on piracy and maritime terrorism takes a contrary tack to that of Ong by arguing for the importance of distinguishing between piracy and terrorism in Southeast Asia. Each is distinct in terms of *modus operandi* and the groups involved. He argues that conflating the two phenomena could reduce the effectiveness of existing counter-piracy strategies. In the conclusion, other potential topics for research are raised, including some which depart significantly from the currently dominant tendencies in piracy studies.

Notes

1 Brian Innes, *The Book of Pirates: Buccaneers, Corsairs, Privateers, Freebooters, & All Sea Rovers* (London: Bancroft, 1966) and Young, this volume.

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5 J. Abhyankar, *An Overview on Piracy Problems — a Global Update* [HTTP] (1999 [cited 12 February 2003]); available from <http://www.sils.org/seminar/1999-piracy-00.htm>.

6 Ibid. ([cited) and Valencia, "Piracy and Terrorism", this volume.

7 Keyuan Zou, *Issues of Public International Law Relating to the Crackdown of Piracy in the South China Sea and Prospects for Regional Co-operation* (1999 [cited 5 February 2003]); available from <http://www.sils.org/seminar/1999-piracy-00.htm>.

8 Peter Chalk, "Contemporary Marine Piracy in Southeast Asia", *Studies in Conflict and Terrorism* 21 (1998), IMO, "Reports on Acts of Piracy and Armed Robbery against Ships, Annual Report 2001" (London: 2002) but see also Mukundan, this volume.

9 M. Veldt, "Misdaad Op Zee", *Intermediair*, 26 March 1993.

10 H. Jippes, "Moderne Zeepiraten; Yohoho En Een Fles Met Rum", *NRC Handelsblad*, 15 November 1997.

11 W. van der Post, "Geweld Op Zee Neemt Toe; Nederlandse Schepen Vaker Prooi Van Zeerovers", *Algemeen Dagblad*, 5 February 1997.

12 Jippes, "Moderne Zeepiraten; Yohoho En Een Fles Met Rum".

13 International Chamber of Commerce, *Piracy Soars as Violence against Seafarers Intensifies* [Web page] (2003 [cited 30 July 2003]); available from <http://www.iccwbo.org/ccs/news_archives/2003/piracy_report_second_quarter.asp>, see also Mukundan, this volume.

14 Abhyankar, *An Overview on Piracy Problems — a Global Update* (cited).

15 J. Burnett, *Dangerous Waters, Modern Piracy and Terror on the High Seas* (New York: Penguin Group, 2002).

16 Post, "Geweld Op Zee Neemt Toe; Nederlandse Schepen Vaker Prooi Van Zeerovers".

17 Abhyankar, *An Overview on Piracy Problems — a Global Update* (cited).

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21 M. Christern, "Zeerovers Vonden Vrijhaven in China", *NRC Handelsblad*, 15 February 1999.
22 Burnett, *Dangerous Waters, Modern Piracy and Terror on the High Seas.*
23 Chalk, "Contemporary Marine Piracy in Southeast Asia", Jippes, "Moderne Zeepiraten; Yohoho En Een Fles Met Rum."
24 Zou, "Enforcing the Law of Piracy in the South China Sea".
25 Zou, *Issues of Public International Law Relating to the Crackdown of Piracy in the South China Sea and Prospects for Regional Co-operation* (cited).
26 F.N.J. Jansen, "De Caribische Zee, Een Zee Vol Juridische Onzekerheden", 31, no. 1 (2000).
27 Zou, "Enforcing the Law of Piracy in the South China Sea".
28 See Chaikin, this volume.