SEEKING EFFECTIVENESS FOR THE CRACKDOWN OF PIRACY AT SEA

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Piracy is traditionally regarded as *hostis humani generis*, the enemy of the human race. Pirates commit acts of murder, robbery, plunder, rape or other villainous deeds at sea, cruelly against humanity. Piracy is punishable wherever encountered. Since the early 1990s, piracy has resurfaced and even increased in some places in the world, particularly in Southeast Asia. According to a report prepared by the International Chamber of Commerce’s (ICC) International Maritime Bureau Piracy Reporting Center (IMB-PRC), between 1 January and 30 June 1999, there were 300 piracy incidents around the world. The total number of piratical incidents from 1984 to the end of March 2002 was 2,626. According to a report issued by the International Maritime Bureau (IMB), pirate attacks have tripled in the last decade. The number of attacks in the first quarter of 2003 had already equaled the total number of recorded pirate attacks for the whole of 1993. During that time, Southeast Asia was categorized as one of the most active piracy zones with seven key “pirate-prone areas.” In 2000 alone, piracy in this region accounted for 65 percent of total global incidents. In 2002, Indonesia’s were the world’s most pirate-infested waters, with 22 of the 87 attacks reported worldwide (there were 32 in Southeast Asian seas) between January and March. For such reasons, the UN General Assembly, for the first time in 1998, called on all states, in particular coastal states in affected regions, to take all necessary and appropriate measures to prevent and combat incidents of piracy and armed robbery at sea. Following the 9/11 attacks, piracy has allegedly been connected to maritime terrorism, and the two have since been mentioned together in mass media and government statements. Moreover, the Bush administration has deemed terrorism just as immoral as piracy, the slave trade and genocide and some believe that piracy constitutes a modern threat to world peace and security.

Sea lanes in Southeast Asia are of vital interest to East Asian countries. More than half of the world’s merchant fleet capacity sails through the Straits of Malacca,
Sunda and Lombok and the South China Sea. More than 10,000 vessels of greater than 10,000 dead weight tons (dwt) move southward through the South China Sea annually, with well over 8,000 proceeding in the opposite direction. In addition, with the rapid growth of the East Asian economy, the recent trend toward greater intra-Asian trade (relative to trade with Europe and North America) results in more shipping in the littoral waters of Southeast Asia and the South China Sea. Thus the sea routes in the region are usually regarded as economic lifelines for East Asian countries, particularly Japan. However, piracy endangers the safety of navigation. Recent cases, including the Cheung Son and the Tenyu, demonstrated that pirates hijacked merchant vessels, killed crew members and/or robbed valuables on board the ships.

Environmental concerns also bear some relevance to piracy and have raised alarm in the world community. A piratical attack on an oil tanker, for instance, could feasibly cause an oil spill disaster. It goes without saying that the potential for a catastrophic accident involving one or more vessels carrying environmentally destructive cargoes is huge. Incidentally, many piratical occurrences have taken place in areas of natural beauty or of international environmental significance, such as the South China Sea. According to one statistic, over 25 percent of the pirate attacks recorded in the Violence at Sea database of the IMB-PRC are against some variety of tanker.

Finally, a new form of piracy is on the horizon, one that involves the hijacking of entire ships. There is wide speculation that these piratical incidents, which occurred in East Asia, involved organized criminals since such large-scale theft, and the subsequent resale of cargo, requires impressive resources and sophisticated planning. Individual pirates do not have these capabilities. This represents one of many concerns that complicate modern day anti-piracy campaigns.

**IMPROVING THE INTERNATIONAL LEGAL REGIME**

Law enforcement on piracy is mainly governed by international law, including the 1982 UN Convention on the Law of the Sea (UNCLOS), and other relevant international treaties. However, with the passing of time, the existing legal regime has demonstrated a lack of effectiveness in cracking down on contemporary piracy. There are two major areas that need to be amended and improved.

**Definitional Problem**

The term "piracy" usually refers to a broad range of violent acts at sea, and UNCLOS defines it as:

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, air-
craft, persons or property in a place outside the jurisdiction of any State;
(b) any act of voluntary participation in the operation of a ship or of an
aircraft with knowledge of facts making it a pirate ship or aircraft; (c) any
act of inciting or of intentionally facilitating an act described in sub-
paragraph (a) or (b).\(^\text{14}\)

This convention's definition consists of five elements: (1) the acts complained
about must be crimes of violence such as robbery, murder, assault or rape; (2) com-
mitted on the high seas, meaning beyond the land territory, the territorial sea or
other territorial jurisdiction of a given state; (3) by a private ship, or a public ship,
which through mutiny or otherwise is no longer under the discipline and effective
control of the state or party that owns it; (4) for private ends; and (5) from one ship
or aircraft to another so that at least two ships are involved.\(^\text{15}\)

However, the definition provided for in UNCLOS has limitations in respect to
the phenomenon of piracy. First, it defines piracy as only for "private ends," though
some have argued that such wording could have a wider interpretation. It is through
this loophole that terrorist acts at sea for political ends are generally excluded. That is why, after the \textit{Achille Lauro} incident in 1985, the world community looked
to the Convention on the Suppression of Unlawful Acts against the Safety of Maritime Navigation (the
SUA Convention), which includes political ends in its definition of illegal activities
against the safety of navigation which embrace piratical acts.\(^\text{16}\) Second, according
to the above definition, piracy \textit{juris gentium} presupposes that a criminal act be exer-
cised by passengers or the crew of a ship against another ship or persons or proper-
ty on its board. The two-vessel requirement is an ingredient of the crime of piracy,
unless a criminal act occurs in \textit{terra nullius}.\(^\text{17}\) Thus "internal seizure" within the ship
is hardly regarded as an "act of piracy" under the definition of UNCLOS.\(^\text{18}\) Because
of the above limitations and other alleged deficiencies in the definition, some schol-
ars have suggested revising it.\(^\text{19}\)

In 1970, before the Third UN Conference on the Law of the Sea (UNCLOS III),
the International Law Association suggested defining piracy as "unlawful seizure or
taking control of a vessel through violence, threats of violence, surprise, fraud or
other means," but this suggestion was not taken into account in UNCLOS III.\(^\text{20}\) In
addition, since the above definition is only applicable to acts of piracy on the high
seas or in places outside the jurisdiction of states, it has a geographic limitation that
does not cover the whole picture of contemporary piracy.

In 1998, the IMB-PRC proposed in 1998 a definition of piracy "as an act of
boarding any vessel with the intent to commit theft or any other crime and with the intent or capability to use force in the furtherance of that act,” which seems to be accepted by the shipping industry but has not been recognized under international and domestic law. The International Maritime Organization (IMO) has advocated dividing acts of piracy into the geographical and legal categories of maritime zones: piracy on the high seas is defined as “piracy” in accordance with UNCLOS, while piracy in ports or national waters (internal waters and territorial seas) is defined as “armed robbery against ships.” However, the shortcoming of this division is obvious: Piracy is not equivalent to armed robbery and it may include other violent acts such as murder, assault and rape.

The problem with different definitions is that this affects the number of incidents relating to piratical attacks. As some scholars point out, the UNCLOS definition of piracy may lead to the conclusion that the low incidence of such acts implies there is no significant problem with piracy today. On the other hand, the 300 incidents reported by the IMB-PRC in 1999 were based exclusively on its own definition. This means that there was no difference between incidents on the high seas and those in the territorial seas of coastal states. Were there a discrepancy, the number would have been much smaller.

However, the IMB-PRC acknowledged that the number it tallied was the lowest possible figure and it assumed that the true figures could be much higher due primarily to the under-reporting of incidents based on its own definition.

The definition problem also arises when comparing international and domestic cases. United States law defines piracy as follows:

- Any act of piracy as defined by international law if the perpetrators are found in the United States.
- Any act of murder, robbery, or hostility against the United States or against a U.S. citizen on the high seas, by a citizen of the United States.
- Acts by aliens against the United States or its citizens that are defined as piracy in the treaty between the nation that the individual is a citizen of and the United States.
- Though it makes a reference to international law, it is not clear that the above definition includes both “private ends” as defined in UNCLOS, and “political ends” as defined in the SUA Convention.

**Inadequate Legal Regime**

International law obligates states to cooperate with the suppression of piracy and grants them certain rights to seize pirate vessels and perpetrators. To that end,
UNCLOS is perhaps the most significant anti-piracy treaty in modern times. The following provisions are of particular relevance:

- **Obligation to cooperate:** Article 100 provides that “[a]ll States shall cooperate to the fullest possible extent in the repression of piracy on the high seas or in any other place outside the jurisdiction of any State.”

- **Right to seize pirate ships and criminals:** Article 105 provides that “[o]n the high seas, or in any other place outside the jurisdiction of any State, every State may seize a pirate ship or aircraft, or a ship or aircraft taken by piracy and under the control of pirates, and arrest the persons and seize the property on board.”

- **Only warships or military aircraft or similar governmentally authorized ships or aircraft have the power to seize a pirate ship or aircraft:** Article 107 provides that “[s]hips and aircraft which are entitled to seize on account of piracy: A seizure on account of piracy may be carried out only by warships or military aircraft, or other ships or aircraft clearly marked and identifiable as being on government service and authorized to that effect.”

In addition, there are supplementary anti-piracy treaties including: (1) the aforementioned 1988 SUA Convention; and (2) the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf (the SUA Protocol) from the same year. These treaties:

- Cover all relevant unlawful acts whether they stem from political or private ends;

- Aim to punish any person who commits an offense by unlawfully and intentionally seizing or exercising control over a ship by force or threat thereof; or a person who performs an act of violence against another person on board a ship, particularly if that act is likely to endanger the safe navigation of that ship; or any individual who destroys or causes damage to a ship or to its cargo, and is thus likely to endanger the safe navigation of that ship;

- Provide that each “Contracting Party” should take necessary measures to establish its jurisdiction over the above offenses or extradite the offender or the alleged offender to the other contracting party who has the corresponding jurisdiction.

Additionally, the convention applies to offenses committed on the ship that is navigating or is scheduled to navigate into, through or from the waters beyond the outer limit of the territorial sea of a coastal state. It also applies when the offend-
er or the alleged offender is found in the territory of a contracting party other than the previous case. The SUA Protocol contains similar provisions.

The above two treaties arguably complement the anti-piracy legal measures provided in UNCLOS. However, the scope of territorial application between UNCLOS and the SUA Convention is different: while the former applies only to the high seas and the exclusive economic zone (EEZ), the latter applies not only to the waters beyond, but also to waters within the national jurisdiction. As the SUA Convention clearly states, “[t]his Convention applies if the ship is navigating or is scheduled to navigate into, through or from waters beyond the outer limit of the territorial sea of a single State, or the lateral limits of its territorial sea with adjacent States.” Clearly, different scopes of application may become problematic when implementing the above conventions.

Pursuant to the provisions of UNCLOS, coastal states have the right to establish maritime zones under their jurisdiction. This is defined by internal waters inside the baselines that are used to measure the extent of national jurisdictional waters, the territorial sea of 12 nautical miles (nm), the EEZ of 200 nm, and the continental shelf of 200 nm (in some cases up to 350 nm), outward from the baselines. Since these zones are within national jurisdiction, a coastal state is entitled to enjoy either sovereignty or sovereign rights and to exercise its jurisdiction and enforce its laws and regulations in accordance with international law.

The expansion of jurisdictional waters by coastal states under UNCLOS also causes problems in implementing the above international treaties. For instance, the EEZ, originally part of the high seas, is an area of debate that has complicated the issue of piracy. Since the articles relating to piracy in UNCLOS are almost entirely copied from the 1958 Convention of the High Seas, it is worth questioning whether these articles are still applicable to the EEZ as residual rights and obligations despite its changed legal status. The jurisdictional provisions are thus ambiguous and controversial, particularly in the context of Article 86 (regarding the non-application of the high seas provisions) of the same convention. Because of the ambiguity embedded in Article 86, it may be argued that relevant provisions of UNCLOS regarding piracy do not apply to the EEZ.

In spite of such ambiguity, it is meaningful to note that similar residual rights and obligations formerly associated with the freedom of the high seas were retained in UNCLOS, such as freedom of navigation in the EEZ. Article 58 of UNCLOS expressly provides that piracy provisions are applicable to the EEZs in so far as they are not incompatible with the provisions on EEZs of that convention, and are in compliance with laws and regulations adopted by the coastal state. Since piracy is closely related to the safety of navigation, states could assume a corresponding duty
or right to suppress piracy in the EEZ of other states provided that anti-piracy measures taken by such states are inadequate. But the problem is exacerbated when a coastal state is unable to effectively handle acts of piracy occurring within its EEZ. For this reason, it is argued that the piracy provisions in UNCLOS should apply to the EEZ in so far as they are not incompatible with the rights of coastal states set forth in UNCLOS. “Since enforcement against a pirate, in normal circumstances, could not be viewed as impinging upon any rights reserved to the coastal state, the law of piracy in the EEZ must be viewed as identical to that applying beyond.”

It is worth noting that while most East Asian countries acceded to UNCLOS, not as many countries have complied with the other important international convention on the prevention and suppression of piracy and maritime terrorism: the SUA Convention (see Table 1). It is regrettable that two key Straits states, Indonesia and Malaysia, remain outside of the SUA legal framework despite the fact that they participated in the Correspondence Group under the leadership of the United States regarding the revision of the SUA Convention, an ongoing matter within the IMO.

The primary discussion here regards the possible incorporation of the ship-boarding regime proposed by the United States (as reflected in the bilateral agreements signed between the United States and relevant flag-state countries) into the SUA Convention. To that end, a diplomatic conference on the SUA Convention is slated to take place in October 2005, regarding the adoption of two Protocols that would incorporate substantial amendments aimed at equipping the SUA Convention with the means to respond to the perceived risks of piracy and maritime terrorism. It is

Table 1. Ratification of UNCLOS & the SUA Convention in East Asia

<table>
<thead>
<tr>
<th>State</th>
<th>UNCLOS (d/m/y)</th>
<th>SUA Convention (d/m/y)</th>
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</thead>
<tbody>
<tr>
<td>Brunei</td>
<td>05/11/1996</td>
<td>04/12/2003</td>
</tr>
<tr>
<td>Cambodia</td>
<td></td>
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<tr>
<td>China</td>
<td>07/06/1996</td>
<td>01/03/1992</td>
</tr>
<tr>
<td>East Timor</td>
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<tr>
<td>Indonesia</td>
<td>03/02/1986</td>
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</tr>
<tr>
<td>Japan</td>
<td>20/06/1996</td>
<td>23/07/1998</td>
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<tr>
<td>Korea (North)</td>
<td></td>
<td></td>
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<tr>
<td>Korea (South)</td>
<td>29/01/1996</td>
<td>14/05/2003</td>
</tr>
<tr>
<td>Laos</td>
<td>05/06/1998</td>
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<tr>
<td>Malaysia</td>
<td>14/10/1996</td>
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<tr>
<td>Mongolia</td>
<td>13/08/1996</td>
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<td>Myanmar</td>
<td>21/05/1996</td>
<td>19/09/2003</td>
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<td>Philippines</td>
<td>08/05/1984</td>
<td>06/01/2004</td>
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<tr>
<td>Singapore</td>
<td>17/11/1994</td>
<td>03/02/2004</td>
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<td>Thailand</td>
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widely anticipated that the upcoming endeavor will improve the existing legal regime’s capacity to crack down on piracy.

**BRIDGING GAPS IN STATE PRACTICE**

The inadequacy of the international legal regime necessitates remedies on the domestic level. Even a sound global framework requires effective implementation efforts from individual states. The predicaments of some East Asian countries are worth noting.

**China**

China borders three seas, the Yellow Sea, the East China Sea and the South China Sea. A place of frequent piracy, the South China Sea has points in Hong Kong, Luzon Island and Hainan Island that delimit what is known as “the Hainan Triangle,” a notorious pirate resort. The case of the *Cheung Son* is illustrative: On 12 November 1998, the *Cheung Son*, a Hong Kong vessel, disappeared in the South China Sea on the way to Malaysia from the Shanghai Harbor. Several days after, the bodies of some crewmembers were found floating on the sea adjacent to the Guangdong Province. The provincial public security department began to investigate and found that it was a maritime hijack case. The pirates had killed all 23 crewmembers and plundered the ship. By August 1999, China had arrested 37 suspects, and in January 2000, 13 of these pirates including one Indonesian and 12 Chinese were executed for robbery and murder in Shanwei, a port city of Guangdong. The remaining pirates received other sentences.

Historically, China has been reluctant to recognize international law, which its government has used as a bidding instrument in state-to-state relations. However, since the economic reform and open-door policy of the late 1970s, China has been more compliant with international law. Certainly globalization played a role in this transition, as it has compelled most nation-states to adhere more diligently to international frameworks. As stated, UNCLOS, which China signed in 1982 and ratified in 1996, is the major international convention that addresses piracy on the global level. China has also ratified the two 1988 documents (the SUA Convention and Protocol) against maritime terrorism, and has participated in activities relating to piracy, which were sponsored by relevant international organizations such as the IMO.

Under the Chinese legal system, there is no law on piracy, nor is there an actual term for “piracy.” Nevertheless, piratical acts are subject to Chinese law enforcement via its criminal code. According to its recently amended Criminal Law, certain crimes, particularly those endangering public security, are deemed relevant to piracy so that they can be punishable under this law. This law also allows China to enforce anti-piracy conventions within its territory, as it provides that “for the crimes defined in international treaties, concluded or acceded to by the People’s Republic
of China, which are under the jurisdiction of the People’s Republic of China within the framework of the treaty obligations, this Law shall apply.”

Other relevant laws include the Maritime Traffic Safety Law of 1984 (concerning the safety of navigation); the Law on the Territorial Sea and the Contiguous Zone of 1992 (establishing the territorial sea and contiguous zone in China; it provides the right of “hot pursuit” to chase and arrest suspected piracy vessels); and the Law on the Exclusive Economic Zone and the Continental Shelf of 1998 (establishing China’s jurisdiction in its EEZ and on its continental shelf, including the right of hot pursuit). In addition, the Opinion on Strengthening the Safety of Navigation and Fishery in the East China Sea was adopted in 1993 and is particularly relevant to the containment of piracy within China’s jurisdictional waters. Despite these efforts, law enforcement remains weak for a variety of reasons that are not limited to the absence of an effective coast guard; the vastness of sea areas; and local protectionist interests.31 It should be noted that the rumor that Chinese government and military officials were involved in piracy was recently proved unfounded.32

With the rapid growth of its economy, China has become more dependent on energy resources from abroad. The transportation of petroleum products through East Asian seaways, particularly through the Malacca Straits, has become more frequent—80 percent of China’s imported oil is shipped through this sea-lane. For this reason, China recently expressed deep concerns about the navigational safety of the Malacca Straits and has displayed newfound interest in Straits affairs in general. As previously mentioned, China expressed its willingness to help bolster maritime security in the Straits, yet details have not been disclosed to the public.33 Not surprisingly, other states bordering the Straits have welcomed China’s assistance.

Japan

Japan ratified UNCLOS in 1996 and adopted its own laws on the territorial sea and on its EEZ. Matters of piracy are subject to the Japanese criminal code. Japan has recently increased its efforts on the piracy issue, particularly when it ratified the SUA Convention in 1998. Apparently, Japan realized that the frequency of piratical incidents and the damages they caused have become a major threat to its shipping routes as Japan depends on imports for the vast majority of its oil and other energy needs, not to mention the importance of trade to its economy.34 In September 2000, Japan sent delegations to the Philippines, Malaysia, Singapore and Indonesia to take surveys and exchange views regarding specific anti-piracy measures and how to cooperate on this front. Then in November 2000, Japan sent a Coast Guard delegation to India and Malaysia seeking bilateral cooperation on similar terms. In the same year, Japan sponsored and organized a series of regional conferences on combating
piracy and armed robbery against ships.

Perhaps not coincidentally, Japan’s initiatives to combat piracy were taken at the same pace with which it expanded its military forces outside its own territory. There are regional suspicions that Japan is using anti-piracy and anti-terrorism as a pretext to realize its martial expansion, which is cause for concern among Asian countries, particularly when linking Japan’s recent endeavors to its imperial past. Japan’s recent anti-piracy drills, which it launched jointly with India and Malaysia in the South China Sea, invited criticism in the mass media. As mentioned, fighting piracy has paid dividends for Japan and become a fairly good way for the country to normalize its security role in the region.35 Japan continues these joint anti-piracy drills with other countries including the Philippines, Thailand and Indonesia. In addition, Japan in 2004 joined the Proliferation Security Initiative (PSI) proposed by the United States.36 The PSI was designed to curb terrorism at sea. In October 2004, Japan hosted the PSI Maritime Interdiction Exercise off the coast of Sagami Bay and off the Port of Yokosuka.37

Indonesia, Malaysia and Singapore

While all three of these countries ratified UNCLOS (see Table 1), Singapore was the only signatory to the SUA Convention. As stated, there have been no piratical incidents within Singapore’s jurisdictional waters in recent years. This indicates the effectiveness of Singapore’s law enforcement, though the water area under its sovereignty is much smaller than those under Indonesia’s or Malaysia’s.

Meanwhile, Indonesia has the most serious piracy problem in the whole Southeast Asian region, and has long been criticized for its slow and ineffective responses. To strengthen its fight against piracy, Indonesia has established a number of anti-piracy centers in Medan on Sumatra, on Bangka Island and on Batam Island. It needs 239 ships and 115 aircraft to patrol its 13,000 islands effectively, yet it currently has only 115 vessels and 60 aircraft.38

Pirates have frequently harassed Malaysian waters as well, in particular the Straits of Malacca. However, the country’s recently strengthened anti-piracy measures have achieved good results. For example, in 2000, there were 75 attacks in waters off Malaysia, but after the Malaysian authorities asserted new tactics, the number was reduced to 17 in the following year.39 However, the piratical situation in the Malacca Straits remains unstable. It is reported that after the Tsunami Disaster in 2004, piracy has resurged rampantly in this area, with 28 piratical incidents in March 2005 alone.40 Clearly, as was recently evident in the parts of the United States affected by Hurricane Katrina, conditions resulting in the immediate aftermath of disasters have a tendency to reopen doors that are better kept shut.

The user states of the Malacca Straits are also concerned with the safety of navigation in the Straits because it is the main seaway connecting the Indian Ocean and
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the South China Sea and also the shortest route for tankers trading between the Persian Gulf and East Asian countries. It was for this reason that the United States put forward the so-called Regional Maritime Security Initiative (RMSI) in March 2004. It was designed to implement the “President’s Proliferation Security Initiative (PSI) and State Department’s Malacca Straits Initiative” with the aim of providing detailed plans “to build and synchronize interagency and international capacity to fight threats that use the maritime space to facilitate their illicit activity.” According to the plan, it is necessary to use high-speed vessels equipped with Special Operations Forces or Marines to conduct effective interdiction in the sea. While Singapore supports this U.S.-led idea, Malaysia and Indonesia are doubtful that it can really play a positive role in curbing piracy and maritime terrorism. They are also suspicious of the United States’ intentions, and whether the plan might infringe on their national sovereignty and territorial integrity. In order to prevent—or maybe pre-empt—potential US military intervention in their Strait affairs, Malaysia and Indonesia decided in 2004 to formulate a cooperative patrol to protect this international waterway. Singapore later joined in the same year. The tripartite patrol consists of 15-20 military vessels and patrols in the Strait all the year round.

Due to the severity of piracy occurrences in the Straits of Malacca, these three countries have intensified the degree of their trilateral cooperation. At the end of July 2005, a maritime air surveillance scheme was discussed that aimed to intensify the crackdown on piracy in this critical international waterway. In August 2004, these countries agreed to launch the air patrol by September 2005. That month, they also agreed to establish a Tripartite Technical Experts Group on Maritime Security. It should be noted that all of these tripartite operations, whether sea- or airborne, are called “coordinated patrols,” rather than joint patrols. In addition, Singapore is a member of the PSI, while Malaysia and Indonesia are skeptical and remain outside it.

Other ASEAN Countries

Countries like the Philippines, Vietnam, Myanmar, Thailand and Cambodia suffer from piracy, but not as seriously as Malaysia and Indonesia. Since Cambodia and Thailand have not yet ratified UNCLOS, they are not bound by its stipulations, particularly on the containment of piracy. However, when or if the convention’s piracy provisions are regarded as rules of international customary law, then the countries outside the convention will be obliged to abide by them. Though not party to the convention, Thailand, together with Cambodia, has acceded to the recently adopted anti-terrorism agreement, the 2002 Agreement on Information Exchange and Establishment of Communication Procedures, to cooperate among them to combat

Some countries doubt whether a U.S.-led Maritime Security Initiative could really play a positive role.
transnational crime, including terrorism, originally signed between Indonesia, Malaysia and the Philippines. Thailand also considered joining the aforementioned air surveillance scheme created by Singapore, Malaysia and Indonesia. Finally, it is worth mentioning that the only country in the region that specifically placed “piracy” under its penal code was the Philippines. According to this code, piracy is punishable by death.

**Enhancing Regional Cooperation**

In the Southeast Asian seas, different zones were established with the ratification of UNCLOS. Therefore, the states concerned have the right, as well as the obligation, to enforce relevant laws and regulations within their respective sea jurisdictions, including the suppression of piratical acts therein. Second, as to the areas beyond the territorial seas of coastal states, regional cooperation is more essential than within territorial seas. According to some statistics, the average distance of piratical attacks from the shore was 11.55 nm in Indonesian waters, 68 nm in Northeast Asia and 94.4 nm in the South China Sea.

Effective law enforcement is extremely difficult in Southeast Asian seas. A typical example is the South China Sea, which is vast (more than 200 nm wide) and dotted with numerous uninhabited islands to which pirates can easily retreat. Moreover, it is said that the Natunas and Spratly island groups are pirate havens. Another key obstacle to effective law enforcement rests with the overlapping territorial claims to some islands. For example, the Spratly Islands are claimed by five adjacent countries (i.e., Brunei, China including Taiwan, Malaysia, the Philippines and Vietnam), a dispute that has yet to be resolved. Even if it had been solved, there are still boundary delimitation issues in the South China Sea.

Under such complicated circumstances, cooperation is the only way to maintain regional maritime security. The “track two” annual conferences on the South China Sea sponsored by Indonesia since 1990 put safety of navigation and piracy control on the agenda as one of the areas of possible cooperation among the countries bordering these waters. In November 2002, the Joint Declaration of ASEAN and China on Cooperation in the Field of Non-Traditional Security Issues was adopted, which initiated full cooperation between ASEAN and China in the field of non-traditional security issues and listed international cooperation as the priority. Currently, the principal concerns include “combating trafficking in illegal drugs, people-smuggling including trafficking in women and children, sea piracy, terrorism, arms-smuggling, money-laundering, international economic crime and cyber-crime.” In addition, the 2002 Declaration on the Conduct of the Parties in the South China Sea also mentions the suppression of piracy and armed robbery at sea.

Multilateral cooperation bears noticeable significance when a coastal state has good reason to believe that a foreign ship has violated its laws and regulations, thus
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giving that state the right of hot pursuit in accordance with UNCLOS. This can be directed at vessels suspected of carrying out piracy. Hot pursuit can originate in internal waters (e.g., harbors and ports), territorial seas, contiguous zones or in the EEZs of the coastal states. The Chinese laws, for instance, on territorial seas and EEZs, authorize government vessels, such as warships, to exercise the right of hot pursuit. However, this right ceases as soon as the ship being pursued enters the territorial sea of its own state or of a third state. Ideally, in cases where piratical attacks occur within territorial seas, and the attackers then flee to the territorial sea of another state, the situation would be righted through a regional cooperative arrangement between the affected states.

Another critical matter that highlights the importance of cooperative enforcement, is that, due to domestic laws, many pirates go unpunished, even after a hijacked ship has been detained. This once occurred in Southern China, when 12 pirates were released in the Petro Ranger case. For that case, the Royal Malaysian Police considered asking the Chinese government to extradite the pirates to stand trial in Malaysia. But according to international law, extradition requires an agreement between the two countries concerned, or it may be executed under an international treaty to which the respective countries are parties.

Nevertheless, the trend toward increased cooperation against piracy has prevailed, or has at least proven to be the desirable solution. The tripartite efforts of Indonesia, Malaysia and Singapore have already begun, while as early as October 1992, the IMB-PRC was established in Kuala Lumpur. The center acts as a focal point for the shipping industry and liaises with law enforcement authorities in the region as well as in the world. Furthermore, in May 2002, Indonesia, Malaysia and the Philippines signed the Agreement on Information Exchange and Establishment of Communication Procedures with a view to preventing the utilization of their land-air-sea territories for the purpose of committing or furthering activities such as terrorism, money-laundering, smuggling, piracy, hijacking, intrusion, illegal entry, drug trafficking, theft of marine resources, marine pollution and illicit arms trafficking. The agreement is presently open to other ASEAN countries. Pursuant to this agreement, an ASEAN ministerial meeting, which was held in Kuala Lumpur in early May 2002, adopted the Work Program to Implement the ASEAN Plan of Action to Combat Transnational Crime, which pinpoints eight “priority areas”—piracy is one of these. ASEAN member states also agreed to work toward harmonizing their laws in order to effectively deal with issues of transnational crime. They further agreed to develop programs for joint exercises and simulations in the relevant areas to enhance cooperation and coordination of law enforcement and intelligence sharing.

Regional anti-piracy conferences have produced some positive results in terms of
regional multilateral collaboration. For example, the heads of coast guard agencies from 16 countries (10 ASEAN countries, India, Sri Lanka, Bangladesh, South Korea, China and Japan) and 1 region (Hong Kong) attended a first-of-its-kind conference in April 2000, from which three documents were adopted. In the statement “Asia Anti-Piracy Challenge 2000,” the delegates expressed their intention to reinforce cooperation in combating piracy and armed robbery against ships. The “Tokyo Appeal” called for the establishment of contact points for information exchange between relevant authorities as well as for the drafting of an anti-piracy action plan at the national level. The Model Action Plan states specific countermeasures against piracy based on the Tokyo Appeal.60

Then in June 2003, the ASEAN Regional Forum (ARF) adopted the first Statement on Cooperation against Piracy and Other Threats to Security, which acknowledged that piracy and armed robbery against ships has been a significant problem in Asia-Pacific waters and that effective responses required “regional maritime security strategies and multilateral cooperation in their implementation.”61 It should be noted that the ARF countries expressed their commitment to become parties to the SUA Convention, assuming they had not yet done so. In addition to undertaking necessary actions like information exchange, IMB proposals on traffic lanes for large supertankers with coastguard or naval escort, technical assistance and capacity-building infrastructure, they committed to “endorse the ongoing efforts to establish a legal framework for regional cooperation to combat piracy and armed-robberies against ships.”62

Perhaps the most significant development is the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Southeast Asia, which was formulated for adoption by 16 Asian countries including Bangladesh, Brunei, Cambodia, China, India, Indonesia, Japan, Laos, Malaysia, Myanmar, the Philippines, Sri Lanka, Singapore, South Korea, Thailand and Vietnam. The agreement obliges contracting states to (1) prevent and suppress piracy and armed robbery against ships; (2) arrest pirates or persons who have committed armed robbery against ships; (3) seize ships or aircraft used for committing piracy or armed robbery against ships; and (4) rescue victim ships and victims of piracy or armed robbery against ships.63 For cooperation purposes, the contracting parties should endeavor to render mutual legal assistance as well as the extradition of piratical agents. In addition, the agreement establishes an Information Sharing Center, which will be located in Singapore. It is reported that Cambodia, Japan, Laos and Singapore were the first to sign the Agreement officially on 28 April 2005.64

CONCLUSION

Piracy is a common concern for the whole world community. The effective sup-
pression and control of such activity at the regional level can benefit not only the adjacent countries but also the interests of global society. Multilateral cooperation can play a critical role in containing piracy, and in turn it may resolve potential jurisdictional conflicts that arise from enforcing law in shared waters. In this respect, Asian countries have set good examples through the above-mentioned anti-piracy arrangements, which formalize regional efforts that target piracy and maritime terrorism. However, sound agreements are only the beginning, and it remains to be seen whether their implementation will produce effective results. One should recall that despite similar efforts in the past, the piracy situation in Southeast Asia remains grave.

Apart from strengthening regional cooperation, there are gaps in state practices that deserve attention. For example, it is imperative for coastal states, particularly in East Asia, to reconsider seriously what they define as piracy in their respective legal systems. As mentioned above, no country in East Asia aside from the Philippines actually "criminalizes" piracy. Also up for debate is how countries implement international treaties at the domestic level. For example, to fulfill their obligations, parties to UNCLOS should enact a set of detailed and enforceable regulations in their domestic provisions on piracy.

Finally, the piracy definition in UNCLOS and its relevant provisions need to be improved in the near future. The current framework of the convention is unable to cope with modern piracy. Fortunately, there is a window of opportunity because UNCLOS is subject to review and possible amendment ten years after the its entry into force in 1994. States that would like to see the existing piracy provisions amended, or those who wish to submit new provisions, can do so through a review conference. However, considering that the SUA Convention is currently under review and amendment, the need for a review conference imposes an imminent task on the world community. As soon as anti-piracy provisions in international law are revised, perhaps a genuine crackdown on piracy will be achieved.

NOTES

1 "A pirate, under the law of nations, is an enemy of the human race; being the enemy of all, he is liable to be punished by all." Appendix to United States v. Smith, 5 Wheat. (U.S.) 153 (1820), 7-8, quoted in the Harvard Draft Convention, American Journal of International Law, Supplement 26 no. 4 (1932), 763.


4 They are: (1) the Straits of Malacca; (2) the northern tip of Sumatra, near the Benaaten Strait; (3) the Phillip Channel and waters near the Riau Islands of Indonesia; (4) the South China Sea, near the Anambas Islands; (5) the South China Sea, east of Pulau Tioman, near Mangkai; (6) the South China Sea, near Pedra Branca/Pulau Batu Puteh; and (7) the Bangka Strait. SNSA, Press Release, May 1992.

5 “Pirate attacks jumped 28% in first quarter,” *Shipping Times*, 10 May 2002.


12 The IMB-PRC stated in its report that "the potential for environmental disaster should not be underestimated, as a significant number of attacked vessels drift unsupervised during and after the piratical incidents." *Piracy Report* (December 1994): 7.


16 On 7 October 1985, a group of Palestinian guerrillas hijacked the Italian cruise ship *Achille Lauro* while it was in Egyptian territorial waters. The hijackers demanded the release of 50 Palestinians held in Israel in return for the release of the passengers. They ordered the ship to sail to Syria, which refused them port entry. The hijackers then on 8 October killed an American passenger. Two days later, the four hijackers gave themselves up to the Egyptian authorities.


18 A different view holds that internal seizures could be piracy. See Samuel P. Menefee, "Piracy, Terrorism, and the Insurgent Passenger: A Historical and Legal Perspective," *ibid.*, 60. In addition, it is acknowledged that even the internal seizure was not piracy in international law, it is still piracy under municipal law of the flag state.


25 Article 4(1) of the SUA Convention.

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30 For relevant discussions, see Zou Keyuan, "Chinese Approaches to International Law", in Weixing Hu et al, eds., China's International Relations in the 21st Century (Lanham: University Press of America, 2000), 171-193.


32 In the case of the Cheung Son, one of the main suspects once worked as a security guard in Shenzhen before he became a pirate and wore a guard uniform on the spot, thus was mistakenly regarded as a policeman.


36 PSI is an effort to consider possible collective measures among the participating countries, in accordance with national legal authorities and relevant international law and frameworks, in order to prevent the proliferation of weapons of mass destruction, missiles and their related materials that pose threats to the peace and stability of the international community. The PSI is administered by the "core group" countries, which, at present, consist of 15 countries (Japan, US, UK, Italy, the Netherlands, Australia, France, Germany, Spain, Poland, Portugal, Singapore, Canada, Norway and Russia).


38 "Ship owners urged to install anti-piracy tracking devices," Agence France-Presse, 8 May 2002.


50 Aune, supra note 26, 21.
51 See, for example, the First Meeting of the Technical Working Group on Safety of Navigation, Shipping and Communication in the South China Sea, Jakarta, 3-6 October 1995, at http://faculty.law.ubc.ca/secs/twgsnsc.htm (11 October 2005).
54 See Article 14 of the Law on the Territorial Sea and the Contiguous Zone; and Article 12 of the Law on the Exclusive Economic Zone and the Continental Shelf.
55 Article 111 (3) of UNCLOS.
56 Personal interview with the officer in IMB-PRC, 6 August 1998.
57 IMB-PRC, supra note 21, 7. The IMB-PRC regards this as an effective deterrent against piratical attacks.
58 "Thailand to join SE Asian nations in terrorism agreement," Asia Pulse, 9 May 2002.
62 Ibid.
63 Article 3 of the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia.
64 "Singapore, Japan, Laos and Cambodia take the lead to sign the Anti-Piracy Agreement," Lianhe Zaobao, 29 April 2005.
65 Art. 312 of UNCLOS (The pertinent text of which reads: "After the expiry of a period of 10 years from the date of entry into force of this Convention, a State Party may, by written communication addressed to the Secretary-General of the United Nations, propose specific amendments to this Convention, other than those relating to activities in the Area, and request the convening of a conference to consider such proposed amendments.")