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## THE POLITICAL ECONOMY OF PIRACY IN THE SOUTH CHINA SEA

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*David Rosenberg*

**P**iracy is an ancient, persistent, and elusive phenomenon in the South China Sea. In the past two decades it has increased substantially, leading to a renewed interest in piracy and its possible nexus with maritime terrorism, especially after the 11 September 2001 attacks on the United States. Although it has been widely reported and investigated, piracy remains difficult to understand and to control. The oceans are “a domain increasingly beyond governmental control,” says William Langewiesche. They are “vast and wild, where laws of nations mean little and where the resilient pathogens of piracy and terrorism flourish.”<sup>1</sup> In the Asia-Pacific region, “maritime disorder prevails,” observes Sam Bateman. “This includes unregulated pollution of the marine environment,

over-fishing, marine environmental degradation and widespread illegal activities at sea.”<sup>2</sup>

This article attempts to analyze piracy through the perspective of political economy, with an emphasis on state and market stakeholders and on the economic, technological, and institutional factors affecting ocean governance of piracy. The major area of concern here is the South China Sea, where approximately half of the world’s reported incidents of piracy have taken place since the 1990s. Following the usage of the International Maritime Bureau (IMB), this estimate includes instances of both piracy as defined under international law—*theft on the*

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high seas—and armed robbery or theft in the territorial waters or ports of coastal states.<sup>3</sup>

This article will examine the scope and trends in piracy in the South China Sea as well as the factors that motivate this form of maritime crime. It continues with an analysis of the factors that impede antipiracy efforts, including uncertainties over definitions and legal jurisdiction, the underlying dynamics of piracy, and uncoordinated efforts at detection, pursuit, arrest, and conviction of pirates as well as recovery of crew, cargo, or ships. It concludes with an analysis of the limited progress made by state and market stakeholders to improve antipiracy security in the vital shipping lanes of the South China Sea.

### MARITIME TRADE AND SHIPPING TRAFFIC

The most important factor affecting piracy and government efforts to interdict pirates is the dramatic increase in shipping traffic. Maritime trade through the South China Sea has expanded rapidly in recent years, due to three major, long-term trends: the high growth rates of regional economies and increasing trade flows among them, rising energy demand and energy imports, and the automation of cargo handling in hub ports.

Seaborne trade has doubled every decade since 1945, and shipbuilding tonnage worldwide has doubled since 1990. It is estimated that 80 percent of all world trade, or about 5.7 billion tons of cargo, is transported by sea. This maritime superhighway in the world economy is supported by a massive infrastructure, including ninety-three thousand merchant vessels with 1.25 million seamen bound for eight thousand ports.<sup>4</sup>

Intra-Asian trade is growing more quickly than transpacific trade. For example, in 2003 South Korea's trade with China surpassed its trade with the United States for the first time. In 2004, Japan's trade with China surpassed its trade with the United States for the first time. More and more Asian states are reorienting their trade flows toward China. The several explanations for this trend include the recovery of Asian economies from the 1997 economic crisis, the dynamic China market, and trade-opening agreements between China and Southeast Asia.<sup>5</sup>

Asian countries had the largest share of the total tonnage of seaborne world exports in 2006, at 38.8 percent. Exports of crude oil from western Asia and manufactured goods from China and other countries of East and Southeast Asia contributed to this result. European countries accounted for 21.8 percent of world export tonnage, with the major share coming from countries belonging to the European Union. Industrialized countries in North America and developing countries in the Americas made up 21.1 percent of world export tonnage; the latter accounted for about two-thirds of the total tonnage for the hemisphere,

owing to their considerable exports of crude oil, iron ore, coal, and grains. Africa's and Oceania's shares of overall world tonnage exported were 8.5 percent and 8.8 percent, respectively.<sup>6</sup>

Of the world's twenty busiest container-handling ports in the past five years, Asian ports accounted for the top six: Hong Kong, Singapore, Shanghai, Shenzhen, Busan, and Kaoshiung. The top twenty busiest global ports generally also include Port Kelang and Tanjung Pelepas in Malaysia, Tanjungpriok in Indonesia, Laem Chabang in Thailand, and Manila in the Philippines.<sup>7</sup> The rapid growth of maritime trade has created enormous pressures for hub ports and shipping companies to speed up shipping traffic. Port managers and shipping companies have tried to accelerate shipping traffic flows, including containerization, automation of cargo handling, and increased ship sizes.

Oil tanker traffic—already high—will increase substantially with the projected increase in Chinese oil imports. Almost all of this additional Asian oil demand, as well as Japan's oil needs, will be imported from the Middle East and Africa. Most tankers pass through the strategic Malacca Strait into the South China Sea. About sixty-five thousand vessels of all types passed through the Malacca Strait in 2005.

This rise in shipping has also created a corresponding increase in the risks of congestion and delay, collision, and crime, including in particular all forms of piracy, especially in the narrow and shallow choke points of the South China Sea. Clearly, there is a growing concern among coastal states and user states to ensure speedy and safe passage through the shipping lanes of the South China Sea. Efforts to halt piracy have been stymied, however, by differing views of what constitutes piracy and as to which countries should have jurisdiction over stopping it in highly disputed waters.

#### THE DETECTION, COST, AND PREVENTION OF PIRACY

Despite the problem of defining piracy and determining which stakeholder should be responsible for stopping it, several widespread generalizations about piracy set it apart from other maritime activities. These include the link between growing shipping volume and piracy, economic drivers (such as poverty), the role of organized crime, and the role that law enforcement agencies on land can play in stopping piracy.

First, the more the shipping, all things being equal, the more the opportunities for piracy. As shipping volume and velocity increase, targets of opportunity increase for pirates to seize valuable and accessible cargo from ships in port or at sea. Globalization has not only accelerated world trade. It has also seen a move to the use of flag-of-convenience shipping and a privatization of port cargo-handling services. It is increasingly difficult for port officials to distinguish legal from illegal

trade, especially among the contents of millions of containers passing through their ports. All these factors enhance the opportunities for illegal trade in pirated goods.

Second, “piracy is largely driven by poor economic conditions.”<sup>8</sup> “The vast majority of lower-end piracy . . . is largely motivated by poverty and disenfranchisement that afflicts vulnerable targets like fishermen and local traders.”<sup>9</sup> Sudden and severe impoverishment, especially among marginal coastal seafaring communities, makes piracy a viable way to meet basic needs. For example, the big increase in the number of piracy attacks in Indonesia’s waters and ports in the past ten years may be attributed to its sharp economic downturn and domestic instability in the wake of the 1997 currency crisis. Eric Frecon has interviewed one poor migrant from a poor Indonesian kampong who puts it this way. “I became a pirate . . . to earn a living. Singapore was rich; we were poor. So, we went to pillage the areas [around] Singapore.”<sup>10</sup>

In times of economic hardship piracy is still viable for some traditional maritime peoples. This helps to explain why most acts of piracy involve petty theft from ships in ports or anchorages. According to one study, in 2002, 77 percent of all attacks occurred in ports.<sup>11</sup> Economic duress also makes impoverished fishermen more vulnerable to and available for recruitment by entrepreneurial criminal organizations. Piracy will continue as long as poverty and unemployment persist.

Third, there is a small but increasing amount of piracy by organized criminal groups. This may be attributed in large part to the increasingly lucrative cargoes created by the economic dynamism of the region. There has been some increase in the kidnapping of crew members for ransom and in theft of bulk cargo. More attackers are armed, more crew members are injured, and more vessels are being hijacked. The role of organized crime in large-scale piracy is indicated by the sophisticated equipment, skilled labor, and managerial infrastructure necessary to transfer commodities on a global scale.

Fourth, all maritime piracy begins and ends on land. Whether they are poor seafarers or criminal gangsters, pirates are recruited and based on shore. Ultimately, their booty must be “fenced” on land. Whatever is taken at sea eventually arrives at a port. This requires official documentation. In the case of pirated goods, this means reliable false documentation. Officials have to be persuaded to look the other way; their corruption is essential to the routine transfer of contraband. Hence, effective antipiracy measures need more than maritime security measures; they also need close coordination with national law enforcement authorities and anticorruption agencies.

How costly is the piracy threat to shipping through the South China Sea? James Warren of the Asia Research Institute at the National University of

Singapore has claimed that piracy in the (Southeast Asia) region has cost the world economy a staggering twenty-five billion U.S. dollars a year.<sup>12</sup> Stanley Weeks notes that “piracy raises insurance rates, restricts free trade, increases tensions between the affected littoral states, their neighbors and the countries whose flagged ships are attacked or hijacked.”<sup>13</sup>

Coastal states have been under considerable pressure from user states to provide safe and secure navigation through the South China Sea, especially in narrow choke points such as the Malacca Strait. The coastal states, particularly Indonesia, have been described in the media as not doing enough to suppress piracy. Also, despite the clear threat that piracy appears to offer, shipowners have not taken much action to stop it. This is perhaps explained by the high cost of preventive measures. The Organisation for Economic Co-operation and Development (OECD), for example, has stated that new security measures to counter the threat of terrorist attacks will require an initial investment by ship operators of at least US\$1.3 billion and will increase annual operating costs by US\$730 million.<sup>14</sup>

In economic terms, however, the relatively low cost of piracy may not warrant such expensive preventive measures. A closer examination of the data on piracy shows that the problem might not be as alarming as sometimes portrayed by the media, at least not in economic terms. For example, in 2005 over sixty-three thousand ships sailed through the Malacca and Singapore straits. In the same year, the IMB reported only twelve cases of actual and attempted attacks on ships in the straits. Hence, the probability of attack in 2005 was a relatively low 0.019 percent, or nineteen out of a hundred thousand. In 2003, in the heavily trafficked Malacca Strait—frequently referred to as one of the most “pirate infested” seas of the world—the risk of a transiting ship being attacked was less than 0.001 percent.

Moreover, many of these reported piracy attacks were little more than cases of petty theft against ships at anchor in port, and most piracy victims are themselves poor fishermen and traders. Considering the relatively minor costs, many shipowners may also be reluctant to report pirate attacks to the authorities or otherwise assist in the investigation of pirate attacks. Apart from reflecting badly on the company’s image, reporting a pirate attack may cause the victim vessel to be detained in harbor for investigation. The cost of such delays—varying from five to twenty-five thousand U.S. dollars per day—may easily exceed the losses incurred by a pirate attack. If suspected pirates are arrested, crew members of the victim ship may be unable or unwilling to bear the expense or risk of testifying at the trial.

Many low-cost antipiracy measures are available, such as equipping the superstructure with proper locks and providing antipiracy training. However,

shipowners and insurance companies have little economic incentive to implement antipiracy measures. Contrary to the popular impression from news media reports, most shipowners have not seen piracy as a menace to international shipping. Ultimately, “repelling intruders becomes a cost-benefit analysis for ship-owners.”<sup>15</sup> Shipowners and shipping companies don’t adopt antipiracy measures because they don’t find it worth the cost.

### ARREST AND CONVICTION OF PIRATES

Piracy is related to other criminal activity in and around ships and ports, and it often overlaps other crimes. The arrest and conviction of pirates, smugglers, drug runners, and terrorists—both politically and economically motivated—are in many ways interconnected. In particular, the proceeds from all of these crimes eventually end up on land, which means that responsibility for stopping piracy must ultimately include law enforcement authorities on land.

The range of criminal activity around seaports is extensive, including the smuggling or illicit import of illegal drugs, contraband, stowaways and aliens, restricted or prohibited merchandise, and munitions. Metropolitan areas near major seaports often have the highest rates of motor vehicle theft. Stolen cars and computers are reported among the most lucrative illegal trade from rich countries to poor countries.<sup>16</sup> Smuggling may also be a precondition for piracy, by providing the essential goods and services of weapons, speedboats, port access, and illegal markets to dispose of pirated goods. Hence, piracy may represent only one aspect of criminality. Widespread poverty around the Malacca Strait also generates smugglers, procurers, prostitutes, and other criminals.

Port authorities are understandably more concerned about smuggling and illegal imports—the most common maritime crimes—than about piracy. Smuggling and illegal importation occur whenever ships unload goods illegally, in areas where they are prohibited, thereby violating states’ embargo or import quotas. Hence, embargoed Iraqi oil found its way to energy importers in Asia, and black-market Marlboro cigarettes evade import duties in many porous ports. It is possible that a shipper may be unaware of an illegal cargo; that is the responsibility of the cargo owner or customs broker. Given the rapid speed and volume of trade flows, it is extremely difficult to detect and detain prohibited shipments. On the contrary, there are substantial pressures on port authorities to expedite shipments across their borders, especially in large, hub ports.

Since the 11 September 2001 attacks on the United States, links between terrorism and piracy have been extensively examined.<sup>17</sup> However, maritime terrorist attacks or threats—that is, politically or ideologically motivated attacks against ships—have been scarce around the South China Sea. Those few that have occurred were within the territorial waters of coastal states. For example,

Singapore foiled a terrorist plot in 2002 to hit visiting U.S. Navy vessels using a small boat rigged with explosives. The most notable maritime attack to date was carried out by the Abu Sayyaf Group (ASG) on *Superferry 14* in Manila Bay in February 2004; 116 people were killed or missing and presumed dead. However, it is not clear whether the attack was primarily motivated by ASG in pursuit of its political objectives. ASG was later found to have sent an extortion letter prior to the bombing, suggesting that it had been motivated by economic factors.

There are some notable obstacles to staging a successful terrorist attack in the South China Sea. Targets are less accessible at sea. A maritime terrorist attack would require very complex and expensive coordination of efforts. An attack, even if successful, could be much less visible than a terrorist attack on land. So far, there have been no terrorist attacks or hijacking attempts in the South China Sea, compared with dozens of terrorist attacks against churches, hotels, and other land-based targets. Overall, the probability of a maritime terrorist attack appears low. However, the total costs of a major blockage of vital sea-lanes like the Malacca Strait could be huge. Although they have been scarce, terrorist attacks on a ferry or cruise ship might have dramatic public impacts: the low probability times the high possible cost still makes maritime terrorism a substantial risk. To date, there has not been a clear relationship between piracy and terrorism.

Arresting and convicting pirates in the South China Sea is a major concern for nonregional countries with major shipping and naval interests, such as the United States, Japan, India, and Australia. They want to maintain freedom of navigation through the straits and sea-lanes of the South China Sea for oil tankers, containerships, and naval vessels. The South China Sea is the main thoroughfare between the Pacific Ocean and the Indian Ocean and is therefore of great strategic significance. The United States sends its warships, including aircraft carriers from its Pacific Fleet, through the South China Sea in support of military missions in the Arabian Sea and Persian Gulf. The South China Sea is the vital artery that connects America's prime Asian ally, Japan, with its Middle East energy suppliers.

Coastal states with extensive coastlines, such as Indonesia, Malaysia, Vietnam, and China, mainly want to protect their recently declared sovereign rights and resource control over exclusive economic zones (EEZs) up to two hundred nautical miles off their respective coastlines, as provided by the United Nations Convention on the Law of the Sea 1982 (UNCLOS). They have also taken on the political responsibility for controlling piracy along with their claims of economic control in their EEZs. For example, Indonesia will not allow any country or private security firm to guard international ships passing through the Malacca Strait on its side of the waterway. Ibnu Hadi, the Director for Asia



Pacific and Africa Inter-Regional Cooperation at the Indonesian Foreign Ministry, has said, “Indonesia will strongly object to any security guard escorting ships in its waters. Indonesia cannot accept foreign ships escorted by foreign security guards.”<sup>18</sup>

Coastal countries also want to assert their sovereign rights to protect tourism, fisheries, and other environmental resources in their territorial waters and EEZs. However, many coastal Southeast Asian nations want to share with international shippers the burden of providing safety of navigation. Overall, this situation presents a dilemma for user states with high concerns over piracy as to whether and how to demand accountability from the coastal states with political responsibility for maritime security where international sea-lanes traverse their territorial waters. The dilemma is complicated by other pressing concerns for countries bordering the South China Sea, such as smuggling, trafficking, poaching, and pollution.

Poaching or illegal, unreported, or unregulated fishing is perhaps a more important concern for coastal states. For centuries, the South China Sea has provided abundant fisheries offering food security and employment opportunities for coastal countries. However, as coastal urban populations have grown and as fishing technology has improved, competition for shared fish stocks has intensified considerably.

There is massive illegal fishing, in the form of unregistered foreign vessels who “pirate” the seas. Foreign fishing boats intruding in rich regional fishing grounds are especially vulnerable and attractive targets for pirates. Eduardo Santos asserts that pirates in the southern Philippines prey more on marginal fishermen than on tankers, barges, containerships, or other commercial shipping vessels. They may not only seize the fish catch; they may also rob ships of their engines, equipment, cash, and other valuables.<sup>19</sup> In May 2004, the director of the North Sumatra Fishery Office estimated that eight thousand fishing boats, or two-thirds of the province’s fishing fleet, were not operating, because of the threat of piracy.<sup>20</sup> The Indonesian government has estimated that the country loses four billion U.S. dollars each year due to illegal fishing alone—several times more than the estimated cost of all pirate attacks worldwide.<sup>21</sup>

For some South China Sea coastal states, any proposed international coordination to combat terrorism or piracy is of lower priority than other pressing issues. These include protecting and maintaining control over newly acquired ocean resources, protecting national security, or protecting bureaucratic interests. In Indonesia, all three issues may coexist. With a coastline twice as long as the circumference of the earth, and with no more than a few dozen operating vessels to patrol its territorial waters, the Indonesian navy and marine police face

a wide range of problems, including illegal fishing, illegal migration, drug trafficking, smuggling, and marine pollution.

To put this in perspective, there were only 103 incidents of piracy in Indonesian waters reported to the IMB in 2002, compared with 1,687 murders, nine thousand cases of violent theft, and eleven thousand serious assaults on land.<sup>22</sup> This means that piracy makes up less than 0.05 percent of Indonesia's cases of reported crime. As a direct result of these competing demands, antipiracy measures not surprisingly receive limited funding.

#### RECENT DEVELOPMENTS IN ANTIPIRACY MEASURES AND BURDEN SHARING

Stakeholder priorities changed substantially after July 2005, when the Joint War Committee (JWC) of the Lloyd's Market Association listed the Malacca Strait and certain areas in the southern Philippines (together with areas such as Iraq, Lebanon, and Somalia) as "prone to hull war, strikes, terrorism and related perils." As a result, marine insurance premiums were increased for vessels transiting these areas despite very strong protests by regional governments and shipowners. The JWC removed the listing in August 2006 after regional governments—with the assistance of international organizations and user states—instituted several security measures.

The JWC listing was a catalyst for several antipiracy developments. In 2003, the thirty-sixth Association of Southeast Asian Nations (ASEAN) Ministerial Meeting had issued a "Statement on Cooperation against Piracy and Other Threats to Maritime Security" but had taken little action. Subsequently, the ASEAN Regional Forum convened a meeting of maritime specialists to coordinate coast-guard action, information exchange, and investigation of piracy reports. Japan's Anti-piracy Coast Guard Program provided additional antipiracy technologies and training.

The IMB Piracy Reporting Center in Kuala Lumpur and the International Maritime Organization's (IMO's) Piracy Reporting Center in London stepped up monitoring and compliance efforts. The IMO made it mandatory for all oceangoing vessels of three hundred gross tons or more to be equipped with an Automatic Identification System (AIS) by the end of 2004. The AIS automatically sends and receives such ship information as identity, position, course, speed, and cargo information to and from other ships, aircraft, and shore installations, all integrated by satellite links. The IMB has endorsed antipiracy measures like the Secure-Ship electric fence and ShipLoc, an inexpensive satellite tracking system designed to locate ships at sea or in port by a tiny transmitter concealed on board. This would permit long-range identification and tracking of ships by anyone with authorized Internet access.

Singapore has implemented the most forceful measures to address maritime security threats. It was the first Asian port to join the U.S.-sponsored Container Security Initiative and has provided sea security teams to escort selected vessels transiting the Singapore Strait. It has restricted circulation of small craft and ferries within the port area and increased surveillance efforts by installing tracking devices on all Singapore-registered small boats to identify their locations, courses, and speeds. Together with Indonesia, it operates a radar tracking system on Batam Island to identify, track, and exchange intelligence on shipping in the Singapore Strait.

In 2003, Malaysia and Thailand started coordinated naval patrols along their joint maritime frontier. Following this, in 2004, Singapore, Malaysia, and Indonesia began coordinated naval patrols in the Malacca Strait, under the code name MALSINDO. In September 2005, the “Eyes in the Sky” initiative began, with coordinated air patrols over the strait by the three coastal states. The Philippines, meanwhile, has proposed building on its maritime border patrol exercises with Malaysia and Indonesia by formalizing a tripartite agreement to exchange information and intelligence. The increase in coordinated patrol activities has been accompanied by an increased effort to modernize regional naval and coast-guard capabilities.

Representatives of the governments of Indonesia and Malaysia have frequently asked shipping companies and the international community to share the costs of policing the Malacca Strait against pirates. Their requests, however, are received with little enthusiasm by most international actors involved—with the notable exception of Japan, which has funded a number of initiatives to provide training and resources to the law enforcement authorities in the region. Regrettably, the states that are most adversely affected by piracy—Indonesia, Myanmar, Bangladesh—can hardly afford to suppress it, whether financially, militarily, or politically. In September 2005, Indonesia and the IMO convened a meeting in Jakarta to discuss safety, security, and environmental protection in the Malacca and Singapore straits. This assembly recognized the role of burden sharing between coastal and user states, especially in the use and maintenance of international straits pursuant to article 43 of UNCLOS (“Navigational and Safety Aids and Other Improvements and the Prevention, Reduction and Control of Pollution”).

Following on from this, in February 2006 the United States hosted a meeting in Alameda, California, that assembled representatives from Indonesia, Malaysia, Singapore, Australia, Germany, India, Japan, the Netherlands, Norway, the Philippines, South Korea, and the United Kingdom. (China was invited but did not attend.) While the meeting’s objective was to coordinate potential user-state contributions to assist the Malacca/Singapore Strait littoral states, little progress

was made on burden sharing. On the one hand, the littoral states want burden sharing to include the cost of providing safety and environmental protection services. On the other hand, international user states view burden sharing as a means of becoming more directly involved in maritime security measures to address piracy and terrorism threats.

In September 2006, Malaysia and the IMO organized a meeting in Kuala Lumpur of coastal states, major shipping nations, and shipping companies. Working groups on safety of navigation and maritime security were established to undertake projects on such issues as the removal of shipwrecks, the establishment of a hazardous and noxious-substance response center, the installation of AIS transponders on small ships, and the placement of tide, current, and wind measurement systems.

Substantial voluntary contributions have been made by China and Japan for these projects. Some have advocated toll-road or user-pays systems to help fund pollution cleanup and navigational aids. The United States and many shippers, however, oppose strongly the introduction of any fees. They prefer to see greater transparency and accountability in any use of funds for maritime safety and security. They would also like to see Malaysia and Indonesia ratify the International Convention on Maritime Search and Rescue 1979 and the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation 1988 (known as the SUA Convention).

In addition, these countries are also considering becoming members of the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP), which was initiated by Prime Minister Junichiro Koizumi of Japan in 2001. Its Information Sharing Center was established in Singapore during September 2006. Malaysia and Indonesia indicated their willingness to participate in this effort but have not yet ratified the agreement, due to sensitivities over national sovereignty.

#### **PERSISTENT PROBLEMS IN CONTROLLING PIRACY**

Despite the recent developments in antipiracy efforts and the recent decline in piracy reports in several areas of the South China Sea, there are some persistent problems in combating piracy. Long-standing concerns include many unresolved overlapping claims and jurisdictional disputes. For example, the Spratly Islands are claimed by six countries and occupied by three of them. These territorial claims are especially important as anchors for assertions of exclusive economic zones around the disputed islands and the oil and natural gas resources they are thought to contain. With few agreed-upon boundaries in the South China Sea, countries act largely in their own self-interest. Hence, “the lack of agreed jurisdiction complicates maritime enforcement, leads to unchecked

degradation of the marine environment and facilitates illegal activities at sea, including possible maritime terrorism.”<sup>23</sup>

Second, international user states themselves have divergent security priorities. For example, recent policy of the United States in the region has been primarily driven by its global war on terrorism. It aims to achieve “maritime domain awareness”—the development of a comprehensive picture of everything that moves on the world’s oceans. American security officials want to “wire” ships so that their locations, courses, speeds, cargoes, registrations, ports of departure, and ports and times of arrival can be tracked with precision, as in an air traffic control system.<sup>24</sup> Japan, on the other hand, is primarily interested in antipiracy measures, reflecting its acute vulnerability to any disruption of its trade and raw materials flows.

A third reason for limited progress is that many coastal states give top priority to protecting national sovereignty and controlling their recently acquired EEZ resources. The declaration of EEZs by coastal states has led to numerous overlapping and multiplying jurisdictional claims and to legal confusion over the right to exercise innocent passage through territorial seas by warships, the right to conduct military surveillance activities in the EEZ of a coastal state, and the arrest authority of states in hot pursuit of pirates in contested waters. There is general agreement that the exercise of freedom of navigation and overflight in and above EEZs should not interfere with the rights of the coastal state. However, there is still disagreement about when overflights become intrusive eavesdropping missions to scout the defenses of potential rivals. One tragic symptom of this disagreement was the collision between a U.S. EP-3 surveillance aircraft and a Chinese fighter jet over Chinese EEZ waters near Hainan Island on 1 April 2001, after which a political crisis ensued.

Fourth, antipiracy efforts are also greatly hindered by the “flags of convenience” system of ship registration. It is extremely easy and convenient to reregister and reflag a ship. According to former IMB director Captain Jayant Abhyankar, “One simply has to fax information as to a ship’s name, ownership, tonnage, and dimensions, and a registration will be granted. The information given is not checked. Once registered, it is free to be hired for trade transport.”<sup>25</sup> It is a system of “managed anarchy,” according to Stephen Flynn, former commander in the U.S. Coast Guard and a writer on maritime security.<sup>26</sup> According to the International Transport Workers Federation, the flags of convenience condone poor safety, pay, and training standards. A 2001 IMO survey found over thirteen thousand cases of falsified documents of seafarers, most of whom were from Indonesia and the Philippines.<sup>27</sup> This provides an easy opportunity for pirates or hijackers to infiltrate a ship’s crew. Having hijacked a

ship, they can elude detection by reregistering it at sea for a nominal fee, thus imposing a layer of obfuscation against the search for the attackers.

Piracy carried out by organized-crime groups sometimes employs “phantom ships,” operating under false identities. They may be hijacked or bought in the salvage market. They can be registered and reflagged after unloading illegal cargo. Reregistration and safety inspections are cheap, fast, and cursory in several jurisdictions. Adding to the problem is the widespread practice of most maritime shipping services to require payment in hard currency on delivery. The cash-based, fast-paced, transient nature of shipping makes it an ideal medium of exchange and money laundering for criminal entrepreneurs. At one time there were thought to be twelve phantom ships operating in Southeast Asia; all but one of them were registered in Panama or Honduras.<sup>28</sup>

There are some simple solutions for preventing smuggling or fraudulent sale of contraband from phantom ships. Every ship has an IMO identification number, based on its original Lloyd’s registry. That number could be engraved permanently in a prominent place, so that any cargo dealer can quickly determine whether or not a suspicious vessel is in fact a phantom ship. This solution is simple, cheap, and likely to be highly effective in locating phantom vessels.

Shipowners and shipping companies are responsible for adopting antipiracy security measures, including relatively cheap physical-security measures like “safe rooms” and the installation of locks and bolts on cargo holds, in addition to satellite-based global positioning systems to track their shipments around the globe. Some shipping companies have invested in antipiracy devices like ShipLoc or Secure-Ship, or even cheaper methods, such as high-pressure water hoses or security lights. But most do not, apparently because they calculate that the risk of loss is not worth the cost of prevention.

Shippers have long-established norms of working outside national boundaries. They have to contend with import quotas, embargoes, and restrictions imposed by states for political reasons, to the commercial detriment of the shipper. Shippers may even obtain bigger profits in making prohibited goods available. In these restricted areas, it may be convenient to shipowners for their vessels to be out of radio contact or undetectable.

Another persistent problem for combating piracy is institutional insularity. A good deal of useful information about piracy is contained in the computers and files of police, coast-guard, customs, immigration, military, intelligence, and other national authorities. However, even within one national government, “information is readily available but it is locked away in ‘silos’ or ‘stovepipes’—institutional frameworks that distribute critical information vertically but not horizontally.”<sup>29</sup> Sharing information horizontally among governments is much

more difficult. Doing so very quickly—for example, when a suspect ship is first sighted—is even more difficult.

Hence, a number of factors impede coordinated antipiracy efforts: uncertainties over legal jurisdiction, disputed sovereignty, and uncoordinated efforts at the recovery of crews, cargoes, or ships. Even when pirates are detected, hot pursuit across national boundaries has seldom been attempted. When coordinated surveillance (like the recent MALSINDO patrols) has reduced piracy attacks, pirates have generally responded by increasing their attacks in less protected areas of the region. State and market stakeholders have made only limited progress in coordinating and sustaining antipiracy security measures for the vital shipping lanes of the South China Sea.

### CONFLICTING CLAIMS, OVERLAPPING INTERESTS

Piracy is often dramatized by the news media, spreading the impression that it is more of a problem than it really is. Piracy is difficult to define and measure. It appears to be related to other forms of crime, on land and at sea. Hence, any antipiracy response must be a coordinated effort—on land and at sea. But this coordination is difficult to achieve. As a result, there is still no effective governance, or burden sharing in the provision of security, of the sea-lanes transiting the South China Sea. Coastal states don't want to give up any sovereign controls. Shippers don't want to impose restrictions or costs on their operations. Major user states have not offered sufficient support to establish the necessary measures. The current situation is far from the highly ambitious proposal by the World Bank, the United Nations Development Program, and the IMO to construct a "Marine Electronic Highway," a shipping traffic control system similar to the global air traffic control arrangement, with comprehensive, integrated electronic information, navigation, and control systems.

Whatever their conflicting claims and mutual suspicions may be, political leaders in the coastal states are beginning to understand that they must cooperate in order to manage the increase in shipping traffic, to use the resources of the South China Sea sustainably, and to address maritime security threats, including piracy. While some progress has been made, there is as yet no durable agreement on how to share the burden for providing safety and security from piracy in the region. The nation-states of Southeast Asia that have only recently extended their sovereignty and resource claims to EEZs in the South China Sea are in no rush to negotiate them away, and shippers who traverse the busiest sea-lanes in the world are reluctant to impose any stringent or expensive security measures.

All these regional and international stakeholders share many overlapping interests—for example, in promoting safe navigation for commercial shipping. On antipiracy or antiterrorist enforcement measures, however, they have had

conflicting views. Littoral states are insistent that the process of achieving regional maritime security should be locally initiated and led. They are willing to accept external assistance, but they contend that ultimately they must have the authority and capability to provide that security. For example, Tokyo's financial contributions, technical assistance, and joint training are welcomed by the littoral states. These measures not only increase the pool of available resources for maritime security but also diversify sources of assistance, avoiding sole reliance on the United States. However, regional states and shippers have yet to put aside their individual stakeholder interests and then negotiate and implement an effective regional maritime antipiracy security system. Unfortunately, it may take an event equivalent to the 11 September 2001 attacks on the United States, a spectacular collision, or a devastating oil spill to overcome contending stakeholder interests and institutional inertia and to galvanize the political will needed for effective antipiracy security measures.

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 NOTES

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