MARITIME SECURITY IN SOUTHEAST ASIA

U.S., Japanese, Regional, and Industry Strategies

By John Bradford, James Manicom, Sheldon W. Simon, and Neil A. Quartaro
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For further information about NBR, contact:

The National Bureau of Asian Research
1414 NE 42nd Street, Suite 300
Seattle, Washington 98105

206-632-7370 Phone
206-632-7487 Fax
nbr@nbr.org E-mail
http://www.nbr.org
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Pirate activity in strategically important waterways around the globe, from the Strait of Malacca to the waters off the Horn of Africa, has garnered significant attention recently from states dependent on these waters for international trade and the free movement of goods. State responses have ranged from independently dispatching naval forces to patrol major sea lines of communication to multinational patrols and information-sharing mechanisms to increase domain awareness. Less visible but of equal—or perhaps even greater—importance, are the efforts of shipowners, operators, and maritime industry groups toward increasing ship security and combating pirate attacks.

The United States and Japan, in particular, are concerned with the threat of piracy to their economic interests and the freedom of navigation at sea, given their status as two of the world’s most trade-dependent economies. They are also two of the best-equipped countries to combat the problem. As such, the National Bureau of Asian Research (NBR) partnered with the Japan Forum on International Relations in May 2010 for a one-day workshop in Tokyo that addressed the problem of piracy and considered areas in which the United States and Japan can cooperate to ensure the safety and security of international waters.

The essays in this report were presented at the workshop and address the issue in four dimensions. First, recognizing the particular importance of Southeast Asia’s strategic waterways to the United States and (especially) Japan, Sheldon Simon’s essay explores the complex web of patrol regimes and multinational mechanisms such as information sharing centers that have emerged to combat piracy in the Strait of Malacca and other waterways in the region. Next, John Bradford’s contribution outlines U.S. maritime strategy and the increased U.S. emphasis on promoting cooperative partnerships to meet the world’s ever-expanding maritime security challenges. Third, James Manicom assesses Japan’s activities toward increasing maritime safety and security in Southeast Asia, focusing his analysis on the root causes of piracy found on land. Finally, Neil Quartaro offers a detailed assessment of industry perspectives on piracy and the lessons that have been learned from recent experience. Taken together, the essays demonstrate a series of pragmatic steps that actors in the maritime domain can take to meet maritime security challenges across the globe and especially in East and Southeast Asia.

I would like to recognize and express appreciation to the members of the research team whose essays appear in this report. I would also like to extend sincere appreciation to the Japan Forum on International Relations for its partnership in the May 2010 workshop in Tokyo, as well as to the Japan Foundation Center for Global Partnership for its financial support for the workshop.

This report marks the first of several that NBR will be releasing in the coming year that explore various facets of maritime security in Asia, including the legal, historical, political, economic, and strategic implications of disputed claims in the South and East China seas and the Gulf of Thailand. Future studies will maintain a keen focus on the maritime domain with respect to its strategic importance to U.S. interests, not just in Asia but around the globe.

Tim Cook  
*Project Director*  
The National Bureau of Asian Research
Safety and Security in the Malacca Strait: The Limits of Collaboration

Sheldon W. Simon

SHELDON W. SIMON is Professor in the School of Politics and Global Studies at Arizona State University. He can be reached at <shells@asu.edu>.

NOTE The author gratefully acknowledges the assistance of Professor See Seng Tan and Oleg Korovin of the S. Rajaratnam School of International Studies in Singapore and Olivia Mohammad of the Arizona State University (ASU) Political Science Junior Fellows Program. The author would also like to acknowledge research support from the National Bureau of Asian Research, the ASU School of Politics and Global Studies, the ASU Center for Asian Research, the Hiroshima Peace Institute, and the Japan Forum of International Affairs.
EXECUTIVE SUMMARY

This study addresses prospects for enhanced cooperative security among user states, littoral states, and the private sector shipping industry for improving safety and security in the Malacca Strait—one of the world’s busiest maritime highways.

MAIN ARGUMENT

The Malacca Strait is arguably the world’s busiest and most important waterway. Increased vulnerability of shipments through the area—from such causes as piracy and armed robbery to navigation and safety concerns—prompted littoral and user states to mount a series of initiatives that helped significantly bolster ship security in the region over the last several years. User states are providing financial and technical assistance to the littoral states, but this assistance has been largely bilateral, with some new collaboration among the participants suggesting a multilateral approach to enhancing safety and security. Questions remain, however, about the sustainability of these programs, additional needs and opportunities, and the lessons they may offer for enhancing safety and security in other regions.

POLICY IMPLICATIONS

• Greater cooperation among user states, littoral states, and shippers for enhancing safety and security in the Malacca Strait should be promoted through the 2007 Cooperative Mechanism.

• The shipping industry should increase its contributions for safety and security, perhaps through funding the installation of Automatic Identification System (AIS) transponders on smaller ships to track their locations.

• Malaysia and Indonesia should join the Singapore-based Information Fusion Center, thus providing complete coverage on maritime crime to the Malacca Strait countries.

• The primary user states—the U.S., Japan, Australia, China, South Korea, and perhaps India—should consider forming a users consortium to allocate responsibilities for improving safety features, such as wreck removal and radar installations, in the strait.

• User states should provide technical assistance and financial support to the littoral states’ air force and navy patrols, thus improving their capacities.
At 520 nautical miles long and extremely narrow at numerous places, the Straits of Malacca and Singapore constitute one of the world’s busiest waterways, linking the Indian Ocean and the South China Sea. Commercial traffic from Europe and the Arabian Gulf passes through the straits on the way to Northeast Asia; and maritime trade from the western Pacific Rim reciprocates, destined for South and West Asia as well as for Europe. Tankers and bulk carriers move vast quantities of coal, iron ore, and minerals to manufacturing centers in Southeast and Northeast Asia, while container ships laden with consumer goods flow in the opposite direction. This trade constitutes more than half the world’s merchant fleet tonnage. Because of shallow reefs and many small islands, and with over 70,000 ships passing through every year, maritime traffic in the straits must transit at greatly reduced speeds, making it vulnerable to maritime crime and piracy—a hazard that has plagued the Malacca Strait for centuries. Between 1999 and 2008, traffic in the strait increased by 74%. Japan’s Ministry of Land, Infrastructure, Transport and Tourism estimates that 114,000 ships will use the strait by 2020.¹

The geopolitical and legal complexities of the Malacca Strait may be found in the disputes that encompass the strait’s internal waters, territorial seas, contiguous zones, and exclusive economic zones (EEZ)—all under the 1982 UN Law of the Sea. Overlapping jurisdictions have led to complaints by countries in the strait against one another—for example, Jakarta has protested Malaysia’s use of straight baselines to measure its territorial seas because of alleged encroachment on Indonesian waters.² These disputes, alongside the varying capabilities of the littoral states to maintain good order in the strait, have led user states to regard the Malacca Strait as an area of instability, lurking threats, and ineffective law enforcement. Littoral states have seen the situation differently: as demonstrated in their 2004 reaction to the U.S.-proposed Regional Maritime Security Initiative (RMSI), Malaysia and Indonesia—though not Singapore—have opposed any effort to “internationalize” management of the strait that could compromise their sovereign rights. Whereas piracy and terrorism are priority challenges for Singapore, Malaysia and Indonesia are much more concerned with fishing interests in the area, environmental threats from ship-sourced pollution, and human, arms, and drug trafficking across the Malacca Strait.³

In 2007 the Cooperative Mechanism for the Straits of Malacca and Singapore was formally launched to encourage user states and shippers voluntarily to assist the littoral states in their responsibility to enhance safety, security, and environmental protection in the straits. Possessing sovereign rights in the straits, the littorals—Singapore, Malaysia, and Indonesia—are primarily responsible for maintaining order. The Cooperative Mechanism is a device by which users can assist in fulfilling these responsibilities in the areas of safety and environmental protection but not in maritime security. Indonesia and Malaysia have refused to include security cooperation in the Cooperative Mechanism, which is discussed below.

³ Ibid., 31–32.
Major Actors in the Malacca Strait

The three most important players determining how safety and security in the Malacca Strait are to be achieved are the littoral states, user states, and shippers. The littoral states have the right to prescribe rules for navigation safety and security, prevent accidents, and provide regulations for marine pollution. These rights are set out in the International Convention for the Safety of Life at Sea (SOLAS), International Regulations for Preventing Collisions at Sea (COLREG), and the 1982 UN Law of the Sea. These provisions are limited, however, by the rights of transit passage that the UN Law of the Sea extends to the vessels of user states passing through the strait. The littoral states have taken a number of measures to promote the safety and security of navigation through the strait, though such measures are not sufficient to eliminate the strait’s vulnerability to piracy, terrorism, environmental spills, and accidents. Shippers are major beneficiaries of littoral states’ safety and security procedures. Commercial shippers, whether bulk cargo or energy carriers, desire to reach their destinations as cheaply and expeditiously as possible. Article 26 of the UN Law of the Sea provides that fees may be levied on a foreign ship passing through a territorial sea for services rendered to the ship, but this provision cannot be made compulsory through unilateral action by the littoral states. When shippers use port facilities, fees are standard, and some of these fees have been used to help maintain the strait’s navigational aids. However, no mandatory charges have yet been established for transit because that would violate freedom of passage.4

The Littoral States

At a 2005 meeting in Batam, Indonesia, the three littoral states met to lay out their views of the respective roles of littoral states, user states, and shippers in ensuring sea lane safety and security. The 2005 Batam Joint Statement reaffirmed the sovereign rights of the littoral states and their primary responsibility for ensuring safety and security in the straits. The statement goes on to acknowledge the interests of user states and notes that the littoral states welcome the assistance of user states, international organizations, and the shipping community in the areas of capacity-building, training, and technology transfer. A follow-up meeting of the International Maritime Organization (IMO) in September in Jakarta authorized the Tripartite Technical Experts Group (TTEG) to establish a mechanism for regular meetings between user states and the shipping industry to facilitate cooperation in matters of safety and security in the strait. In effect, the TTEG could become the venue to negotiate aid from user states and shippers.5

There is, however, an underlying difficulty among the littoral states. Their views of best practices for the strait do not always coincide but vary according to national threat perceptions, sovereignty concerns, national capabilities, and nonaligned orientation. Singapore, with the smallest sea space and busiest port, possesses a state-of-the-art ship tracking system that employs coastal radars to track 70,000 vessels simultaneously. Malaysia’s Maritime Enforcement Agency, with 70 patrol craft and 6 helicopters, maintains a considerable presence but is less concerned with piracy than with illegal fishing and the development of tourism. Indonesia’s waterborne trade, on the other hand, travels more through the Straits of Lombok and Makassar than through the Strait of Malacca. Moreover, maritime border disputes with Malaysia, smuggling, illegal fishing, and environmental

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degradation are of greater concern to Indonesia than piracy and maritime crime. Jakarta’s anemic maritime budget means that Indonesia lacks sufficient ships to patrol the waters around its 17,000 islands. Exacerbating these differences is the wide range of maritime coastal organizations among the littorals that interact only with difficulty. Indonesia has a complicated maritime command network encompassing nine agencies that share neither intelligence nor resources often. Local jurisdictions in Indonesian provinces rather than the central government have primary responsibility for coastal waters. Nevertheless, by 2008 Indonesia, with Japanese assistance, was planning to create a separate coast guard. Finally, neither Malaysia nor Indonesia belongs to the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, which gives coastal states jurisdiction over the prosecution of crimes even if the perpetrators flee to other countries. This convention is particularly germane to the Malacca Strait, where maritime criminals can move rapidly among the littoral states’ waters.6

Looking more closely at the capacities and policies of each littoral state helps in understanding the obstacles to better collaboration. Singapore has the most integrated arrangement of the three countries. Its interagency Maritime and Port Security Working Group brings together the navy, coast guard, and port authority to control ship movements within the port. Employing electronic navigation displays and synchronized voice, track, and data recording, the working group can simultaneously monitor up to five thousand ships. Given the complexity of these activities, Singapore is a vocal advocate of international cooperation and has also provided armed sea marshals who board and accompany high-value vessels that use its port.7

Neither Malaysia nor Indonesia has anything comparable to these capabilities. Though Kuala Lumpur is acquiring new patrol vessels, they will be deployed in the South China Sea off the east coast of the peninsula to patrol Malaysia’s EEZ and not in the Malacca Strait. Malaysia, however, has built a string of radar tracking stations along the strait and has placed armed police officers on some tugboats and barges in these waters. After 2005, Kuala Lumpur established a centralized coast guard, the Malaysian Maritime Enforcement Agency. The creation of this agency was in part a reaction to the addition by Lloyd’s of London of the Malacca Strait to its “war list” for maritime insurance.8 Lloyd’s decision raised shippers’ insurance rates through the strait and motivated Singapore, Indonesia, and Malaysia to create a joint patrol arrangement (discussed below), which then prompted the British insurance company to remove Malacca from the war list a year later.

Of the littoral states, Indonesia gives the least attention to the Malacca Strait. With land-based security concerns involving separatist movements and communal strife, piracy is low on its list of priorities. Through 2006, Indonesia was home to the most pirate-infested waters in the world. Frequently, fishermen with bleak economic prospects due to overfished waters and possessing the boats and nautical skills to engage in sea robbery operated from small islets within the strait, sometimes with the assistance of local police and port officials. However, Indonesia’s navy is more concerned with illegal fishing on the eastern end of the archipelago than with piracy in the Malacca Strait. Few ships moving through the strait call at Indonesian ports. In 2004 the Indonesian Navy estimated it would need 302 warships and 170 aircraft to effectively monitor the seas around the country’s 17,000 islands. Although the navy is acquiring new ships, their number

6 The foregoing analysis is based on the author’s interview with Lt. Colonel Joshua Ho of the Singapore Navy, who is also a senior fellow and coordinator of the Maritime Security Program at RSIS, October 27, 2009.


remains well below that needed for effective surveillance. In 2008, Indonesian defense minister Juwono Sudarsono estimated that only 60% of the fleet’s 124 ships is operational. Additionally, as a result of the global recession, Indonesia’s defense budget in 2009 was only $3.2 billion, far short of the $10.5 billion requested, leaving the navy with insufficient fuel for Malacca Strait patrols. To compensate, the authorities are asking local fishermen to report illegal fishing and other crimes.9

The User States

Of the user states, the United States and Japan have been the primary contributors to the promotion of safety and security in the strait, with South Korea, China, and India more recently becoming involved. Extraregional countries assist in capacity-building, training, and technical assistance on a bilateral basis. The United States has provided surveillance radars along the coast of Sumatra; Japan has contributed patrol craft and trained regional maritime police; China has offered capacity-building assistance to both Indonesia and Malaysia; and India has conducted joint patrols with Indonesia along the Andaman Sea entrance to the strait.10

Washington has emphasized that the United States has a major interest in safe and secure passage through the strait. At the IMO meeting in Kuala Lumpur in 2006, the United States called for enhanced cooperation between user and littoral states and urged the latter to increase their operational presence to enhance deterrence against piracy and terrorism and to more effectively share information. However, Washington also warned that any new security measures should not impair the right of transit through the strait.11 In 2006 the U.S. National Defense Authorization Act provided assistance for the improvement of maritime security and counterterrorism under the Global Train and Equip Program. Through 2008, Washington dispersed $47.1 million to Indonesia and $16.3 million to Malaysia. Indonesia received five coastal radars along the Malacca Strait (and an additional seven in the Makassar Strait and Celebes Sea, which now experiences more piracy than the Malacca waterway). Sensitive to nationalist sentiments in Jakarta and Kuala Lumpur, Washington has provided this aid in a low-key manner.12 The U.S. Pacific Fleet also exercises annually with the littoral states’ navies through the Cooperation Afloat and Readiness Training (CARAT) and Southeast Asian Cooperation for Anti-Terrorism (SEACAT) activities. Finally, in pursuit of its anti-terrorism goals, U.S. naval officials would like to equip ships electronically in order to precisely track their positions, speed, registrations, destinations, and manifests, comparable to the global air traffic control system.13

Japan has been the most active user state in assisting littoral countries with safety, security, and environmental protection measures in the strait. For many years it was the only user state to do so. As early as 1997, the Japan Coast Guard (JCG) participated in creating a traffic separation scheme for the Malacca Strait. In the 1990s the JCG also began inviting Southeast Asian maritime police to train

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in Japan, and in 2005 the new Malaysian Maritime Enforcement Agency (MMEA) asked the JCG to help train its personnel. Likewise, the JCG is also helping Indonesia create a coast guard.\footnote{Masahiro Akiyama, “Regional Maritime Security Engagements: A Japanese Perspective,” in Ho, Realising Safe and Secure Seas for All, 90–93; and author’s interview with Colonel Jackson Chia, commander of the Maritime Security Task Force, Singapore Armed Forces, October 26, 2009.}

Tokyo’s concerns about the Malacca Strait significantly increased in 2005 after a Japanese tugboat crew was abducted in the strait. In addition to offering Indonesia high speed patrol boats for anti-piracy missions, Japan proposed multinational patrols for the waterway, an idea rejected by Indonesia and Malaysia as violating their sovereignty, though Singapore was receptive.\footnote{Andrew T.H. Tan, “Singapore’s Cooperation with the Trilateral Security Dialogue Partners in the War Against Global Terrorism,” Defense Studies 7, no. 2 (June 2007): 200.}

Commercial Shippers

Though commercial shippers, being the main beneficiaries of a smooth voyage through the waterway, are clearly concerned about safety in the Malacca Strait, they oppose any mandatory fee that would contribute to its safety as contrary to the transit passage provision in the 1982 UN Law of the Sea. Their objection would be supported by the United States, Singapore, and other states that rely heavily on ocean commerce.\footnote{Author’s communication with Australian maritime expert Sam Bateman, September 2009.} Article 26 of the UN Law of the Sea Treaty stipulates that coastal states can only charge for services rendered in territorial waters (for example, pilotage). Malaysia has pointed out, however, that Article 43 of the treaty calls for user and littoral states to cooperate to enhance safety; this article could provide a basis for imposing fees that are designated for improving the security of the strait.\footnote{Mohammad Nizam Basiron, “Between Rising Naval Powers: Implications for Southeast Asia of the Rise of Chinese and Indian Naval Power” (statement at the Maritime Institute of Malaysia Conference, Singapore, November 18–19, 2008), 14. See also Sam Bateman, “UNCLOS and Its Limitations as the Foundation for a Regional Maritime Security Regime,” Institute of Defense and Strategic Studies, Working Paper, no. 111, April 2006, 13–14.} Because more than half the commercial ships transiting the strait do not make port calls, they are in effect free riders on fee-based improvements made by the littoral states with funds from the ships that use services in the strait.

In some cases, international maritime law has required shippers to improve safety practices. The IMO, through the ISPS Code of 2004, requires all commercial vessels over 300 gross tons to be equipped with Automatic Identification System (AIS) transponders. Singapore goes even further by insisting that all ships within its port limits carry low-cost transponders. These devices permit real-time tracking but have only a limited range, though one sufficient for ships to be followed in the Malacca Strait.\footnote{Chew Men Leong, “Realising Safe and Secure Seas for All,” in Ho, Realising Safe and Secure Seas for All, 14–15.}

Challenges in the Malacca Strait

Piracy and Maritime Crime

Although piracy and maritime crime in the Malacca Strait significantly declined after 2005, there has been an uptick in two areas since 2008, attributed in part to problematic maritime enforcement due to disputed maritime boundaries. One area is the Riau Archipelago south of Singapore along the eastbound lane of the traffic separation scheme. The other is in the northern Malacca Strait between Sumatra and the west coast of Malaysia, where there is no agreed on EEZ boundary between Indonesia and Malaysia. Most maritime crime is small-scale robbery, involving
ships at anchor and entering or leaving a harbor, and could be countered by more effective policing by port authorities. Analysts note that there are economic factors in regional piracy, particularly on the Indonesian side, where overpopulation, unemployment, and the absence of infrastructure to encourage investment all contribute to piracy’s appeal. Field research in Batam among former pirates, who in 2009 had legal, land-based jobs paying about 6 Singapore dollars per day said that as pirates, they could make between 13,000 and 20,000 Singapore dollars for a successful strike.

It is also important to note the distinction between piracy and sea robbery. The latter occurs in national waters and is a domestic issue; the former takes place in international waters and requires international cooperation to address. Where sea robbery within national waters tends to be petty theft at ports and anchorages, piracy tends to be carried out by organized groups who are well-equipped with weapons and fast craft. Pirates may take bulk cargo to sell on the black market and kidnap crew members for ransom. In rare cases, ships may be hijacked. Corrupt local officials may be directly involved in piracy by issuing false papers and identity cards to perpetrators and by looking the other way when contraband is transferred.

Indonesia and Malaysia have frequently asked shipping companies to share the costs of policing the Malacca Strait against pirates. For the most part, the shippers have demurred. Moreover, the littoral states also want shippers as well as user states to share the burden of policing the strait, including safety and environmental measures. Only Japan has regularly contributed. The reluctance of shippers to commit to expensive anti-piracy measures may be based on economic analysis of piracy costs. The Organisation for Economic Co-operation and Development (OECD) has estimated that new security measures to counter the threat of piracy or terrorism at sea would cost ship operators at least $1.3 billion and would increase annual operating costs by $730 million. However, the relatively low cost of actual piracy may not warrant such expensive outlays. In 2005—a year of relatively high levels of piracy in Southeast Asia—over 63,000 ships passed through the Malacca Strait, and the IMB reported only 12 cases of piracy, or a probability level of .019%. Moreover, many of the reported attacks involved petty theft against ships at anchor. Shippers, on the other hand, probably underreport pirate attacks because they may cause vessels to be detained in ports for investigations, with the costs of such delays frequently exceeding the losses incurred by piracy. Arming merchant ships is discouraged by both owners and trade unions in the belief that firearms will further endanger crews. Moreover, both Indonesia and Malaysia prohibit armed guards on merchant vessels passing through territorial waters, though Kuala Lumpur has relented to the extent that such ships may pass through its section of the strait as long as the passage is continuous. Singapore requires any armed guards on merchant ships in its territorial waters to disassemble their weapons and lock them away.

Further complicating piracy suppression in the strait is the proximity of the littoral states’ territorial waters. Pirates can attack a ship in Singapore waters and then flee to Malaysian or Indonesian jurisdictions. An answer to this problem may be found in the 1988 Rome Convention on the Suppression of Unlawful Acts Against the Safety of Marine Navigation (SUA). The convention extends coastal state jurisdiction where a crime has been committed to foreign territorial waters.
and provides guidelines for the extradition of suspects to the coastal state where the crime was committed. Of the Malacca littoral states, however, only Singapore is a signatory; the same jurisdiction does not yet extend to either Malaysia or Indonesia.22

Because of a number of changes designed to deter maritime crime in the Malacca Strait over the past decade, incidents of piracy have moved into the adjacent South China Sea. Unlike in the 1990s, however, when gangs operating from China and Thailand hijacked ships, forced crews to leave, and took the vessels to complicit local ports where they were repainted, provided with counterfeit documents, and sold to buyers who were unaware of the ships’ provenance, now sea robbers tend to be former fishermen from Indonesian villages who use small vessels with limited fuel capacity, allowing them to rob ships and return to shore quickly.23

*Maintaining Navigation and Environmental Safety*

In addition to piracy and related to it are navigation safety and environmental protection problems in the strait concerning the maintenance and replacement of aids to navigation such as lighthouses, buoys, and radar installations. Through the TTEG the littoral states have agreed on six specific projects to enhance safety and environmental protection and have requested that user states support these projects:

1. Removal of six shipwrecks in the traffic separation scheme at a cost of $5 million per wreck
2. Cooperation and capacity-building with respect to the protocol on the response to hazardous and noxious substances at a projected cost over two years of $3.5 million (which by 2008 had 21 signatories, including Japan and Singapore)
3. Provision of a demonstration project of Class B AIS transponders on small ships
4. Setting up tide, current, and wind measurement systems over a period of six years at a cost of $774,000 in addition to an annual maintenance cost of $833,000
5. Replacement and maintenance of navigational aids at $28.2 million for ten years
6. Replacement of aids to navigation damaged in the December 2004 tsunami at a cost of $2.6 million24

The foregoing projects constitute an ambitious agenda that, if fulfilled, would insure the Malacca Strait’s future. To provide just a single example of their potential efficacy, in recent years, tugs have been favorite targets of pirates because most do not have AIS transponders. Such vessels can be seized at sea, without maritime law enforcement discovering their subsequent locations. Once taken, these boats can be used in a variety of criminal activities, particularly those favoring small vessels in port. Tugs with transponders can be tracked and recovered by maritime law enforcement if they are seized by pirates. Yet, as Catherine Raymond points out, though user states and shippers have been willing to support some projects on a bilateral basis, there is little interest in any long-term institutionalization of the process. Moreover, while Singapore favors a multilateral enterprise for managing the strait, neither Malaysia nor Indonesia concur; and for political reasons, Singapore does not want to press the others.25

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22 Teo, “Target Malacca Straits,” 544.
25 Catherine Zara Raymond, “Piracy and Armed Robbery in the Malacca Strait,” *Naval War College Review* 62, no. 3 (Summer 2009): 40; and author’s interview with Chia.
In a November 2009 report, the Maritime and Port Authority of Singapore released a preliminary assessment of traffic through the Malacca Strait, noting that the number of collisions in the adjoining Singapore Strait—the narrowest point in the waterway, which is just 1.2 miles wide—has remained the same over the past three years even as traffic volume has increased. Thus, the Strait of Malacca could well bear more traffic without significantly endangering ships if safety and security measures are taken.  

Current Measures for Improving Safety and Security in the Strait

The Malacca Strait Patrols (MSP)

Arguably the most effective cooperative security mechanism to suppress piracy in the Malacca Strait, the MSP (formerly known as Malaysia-Singapore-Indonesia, or MALSINDO) is Southeast Asia’s only indigenous multilateral military arrangement that is ongoing, involving the coast guards, navies, and air forces of the littoral states as well as Thailand (since 2008). A joint coordinating committee of the MSP meets twice a year, and intelligence is also shared among the participants. However, the MSP is more coordinated than joint, with each country responsible for patrolling its own sector and each ship under national command. After a 2006 agreement was reached, ships in the MSP have the right of hot pursuit up to five nautical miles (nm) into the sovereign waters of a neighbor, though there are no plans yet for joint patrols.

The “Eyes in the Sky” (EiS) component of the MSP, of which Thailand is a member, involves aircraft patrols from the four states, though only six sorties per week. Each flight carries personnel from each of the participating armed forces, who report “suspicious activities” to monitoring and action agencies (MAA) in each of the countries. The EiS patrols are conducted only in daylight hours, however, whereas most piracy and sea robbery occur at night. Experts estimate that at least 70 sorties per week are necessary to provide 24-hour coverage; EiS provides only a small fraction of that number. Nevertheless, with MSP’s inauguration in 2005, the number of reported piracy incidents declined from a high of 38 in 2004 to just 4 in 2008. Interestingly, the EiS agreement contains a provision that could permit extraregional countries to participate in the air patrols, though this has not been activated, probably because of the low level of piracy currently experienced in the strait. Yet, in a May 7, 2008, briefing to the Japan Society in New York, then U.S. Pacific commander Admiral Timothy Keating stated that the United States “has one plane on patrol” in the strait. If true, little has been publicized about this deployment.

External Aid to the Strait States

Although external states are not generally involved in patrolling the Malacca Strait, they do play an important role in helping the littorals build capacity. The United States, Japan, Australia, South Korea, India, and most recently China are assisting—or in China’s case have offered to assist—the littoral states in improving safety and security practices. As mentioned above, the United States has supplied five coastal radars on the Indonesian side of the strait and is donating 30 patrol boats to the Indonesian marine police. Through CARAT and SEACAT exercises, the

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U.S. Navy provides training opportunities for all three littorals. Likewise, the U.S. Coast Guard conducts training with regional maritime law enforcement agencies. Washington is also funding a tactical communications center in Jakarta. The legislative basis for U.S. capacity-building is the 2006 Global Train and Equip Program through which Washington has provided $47.1 million worth of equipment for Indonesia and $16.3 million for Malaysia.28

Japan has the longest involvement in supporting Malacca Strait safety, with projects going back to 1969. Tokyo’s private Malacca Strait Council, backed by the Nippon Foundation, has donated $130 million over 40 years for such projects as wreck removal, dredging, upkeep of navigational aids, and the compiling of channel charts. In the late 1990s the JCG helped create the traffic separation scheme for the strait; and the JCG has trained the maritime police littoral states in both Southeast Asia and Japan for decades. In addition to providing three patrol vessels in 2007 to the Indonesian Sea Police, the Nippon Foundation has funded maintenance vessels for Indonesia and Malaysia and a training ship to Malaysia in 2006. More recently, in February 2009 a grant from Tokyo to Malaysia’s Maritime Enforcement Agency led to the installation of laser cameras and laser direction finders that both enhance traffic safety and help to detect illegal activities in the strait.29

Over the past decade, the JCG set up a network of fourteen Asian coast guards to exchange information on piracy on a daily basis. The JCG also conducts more joint exercises with its Southeast Asian counterparts than any other coast guard, including that of the United States. Despite Japan’s “Peace Constitution” that constrains the kind of military actions its regular armed forces can undertake, because the JCG is a police agency, its training activities and equipment transfers are not considered military actions.30

Japan has also pressed shipowners to contribute to a fund for ensuring safety in the Malacca Strait. The Nippon Foundation, which has borne one-third of the cost of maintaining the strait’s navigational aids, has asked shipowners to ease the financial burden of the littoral states. While Japanese shipowners have contributed, most shippers from other countries have refrained, arguing once again that international waterways should be free and that they would have to increase freight charges were they to contribute. Nevertheless, in November 2008, shipping industry members and user states agreed to contribute $5.4 million for safety in the strait via a fund for navigational aids.31

Finally, China has joined the roster of countries offering to improve navigation in the strait. Under the auspices of the IMO, Beijing offered to help finance the replacement of navigational aids damaged by the 2004 tsunami and to help the littoral states build capacity in general; India has also tendered similar offers.32 Though most of these recent donations by user states and shippers are modest financially, they establish precedents and a base for future efforts as well as an understanding that the littoral states will continue to present a list of projects they would like to see funded.33

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33 Ibid.
ReCAAP: A Successful Multilateral Institution

Seen as the most successful example of multilateral maritime security in Southeast Asia, the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP) was launched in Singapore in 2006 to provide more timely and accurate reports of maritime crime against ships in the region while facilitating best practices among the states concerned. Sixteen Asian states covering South, Southeast, and Northeast Asia belong to ReCAAP, though neither Indonesia nor Malaysia is a member. ReCAAP’s Information Sharing Center (ISC), in addition to distributing data on illegal activities against shipping, also assists in capacity-building and cooperative arrangements. The ISC comprises four departments: operations, research, programs, and administration. Each member state has designated an internal agency as a “focal point” that manages and coordinates all actions dealing with maritime crime against ships in its jurisdiction as well as coordinates with neighboring focal points when necessary. Japan was the original architect of ReCAAP through its coast guard, and ReCAAP’s focal points include coast guards, marine police, navies, and port authorities. One of ReCAAP’s achievements has been to break down the jurisdictional silos within each country with respect to maritime affairs, largely through capacity-building initiatives such as exercises and training workshops. Partner organizations also include shippers associations such as the Asian Shipowners’ Forum, the Baltic and International Maritime Council (BIMCO), the IMO, and the International Independent Tank Owners Association (INTERTANKO).

Despite such collaborative achievements, ReCAAP has its limitations, the most significant being that neither Malaysia nor Indonesia has ratified the agreement. Although both countries have expressed support for ReCAAP, they have refrained from formally participating because of the belief that to do so would undermine their claims of sovereignty in archipelagic waters and territorial seas. Moreover, Malaysia further objects that ReCAAP’s Singapore venue creates an unnecessary competitor to Kuala Lumpur’s IMB Piracy Reporting Center. The IMB center, however, has generated its share of complaints from Indonesia. Jakarta claims that the IMB locates piracy incidents in Indonesian waters when in fact they occurred on the Malaysian side of the Malacca Strait.

ReCAAP incident response could also be improved by urging the shipping industry to encourage ships to report to the ISC first rather than to their flag states and focal points. ReCAAP could then alert the respective operations centers that have the responsibility to deploy patrol ships. Currently, the ISC has no authority to render assistance to a victim ship, given that it is exclusively an information sharing center.

ReCAAP’s primary strength is as a reporting and analytical center. The center’s assessments of piracy and maritime crime identify patterns and locations of attacks, thus helping states allocate patrol resources. For example, ReCAAP reports have revealed that most Southeast Asian piracy either occurs in Indonesian waters or is conducted by pirates from Indonesian villages. ReCAAP

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workshops have been an impetus for states’ focal points to share information and contact each other on their own initiatives without necessarily having to first go through the ISC.  

Finally, it is worth noting that in one case ReCAAP analysts assessed the September 2008 hijacking of a Singapore-registered tugboat using information from the boat’s crew that was originally provided in a police report and sent the assessment to focal points in Cambodia, Thailand, and Vietnam. Within two weeks, the Thai Marine Police apprehended the hijackers, who had renamed and repainted the boat in a Thai port.

**Other Forms of Cooperation in the Malacca Strait**

Other forms of international cooperation in the strait exist—the most notable being the Cooperative Mechanism. A 2007 agreement engendered by the IMO, the Cooperative Mechanism is supposed to enhance navigation safety, security, and environmental protection in the strait. Particularly notable is a dialogue forum among littoral states, user states, and shippers—a first for Malacca Strait policymaking. The Cooperative Mechanism has also created a committee to coordinate and manage six designated joint projects on navigation security as well as the Aids to Navigation Fund that accepts voluntary contributions. The Cooperative Mechanism is currently the only venue in which all three principal actors in the Malacca Strait meet regularly to determine joint projects for safety and security and establish the means to fund them. As of 2009, Australia, the United States, Germany, Japan, India, South Korea, the United Kingdom, Greece, the United Arab Emirates (UAE), and INTERTANKO have all committed either financing or expertise. However, at the October 2009 Cooperative Mechanism meeting in Singapore, the BIMCO representative reminded those attending that any measures relating to shipping in the strait should have the approval of the shipping industry as well as of states. Indeed, as of 2009, contributions to the Aids to Navigation Fund had been made by states and foundations but not by private companies. The latter may fear that voluntary contributions could create a precedent for setting up similar schemes for other straits.

The Information Fusion Center (IFC), inaugurated by the Singapore Navy in 2009, exhibits the kind of multilateral cooperation that Singapore prizes. Located at the Changi C2 Center, IFC houses a number of information-sharing arrangements, including the Western Pacific Naval Symposium (WPNS) and MSP Information System. IFC also works closely with ReCAAP. IFC’s purpose is to provide participating navies and maritime agencies with a complete regional maritime picture, thus enabling the identification of potential threats. The regional groups that are located in the IFC are invited by the Singapore Navy to attach international liaison officers to the center. The IFC also has an anti-terrorism brief based on the belief that the sharing of a variety of nations’ maritime experiences can contribute to a better understanding of this data than can individual countries alone. The goal of the IFC is “delivering actionable information to our partners to cue operational responses.” To realize this outcome, the IFC has set up a 24-7 operation run by an integrated team of international liaison officers and Singapore Navy personnel. Although Indonesia and Malaysia

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38 Author’s discussion with ReCAAP officials, Singapore, October 28, 2009.
41 Author’s interview with Thomas Timlen, Asia liaison for BIMCO, Singapore, October 27, 2009; also see Beckman, “Maritime Security and the Cooperative Mechanism,” 8.
are not represented at the IFC, they coordinate with the center informally. IFC reports also are delivered to regional shipping companies. At the IFC’s heart is a database on more than 150,000 vessels and a software tool designed to flag suspicious ships. The MSP Information System is linked to this database. Finally, the IFC coordinates Proliferation Security Initiative (PSI) exercises designed to interdict ships and aircraft transporting WMD material.43

Conclusion

This study has addressed prospects for enhanced multilateral cooperation (cooperative security) among large states, small states, and the private-sector shipping industry for improving safety and security in the Strait of Malacca. The underlying premises of the research are that more safety and security in one of the world’s busiest waterways constitutes a positive-sum outcome for all the actors; a cooperative division of responsibilities among the littoral states, user states, and shippers would be an efficient process for maintaining the strait; and political and commercial obstacles to sharing the costs and responsibilities for enhanced navigation could be transcended because the payoff for all involved is so important. This review has demonstrated that there already is significant collaboration along several dimensions by the littoral states (for example, through the MSP), from user states to littoral states through a variety of assistance arrangements, from littoral states to shippers via safe navigation arrangements in the strait, and most recently by all actors through the 2007 Cooperative Mechanism. The Cooperative Mechanism constitutes the most significant step toward regime-building for the Malacca Strait because it acknowledges joint responsibility for safety and security.

Nevertheless, for the most part the foregoing arrangements are ad hoc and incomplete. There is no single international council that brings the stakeholders together, determines priorities for safety and security, raises funds to meet the identified needs, and allocates tasks among members. Nor does such a council seem likely in the future. One reason is that littoral and user states have divergent priorities: Malaysia and Indonesia are more concerned about smuggling, illegal fishing, and human trafficking than is Singapore, which focuses on navigation through the strait. The littoral states insist that maritime security be locally initiated and led, yet their maritime organizations do not easily mesh. While Singapore and Malaysia have coast guards (or the equivalent), Indonesia possesses no central maritime police. That function is divided among bureaucracies and provinces rather than central government offices. User states, too, have different priorities: during the Bush years, the United States was primarily concerned with maritime terrorism, Japan with piracy, and Australia with general capacity-building for the littoral states. In the southern one-third of the Malacca Strait, where the strait narrows, sovereignty has yet to be determined because the territorial seas of Malaysia and Indonesia overlap. Likewise, in the northern part of the strait, Malaysian and Indonesian EEZs overlap, complicating enforcement of illegal fishing. Indonesia claims that the boundary is the median line, whereas Malaysia insists that the boundary is coincident with the continental shelf.44 If a Malacca Strait regime is to be formed in the future, the Cooperative Mechanism will be its progenitor. While the mechanism’s

43 Tan Wee Bang, “Enhancing Maritime Security Through Singapore’s Maritime Security Task Force (MSTF),” in Ho, Realising Safe and Secure Seas for All, 191–92; Bateman, Ho, and Chan, “Good Order at Sea in Southeast Asia,” 34; and author’s interview with Chia.
The 2009 budget is small at $8 million, the mere fact of its existence shows that the principle of shared responsibilities among littorals and users has taken hold.\footnote{Bateman, “Regime Building,” 39.}

By the end of 2009, work was underway on several projects in the strait: the Marine Electronic Highway was proceeding, with Indonesia installing navigation equipment purchased with World Bank funds; Malaysia had identified eleven critical wrecked ships that required removal for navigation safety; Singapore’s demonstration project on the utility of AIS transponders for small ships successfully identified the locations of vessels in the crowded Singapore Strait; the U.S. Coast Guard conducted a program on dealing with hazardous and noxious substances to enhance preparedness and response capacities of the littoral states against ship-sourced incidents; and China had agreed to fund the replacement of navigational aids destroyed in the 2004 tsunami.

Nevertheless, while the Cooperative Mechanism improves safety and environmental projection, it does not include measures to enhance maritime security in the Malacca Strait. Users have tacitly agreed that the littoral states’ defense forces are responsible for maritime security through the MSP. Moreover, there are other venues for maritime security discussion, including the meeting of the chiefs of defense forces of the three littoral states, meetings of the ASEAN Regional Forum, and ReCAAP activities that bring representatives of several states together. ReCAAP may be the most promising mechanism for enhancing multilateral security cooperation. The agreement could expand its purview to include arms and human smuggling and should increase its efforts to convince Malaysia and Indonesia to go beyond informal cooperation, which delays information-sharing with the other members.

On balance, then, safety and security in the Malacca Strait will continue to involve a potpourri of arrangements, ranging from the capacities of the individual littoral states, bilateral aid arrangements between users and littoral states, limited multilateral protection arrangements among the littoral states (such as MSP), and multilateral maritime information collection and diffusion (such as ReCAAP, the Cooperative Mechanism, and Singapore’s IFC). Together, these arrangements have created a reasonably effective, decentralized way of keeping the Malacca Strait open to international traffic. Absent a major catastrophe in the strait, these uncoordinated arrangements are unlikely to change.

Postscript: Are There Lessons from the Malacca Strait for Piracy Off the Gulf of Aden?

While maritime crime seems under control and a number of safe transit procedures are in place in the Malacca Strait, the world’s attention has turned to the Gulf of Aden (GOA) and the western Indian Ocean, where piracy is ubiquitous. In 2008, pirates attacked 111 vessels in and around the GOA; increased insurance premiums added $20,000 per trip in the region.\footnote{Mark Valencia and Nazery Khalid, “The Somalia Multilateral Anti-Piracy Approach: Some Caveats,” Nautilus Institute, February 12, 2009.} The question then arises as to whether any arrangements developed over the past twenty years to improve safety and security in the Malacca Strait are applicable in the GOA? Unfortunately, any isomorphism seems remote. First, the geography of the two regions is quite different. The GOA opens into the vast western Indian Ocean, whereas the Malacca Strait is much narrower and connects small bodies of water—the Andaman and South China seas. Sociological conditions also differ. For the GOA and its environs, pirates originate from Somalia, a failed state, where they have created safe havens. In the Malacca Strait, the littoral states collaborate to suppress piracy and maritime crime that come primarily from small fishing villages in Indonesia, where local economies have been bleak.
Whereas the Malacca Strait countries have largely successfully suppressed maritime crime on their own, the East African states are unable to do so, leading to the creation of an anti-piracy force of navy contingents from some twenty countries coordinated by the United States.

The UN Security Council passed four resolutions authorizing foreign intervention to suppress piracy off Somalia and the GOA—with one passed in December 2008 even authorizing hot pursuit onshore of pirates operating from Somalia. However, Indonesia—a Security Council member at the time—both objected to authorization for entering Somali airspace and insisted that any foreign navies operating in Somalia’s territorial waters abide by the 1982 Law of the Sea and not create a precedent for intervention in other waters where piracy is common.47

Cooperation in the Malacca Strait also includes arrangements to promote collaboration among users and the littorals—ReCAAP for combating piracy and the Cooperative Mechanism whereby users aid the littorals to improve safety. The achievements of such arrangements can be attributed to the fact that the littoral states are politically, economically, and militarily energetic. Somalia meets none of these criteria. In other words, in the African case, there is no base from which to create an indigenous safety and security regime.

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U.S. Strategic Interests and Cooperative Activities in Maritime Southeast Asia

John Bradford

JOHN BRADFORD is a U.S. Navy Officer who has been assigned to several ships forward-deployed to the Western Pacific and ashore to a number of defense staff positions dealing with Asia-Pacific strategic affairs. In a private capacity, he facilitates the Indo-Pacific Maritime Security Network, a group of maritime-oriented professionals who seek to promote safety and security at sea through exchange research and informed opinion. He can be reached at <johnfbradford@gmail.com>.

NOTE The views expressed in this paper are those of the author and do not represent official policy of the U.S. Navy, the Department of Defense, or the U.S. government.
EXECUTIVE SUMMARY

U.S. maritime strategy’s focus on building partnerships to execute both high-end hard power security missions and operations such as humanitarian assistance/disaster relief (HA/DR) and maritime security is well-suited for addressing important strategic issues in Southeast Asia.

MAIN ARGUMENT

The U.S. maritime strategy emphasizes the importance of building partnerships with a wide range of actors and specifically names the Western Pacific as a region where U.S. maritime forces will concentrate their attention. The strategic importance of Southeast Asian waterways dictates that these partnership efforts address security threats such as those posed by transnational criminals, terrorists, and natural disasters. Lessons learned from international cooperation in the Strait of Malacca demonstrate that such partnerships can be effective and inform current U.S. operations in maritime Southeast Asia. Given the shared priorities in U.S. and Japanese maritime strategies, a U.S.-Japan partnership affords opportunities to enhance cooperation on safety and security in Southeast Asian waterways.

POLICY IMPLICATIONS

- Southeast Asia is a critical maritime region for commerce, communication, and resources.
- The U.S. maritime strategy is appropriate for addressing safety and security challenges in Southeast Asia.
- Lessons from the international humanitarian response following the 2004 Indian Ocean tsunami and Strait of Malacca counter-piracy cooperation demonstrate the effectiveness of maritime partnerships.
- Shared strategic priorities provide opportunities for the U.S. and Japan to cooperatively contribute to enhance maritime safety and security in Southeast Asia.
- Cooperation on HA/DR is an area where the U.S. and Japan should focus efforts.
In 2007 the United States published a new maritime strategy directing the U.S. Navy, Marine Corps, and Coast Guard to prioritize both sustaining the capacity to win wars and building partnerships that strengthen security in peacetime. The critical strategic importance of maritime Southeast Asia and the nature of the security threats in that region demonstrate that this new strategy is exceptionally appropriate to Southeast Asia. The Strait of Malacca provides specific case studies that aptly illustrate this point. Given these strategic realities, it is not surprising that the United States is aggressively engaged in a variety of partnership activities in maritime Southeast Asia. However, much work remains to be done, and the conflux of U.S. and Japanese strategic priorities provides opportunities for those two nations to strengthen their cooperation in order to further enhance maritime safety and security in the region.

A Cooperative Strategy for 21st Century Sea Power

In October 2007 the chiefs of the U.S. Navy, Marine Corps, and Coast Guard issued a new maritime strategy, “A Cooperative Strategy for 21st Century Seapower.” This document, now referred to in short-hand as “CS21,” articulates the first comprehensive U.S. maritime strategy published since 1986. Given the degree to which the world has changed in the more than two decades that passed between the development of these two strategies, it is not surprising that they incorporate marked differences. Perhaps most immediately noticeable, the 1986 maritime strategy pertained to the navy only while CS21 provides a common strategy for all three maritime services.

A classified Cold War product, the 1986 maritime strategy was focused on defeating the Soviet blue-water threat. In the introduction to the 1986 book that was published by the U.S. Naval Institute to provide “the most definitive and authoritative statements of the Maritime Strategy that are available in unclassified form,” Admiral James Watkins explains that “the goal of the overall Maritime Strategy is to use maritime power, in combination with efforts of our sister services and forces of our allies, to bring about war termination on favorable terms.” In contrast, CS21 prioritizes the prevention of war as equal to prevailing in war. CS21 also directs that maritime forces be employed in times of peace to build confidence and trust among nations through collective maritime efforts that focus on common threats and mutual interests. In doing so, CS21 stresses the need for U.S. maritime forces to work with a wide range of partners in order to successfully meet these challenges.

CS21 also contrasts with the previous maritime strategy by specifically affirming the value of U.S. maritime forces’ constabulary and civil assistance missions. In fact, CS21 elevates maritime security and humanitarian assistance and disaster response (HA/DR) to core capabilities, placing them together with four hard-power capabilities: deterrence, power projection, forward presence, and sea control. HA/DR represents a mission set that U.S. maritime forces have always performed, but for the first time, the maritime strategy dictates that these capabilities will be central to planning. Far from signaling a shift away from Mahanian concepts of sea power toward the notions of law enforcement and humanitarianism, CS21’s new emphasis is a logical

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extension of the navy’s need to address the diversity of the challenges of today’s operating environment most effectively.⁴

CS21 observes that in an increasingly interconnected world it is not feasible for any nation to operate independently when confronting the challenge of ensuring the safety, security, and stability of the global commons. Therefore, the strategy embraces a flexible vision of voluntary partnerships of varying levels of formality, scope, and capability to meet the world’s needs. CS21 places specific importance on working with international partners and broadening the range of those partners to build mutual understanding and respect with all maritime stakeholders. As a result, CS21 calls on U.S. maritime forces to strengthen efforts to cooperate with foreign navies, coast guards, maritime law enforcement bodies, international organizations, NGOs, private companies, and the general public.

Global Maritime Partnership (GMP) is a concept by which the U.S. Navy fosters and sustains these cooperative relationships. The flexible nature of the GMP concept allows maritime stakeholders to come together, at times without formal agreement, in response to emergent crises or to solve maritime problems that require long-term effort, such as building regional maritime capacity. GMP can be accomplished in a manner that complements existing alliances, partnerships, and coalitions without necessarily establishing a new organization or governing body, as long as the challenge addressed is of mutual concern.⁵ GMPs represent the implementation of a key observation found in CS21: “Although our forces can surge when necessary to respond to crises, trust and cooperation cannot be surged.”

The Strategic Importance of Maritime Southeast Asia

CS21 specifically mentions two regions as places where maritime forces must focus their energies, the Western Pacific and Arabian Gulf/Indian Ocean. Both regions are areas where the United States maintains a presence in order to reduce contingency response times and thereby assure allies while dissuading and deterring those actors that might otherwise seek to disrupt the balance of power. U.S. maritime forces also maintain force presence in these regions to build trust and cooperation among friends and allies and to improve partner capacity.⁶ Within the Western Pacific, maritime Southeast Asia is a region of exceptional strategic importance.

When addressing the senior naval officers gathered for the International Maritime Seminar in Manado, Indonesia, on August 18, 2009, Admiral Gary Roughead, Chief of Naval Operations, described Southeast Asia as “a critical maritime region for commerce, for communication and for resources; three vital areas in which the oceans connect our nations.”⁷ Perhaps most importantly, Southeast Asian waterways provide some of the world’s most important sea lines of communication (SLOC). In particular, the Malacca Strait serves as the primary link between the Indian and Pacific oceans. An estimated 50,000 vessels transit this route each year carrying about a third of the globe’s total trade.⁸ However, the world’s largest ships, mostly supertankers, draw too much

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⁷ Gary Roughead (conference remarks at the International Maritime Seminar, Manado, August 18, 2009).
draft for the Strait of Malacca, and these ships that exceed “Malaccamax” typically transit between the oceans via Indonesia’s Lombok Strait or Sunda Strait. Other Southeast Asian waterways, such as the Makassar Strait, Sibiu Passage, and Mindoro Strait, also carry huge volumes of trade. These trade lanes are tremendously important both because of the volume they transport and because of the critical nature of the cargo. For example, Japan imports 98% of the petroleum it consumes, and roughly 80% of that supply passes through the Strait of Malacca.9 Similarly, approximately 85% of Chinese oil imports transit the same strait.10 South Korea and Taiwan are also critically reliant on Southeast Asian waterways for their energy needs. Beyond petroleum, the sea lanes passing through maritime Southeast Asia bring raw materials from Africa and Australia to the industrial engines of East Asia and carry their exports to important markets in Europe, the Middle East, Africa, and Australia.

By their geographic nature, these straits are also chokepoints and therefore represent strategic vulnerabilities. If they were closed, the economic fallout would be catastrophic. Although the United States does not directly rely on these waterways for its energy needs (most Middle East oil bound for the United States crosses the Atlantic Ocean), its critical interests in a stable East Asia dictate that Washington be fully invested in freedom of navigation through Southeast Asian SLOCs. As a result, the United States has long taken an active interest in regional maritime security. Acting on similar strategic drivers, Japan has adopted increasingly robust initiatives to help guarantee the free flow of shipping through these waters for more than 30 years.11 More recently, Chinese security planners have also begun to actively discuss solutions to this vulnerability, commonly referred to as China’s “Malacca Dilemma.” The rise of the country’s blue water capabilities are likely motivated, at least in part, by a desire to find alternative solutions to this dilemma.12

The strategic importance of Southeast Asia stretches beyond its sea lanes. Southeast Asia’s growing economies, large populations, and rich cultures are directly linked to the U.S. economy. The region is rich in petroleum and minerals that are extracted from both onshore and offshore sites. Other Southeast Asian exports—namely, manufactured goods such as electronic components and textiles—are important to the United States’ consumption-based economy. U.S.-ASEAN trade totals more than $200 billion annually. Deputy Assistant Secretary of Defense Robert Scher summed up the geostrategic importance of Southeast Asia in testimony to Congress: “[Southeast Asia] is a region that is central to the continued peace and stability of all Asia-Pacific as well as the continued economic prosperity of the United States.”13

Security Threats to Maritime Southeast Asia

Given the strategic importance of maritime Southeast Asia, its security is of utmost importance to the United States. Fortunately, from a geopolitical standpoint, the region appears relatively

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12 Erickson and Goldstein, “Gunboats for China’s New ‘Grand Canals’?” 43.
stable. Southeast Asian nations share common strategic interests and have developed robust consultative mechanisms, most notably the Association of Southeast Asian Nations (ASEAN) and its associated forums, such as ASEAN +3 and the ASEAN Regional Forum. As a result, although tensions exist around a handful of issues such as maritime boundary disputes, the risk of interstate war in Southeast Asia is minimal. Indeed, the most likely source of conflict among Southeast Asian states appears to be linked to future shifts in the balance of power within neighboring regions. In contrast, nontraditional security challenges are of more immediate concern to maritime Southeast Asia. The region is deeply vulnerable to natural disasters, and nonstate actors such as pirates and terrorists pose real threats to shipping and human security in the littorals.

As a result of its location at the junction of the Eurasian, Pacific, and Indo-Australian plates, Southeast Asia is seismically unstable and home to an unusually high concentration of active volcanoes. This geological activity has resulted in some of the worst natural disasters in human history. Two examples clearly illustrate the tremendous power of this security threat. On August 27, 1887, the volcanic island Krakatau erupted producing the greatest detonation (equivalent to 200 megatons of TNT) and loudest sound (heard 3,500 kilometers away in Perth, Australia) in recorded history. Dutch colonial authorities counted more than 30,000 deaths in the immediate area, while the tsunamis and global climate change triggered by the blast caused casualties and altered lives across the world.14 More recently, on December 26, 2004, an earthquake under the Indian Ocean triggered the most destructive tsunami in recorded history, a natural disaster that demolished cities, permanently reshaped coastlines, and killed hundreds of thousands of people.15 Other deadly seismic events of the last decade include the 2006 Java earthquake and 2009 Sumatra earthquake, both of which killed thousands.

Maritime Southeast Asia is also vulnerable to weather-related disasters, most notably cyclones that blow in from the Indian Ocean and typhoons that come west off the Pacific Ocean. Recent examples include Typhoon Morakot (2009), which ravaged Taiwan, and Cyclone Nargis (2008), which killed over 100,000 people in Burma. In addition to violent storms, heavy rains regularly destroy crops, flood cities, and cause follow-on damage. In 2006, for example, torrential rains led to a landslide in the Philippines that killed more than a thousand people.

While Mother Nature poses the greatest security threat to maritime Southeast Asia, transnational human actors also create strategic risks that concern the United States. During the 1990s and early 21st century, Southeast Asia was assessed to be the world’s most piracy-prone region, accounting for roughly half the global attacks reported to the International Maritime Bureau (IMB) each year. The threat became so significant that from July 2005 to August 2006 international insurers included the Strait of Malacca on their list of “hull war, strikes, terrorism and related perils areas.” Since then, regional actors have taken significant action to address this risk, which has substantially reduced piracy rates, especially in the Strait of Malacca.16 Whereas the IMB counted 75 attacks in that critical waterway in 2000, it recorded only 2 attacks in 2008 and 2 in 2009. Still, the piracy problem remains unsolved. In 2009 the IMB counted 68 acts of piracy and armed robbery in all maritime Southeast Asia. Comparatively, this is more than the

number of attacks counted in the entire Western hemisphere. Only the waters around Somalia and the Gulf of Aden, where more than 200 attacks were reported in 2009, are more piracy prone.17

Southeast Asia also appears to have stemmed the tide of maritime terrorism, but one cannot assume that the threat has been routed. From 2000 to 2005, terrorist organizations executed a number of serious attacks on targets in maritime Southeast Asia. Most tragically, the February 2004 bombing of SuperFerry 14 sunk the ship in Manila harbor and killed 116 people. In April 2003 an aluminum nitrate bomb placed by a barbeque stand at the Davao City wharf was timed to maximize casualties as two large vessels, the SuperFerry 15 and *Filipina Princess*, embarked and disembarked passengers. The blast killed 16 people and injured more than 50 others. In 2000 and 2001 the Abu Sayyaf Group (ASG), operating by boat, kidnapped local citizens and international tourists from resorts on Sipadan and Palawan Islands. Also in 2000, two explosive devices hidden in coaches carried by the ferry *Our Lady Mediatrix* exploded while the ship was docking in Ozamiz City. The ensuing fire, stoked by a truckload of dried copra, killed 52 people and wounded more than 40.18 Such maritime violence has not been limited to the Philippines. On December 11, 2001, the ferry *Kalifornia* was bombed in the Maluku Islands of Indonesia, killing 10 and injuring 46.19

Reports from regional governments and admissions by captured members of transnational terrorist groups such as al Qaeda and Jemaah Islamiyah described several other attacks planned in maritime Southeast Asia. This led authorities to worry that terrorists would take advantage of the region’s choked straits and busy ports to launch attacks against military vessels or commercial shipping. Indeed, al Qaeda’s former “Prince of the Sea,” Abdul Rahim Mohamed Hussein Abda al-Nasher, who admitted to his role in organizing the attacks on the USS *Cole* and USS *Limburg*, also described plans for similar attacks in Southeast Asia. These included a plot to strike a U.S. warship visiting Port Kelang, Malaysia, in 2000.20 Similarly, terrorist Omar al-Faruq, captured in June 2002, acknowledged his plans to attack a U.S. Navy ship visiting Surabaya, Indonesia. The Singapore government tells us that when it cracked down on the Jemaah Islamiyah network in December 2001, it discovered plans for suicide attacks on U.S. warships visiting Singapore.21

Although Southeast Asian states appear to have been quite effective in crippling the regional activities of transnational terrorist groups such as al Qaeda and Jemaah Islamiyah, the current threat cannot be disregarded. Indeed, the July 17, 2009, attacks on Western hotels in Jakarta demonstrated that these groups have not been eliminated. Furthermore, they may also retain maritime capabilities. Validating the continued threat of maritime terrorism, in March 2010 Indonesia, Malaysia, and Singapore announced increased security measures in response to a warning that terrorists were planning to attack oil tankers or other traffic transiting the Malacca Strait.22

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CS21 as the Appropriate Strategy for Maritime Southeast Asia: Lessons from the Malacca Strait

The strategic concepts found in CS21 are especially appropriate to maritime Southeast Asia. It is noteworthy that the primary security threats in the region correlate to the capacities CS21 introduces as core elements of maritime power, maritime security, and HA/DR. Furthermore, the cooperative tenets of CS21 are particularly relevant to achieving strategic goals in maritime Southeast Asia. These tenets include the importance of partnership-building, the advantages of building trust before crises begin, and sustained respect for sovereignty. Two experiences, both from the Strait of Malacca, are particularly useful for illustrating the insightful thoughts behind CS21. The first example is the 2004 Indian Ocean tsunami response. The second is the effort to curb piracy in the Malacca Strait.

When the Indian Ocean tsunami crashed ashore on December 26, 2004, the United States was quick to deploy maritime forces to participate in the relief operations. Almost immediately, the Abraham Lincoln Carrier Strike Group sailed from Hong Kong and the Bonhomme Richard Expeditionary Strike Group surged from Guam, both bound for Southeast Asia. While ground forces focused on Thailand, U.S. maritime forces took the lead in Indonesia. Within ten days of the tsunami, 25 U.S. ships and over 50 helicopters were on station delivering relief. As this group assembled, the USNS Mercy, a Cold War-era hospital ship in a reduced operating status that had not deployed since the end of the first Gulf War, joined the mission. Departing San Diego on January 5, the Mercy arrived in Indonesian waters on February 2 with a unique crew of military, public health service, and NGO personnel. Once on station, U.S. maritime forces partnered with a coalition of relief actors from Indonesian agencies, international organizations, over three hundred NGOs, and more than twenty partner governments. While the Indonesian government remained clearly in charge of the relief effort, minister of defense Juwono Sudarsono described the U.S. maritime force as “the backbone of the logistical operations providing assistance to all afflicted after the disaster.”

While no amount of aid could erase the damage that was done, the tsunami relief operation was successful in a number of important ways. The response provided assistance to thousands of people, stemmed the spread of disease, and helped create the political space that assisted reconciliation of the three decade-old civil war in Indonesia’s Aceh Province. The disaster relief efforts also provided strategic opportunities for the United States to strengthen its critical relationship with Indonesia. Prior to the tsunami relief operations, the popular perception of the United States in Indonesia had been extremely low. In 2003 only 15% of Indonesians surveyed by the Pew Research Center reported positive opinions of the United States. A few months later, Pew polls showed that 79% of Indonesians had developed a more favorable view as a result of the relief efforts. The value of such gains in soft power cannot be understated, given that Indonesia is the world’s largest Muslim-majority nation and the third-largest democracy.

Several lessons from the Indian Ocean tsunami experience directly informed the creation of CS21. For one, HA/DR was validated not just as a worthy use of maritime forces but also as a
strategic priority. Furthermore, the U.S. Navy gained further evidence that its hard-power assets, such as nuclear aircraft carriers and their escorts have the fungible capacity to address “lower tier” missions, such as HA/DR. The navy also learned about the value of acting with diverse partnerships.

The mission in Indonesia would not have been a success if not for the synergy of cooperation between the international humanitarian community, national governments, NGOs, private industry, and individual citizens. At the same time, differences in organizational cultures and planning shortfalls prevented this coalition from maximizing its effectiveness, demonstrating the necessity of CS21’s emphasis on building relationships over time. This experience taught the entire response community that long-term investments, commitments, and relationships between development programs, disaster response actors, and the recipient community are essential to maximize success. In particular, the Aceh experience prompted the navy to take a more proactive stance toward building partnerships.

Lessons from counter-piracy efforts in the Strait of Malacca also reinforce the aptness of CS21’s tenets. In this case, piracy has been curbed primarily by the actions of the littoral states, Malaysia, Singapore, and Indonesia. In recent years these countries not only have strengthened their unilateral efforts to fight piracy and sea robbery within their territorial borders, but they have strengthened cooperative efforts to deal with piracy and sea robbery as a transnational phenomenon. The most visible of these efforts is the Malacca Strait Patrols, a trilateral arrangement formed in 2004. At first the arrangement covered only coordinated surface patrols, but the program has been expanded to include cooperative airborne patrols, intelligence exchanges, standard operating procedures, and, according to a briefing given by the Indonesian Navy in 2006, limited “hot pursuit rights” into the other countries’ territorial waters.

The littoral states took these actions on their own, and extraregional states have not been directly involved in patrols or other law enforcement activities. Indeed, constabulary activity by foreign maritime forces was neither necessary nor welcome.

Rather than pursuing efforts to directly involve U.S. forces in the provision of security, the United States has praised the regional effort and supported this effort through training and capacity-building programs tailored to the needs and desires of the coastal states. For example, when addressing the International Maritime Seminar in Indonesia, Admiral Roughead noted:

> The growing cooperation among Southeast Asian navies is a superb example of how we can effectively work together. The regional efforts to eliminate piracy are an outstanding demonstration of how that unique cooperation has benefited all of us. Where challenges to common safety and security exist, relatively small numbers of countries must sometimes form partnerships that benefit not only themselves but many others.

Indeed, these regional efforts to curb Southeast Asian piracy illustrate the potential for maritime partners to find win-win solutions as described in both CS21 and GMPs.

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U.S. Navy Partnership Activities in Maritime Southeast Asia

As directed by CS21, U.S. forces are actively engaged in maritime Southeast Asia, working with partners to strengthen capacity and promote a safer, more secure maritime domain. This engagement takes a variety of forms. U.S. forces do not perform constabulary functions within the sovereign territories of regional states but are actively involved in the provision of security through disaster relief operations and humanitarian and civic assistance (HCA) missions. U.S. forces also work to enhance partnership capacity through exercises, technological assistance programs, and support for regional cooperative ventures. These programs are designed to promote local capacity, strengthen interoperability, and accelerate the “speed of trust” so that partners can come together more quickly and more effectively in response to security needs.

In the last few years, the most visible U.S. maritime operations in Southeast Asia have been disaster relief operations. From 2005 to 2009, U.S. maritime forces have responded to a number of disasters, including the Java earthquake (2006), the Philippine mudslides (2006), Cyclone Nargis (2008), the Sumatra earthquake (2009), and Typhoons Morakot, Ketsana, Parma, and Fengshen (2009). In each case, these forces deployed at the request of the host nation and acted in concert with local and international relief efforts.

In addition to conducting disaster response, U.S. maritime forces have been actively building sustainable relationships with diverse partners through cooperative HCA missions. These HCA missions seek to eliminate some of the root causes of instability by addressing the medical, dental, veterinary, and engineering needs of underserved populations. When conducting HCA operations and activities, U.S. forces serve as facilitators and a conduit for partner nations and other organizations to build local capacity as well as assist with humanitarian endeavors in close consultation with the host nation.

The most significant of these HCA missions in Southeast Asia is the Pacific Partnership, which evolved directly from the unprecedented international disaster response for countries devastated during the 2004 Indian Ocean tsunami. In 2006, the USNS Mercy returned to Southeast Asia as the Pacific Partnership flagship on a mission to strengthen relationships with partner nations and organizations; build partner capacity to conduct peace, stability, and consequence-management operations; improve U.S. and partner capacity; and improve security cooperation among nations. Since then, the United States has conducted Pacific Partnership missions in Southeast Asia and Oceania on an annual basis. Under the auspices of this campaign, engineering support units and health care professionals from partner governments, U.S. inter-agency actors, and NGOs have joined to provide robust services and training to host governments and local communities. When executing Pacific Partnership, the U.S. Pacific Fleet adopts the “by, with, and through” approach to providing medical, dental, veterinary, and engineering assistance to underserved populations—everything is provided by invitation of the host nation, with host nation involvement or participation, and through the host nation government.

Of course, U.S. commitment to maritime capacity-building is not limited to humanitarian programs. The United States is also concerned with more traditional security missions. To this end, combined exercises play an important role in building both capability and interoperability of regional fleets. Some exercises in the series are relatively new, whereas others date back to the Cold War. However, all are increasingly tailored to focus on immediate security concerns, such as responses to natural disasters and other humanitarian crises.

as disaster relief and maritime security. The two most visible U.S. annual exercises in Southeast Asia are Cobra Gold, which is co-hosted by Thailand, and Balikatan, which is co-hosted by the Philippines. Both Cobra Gold and Balikatan originated as exercises between treaty allies during the Cold War when regional threat perceptions focused on the spread of Communism. In recent years, both have shifted focus toward lower-tier operations, such as peacekeeping, maritime security, and disaster response, which are more relevant to maritime Southeast Asia’s current needs. Both exercises have expanded to include forces from additional countries and nontraditional partners such as NGOs. Similarly, the U.S. Navy’s Cooperation and Readiness Afloat Training (CARAT) exercises focus on the training goals of each partner and grow more complex each year. Anti-piracy, counterterrorism, and humanitarian assistance are specific growth areas for the CARAT exercises. Likewise, the annual Southeast Asian Cooperation Against Terrorism (SEACAT) exercise was begun in 2002 to contribute to regional coordination efforts that support cooperative responses to terrorism and transnational crimes at sea, including piracy.³⁴

The United States also provides allies and partners in Southeast Asia with training and equipment, from radars to patrol craft, to enhance their ability to assert control over waterways that have been used by smugglers, pirates, and terrorists. Training programs are primarily delivered via the International Military Education and Training (IMET) program that makes U.S. government training courses available to individuals from partner militaries. The United States also organizes mobile training teams (MTT) that deploy in support of specific training objectives. Each MTT is tasked with a specific set of training objectives and delivers training tailored to the needs of individuals or groups specified by the recipient nation.

U.S. technology transfers to maritime Southeast Asia have been completed both through the foreign military sales system and direct grant programs such as the 1206 funding program. One especially important focus area for such technology transfers has been in the field of maritime domain awareness (MDA). Regularly referred to by Admiral Roughead as the “glue” that binds CS21 activities together, MDA is the effective understanding of anything associated with the maritime domain that could affect the security, safety, economy, or environment of a nation.³⁵ Successful MDA requires surveillance data to be gathered, collated, and understood—a hefty task, especially for resource-constrained states with vast sea territories. In maritime Southeast Asia, the United States has helped with this challenge by funding projects such as the establishment of radar stations along key sea lanes in Thailand, Indonesia, and the Philippines and the upgrading of Malaysian coastal surveillance stations with the Integrated Maritime Surveillance System.³⁶ Fully owned and operated by the recipient nation, these stations have been linked to domestic MDA systems and provide support to partner security forces.

Another element of CS21 activity in maritime Southeast Asia has been support for regional cooperative organizations and dialogues. These organizations and dialogues afford opportunities to build confidence between partners and to launch cooperative ventures and are therefore essential venues for forging the stronger relationships called for in CS21. One such organization is the Western Pacific Naval Symposium (WPNS). All Southeast Asian navy chiefs are members

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³⁵ This definition draws from the “National Plan to Achieve Maritime Domain Awareness,” U.S. Department of Homeland Security, October 2005. Whereas that definition is contextually specific to the United States, in the spirit of CS21 the MDA definition applies equally to partner nations.

of this dialogue, which also includes members from Northeast Asia, Australia, New Zealand, Canada, and nations with Pacific Island territories such as the United States and France. The United States is a strong supporter of the WPNS, not only participating in the meetings but also taking part in WPNS-sponsored activities such as co-hosting an HA/DR table-top exercise with Indonesia in 2007 and deploying ships to the WPNS at-sea exercise hosted by Singapore in May 2009. The United States gives similar priority to supporting the maritime activities of multilateral frameworks such as the ASEAN Regional Forum Maritime Senior Officials Meeting, the Council for Security Cooperation Asia-Pacific Maritime Working Group, and the Asia-Pacific Economic Cooperation (APEC) Working Group on Maritime Security.

Conclusion: Opportunities for U.S.-Japan Cooperation in Maritime Southeast Asia

The United States and Japan share common strategic interests in maritime Southeast Asia. In particular, these two close allies rely on the safe and secure SLOCs that pass through the region. Therefore, it is natural for the United States and Japan to look for opportunities to increase their cooperation in maritime Southeast Asia. Fortunately, good relations with the coastal states, the flexible nature of CS21, and Japan’s strategic outlook create substantial opportunities for cooperation so long as it is implemented in concert with host nation priorities.

One area where the United States and Japan might focus their energies in the near term is HA/DR. U.S. Secretary of Defense Robert Gates challenged the two nations to do just this while visiting Japan in October 2009:

> As you look around this part of the world and recent developments in places like Indonesia and the Philippines, the greatest enemy seems to be Mother Nature, and we have the capabilities to deal with the consequences of some of these disasters, working together.37

HA/DR is an area where the United States and Japan are already cooperating. For example, the forces Japan sent to provide disaster relief after the January 2010 earthquake in Haiti operated from U.S. bases and with U.S. logistic support. The first Japanese aircraft to deliver aid to Haiti departed with a cargo of U.S. citizen evacuees.38 In Southeast Asia, U.S. and Japanese forces have cooperated when responding to disasters such as the 2004 Indian Ocean tsunami, the 2006 Java earthquake, and the 2009 Sumatra earthquake. However, there are additional steps that the United States and Japan could take to strengthen their cooperative HA/DR capacity. For example, according to a 2010 study completed by Colonel Tatsuo Tarumi of the Japan Ground Self-Defense Force during a fellowship at the Stimson Center in Washington, D.C., the two nations should establish better organizational frameworks in order to streamline cooperation as well as improve interoperability by expanding bilateral and multilateral HA/DR training programs.39

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39 Tatsuo Tarumi, “Japan-U.S. Cooperation in Disaster Relief and Humanitarian Assistance” (presentation at the Henry Stimson Center, Washington, D.C., March 5, 2010).
Japan and the United States can also strengthen cooperation in executing pre-planned HCA missions. Taking an important step in this direction, Japan deployed JDS Kunisaki, a 178-meter Maritime Self-Defense Force amphibious landing ship, as an HCA “Boat Friendship and Amity.” In 2010 the ship visited Cambodia and Vietnam in conjunction with the USNS Mercy during Pacific Partnership.\textsuperscript{40} According to Prime Minister Yukio Hatoyama, this maritime expedition was developed to demonstrate “that the Japanese government is proactively extending humanitarian assistance.”\textsuperscript{41} This experience can be a first step toward bigger things. For example, Japan could begin a recurring HCA partnership-building mission series of its own and invite the United States and other partners to support it with expertise or material assistance.

Japan would also be an excellent nation to host a disaster relief training and logistics center that provides services to Southeast Asia. Such a center could fill the region’s need for a focal point for training, information-sharing, and disaster response activities by taking advantage of the robust disaster relief capabilities and special expertise of the Japanese government and Japan-based NGOs. In addition, Japan’s geographic location adjacent to maritime Southeast Asia situates it well as a staging area for relief forces, especially if the center were to be located in Japan’s southern islands. The United States could support this center through a formal or informal partnership as desired by the Japanese government.

These are just a few examples of next steps the United States and Japan might take as they seek to strengthen their cooperative activities in maritime Southeast Asia. In this region, the two nations share closely aligned interests and complementary maritime strategies. So long as they continue to appreciate the different needs and preferences of the littoral states and act to find win-win solutions for all parties, the potential for cooperation should continue to expand. Given the tremendous strategic nature of maritime Southeast Asia, such cooperation will benefit not only the region but also the world.

\textsuperscript{41} “Japan May Use MSDF Vessels to Provide Medical Assistance to Disaster—Hit Areas Abroad,” Mainichi Daily News, November 17, 2009.
Japan’s Role in Strengthening Maritime Security in Southeast Asia

James Manicom

JAMES MANICOM is an SSHRC Postdoctoral Fellow in the Balsillie School of International Affairs at the University of Waterloo. He can be reached at <jmanicom@balsillieschool.ca>.
EXECUTIVE SUMMARY

This essay assesses Japan’s contributions to anti-piracy efforts in Southeast Asia and proposes measures to improve its regional security efforts.

MAIN ARGUMENT

This essay explores the impetus for Japan’s efforts to improve the security of Southeast Asian waters, with specific reference to the Straits of Singapore and Malacca, and assesses how these initiatives have been received by coastal states. It argues that the bulk of Japan’s efforts have been aimed at treating the symptoms of maritime piracy (broadly defined) rather than the root causes. By contrasting the country’s anti-piracy initiatives in Southeast Asia with its efforts to combat piracy off the coast of Africa, the essay argues that Japan could reduce the incidence of piracy by doing more to build state capacity and foster development.

POLICY IMPLICATIONS

- Policymakers should bear in mind that the causes of piracy lie on land rather than at sea. As a result, the effectiveness of enforcement side-measures may be limited and may cause pirates to relocate to more remote waters.
- Responses that target the roots of piracy may encounter resistance from countries that host pirate havens based on sovereignty concerns. These challenges can be overcome through existing aid mechanisms. Japan can directly target official development assistance (ODA) funding to reduce poverty, improve governance, and address human security challenges in known pirate havens in Southeast Asia.
- Japan’s willingness to contribute ODA funds to alleviate poverty and foster employment in known pirate havens may be limited in the current fiscal climate. It is not clear that the costs of piracy to Japan are high enough to warrant expensive long-term aid solutions.
Piracy in Southeast Asia, the one-time scourge of the region, may in time be remembered as a successful example of cooperation on an issue of broad regional importance. The International Maritime Bureau (IMB) reported zero attacks in the Strait of Malacca in the first quarter of 2010.\(^1\) Combating piracy in Southeast Asia is complicated because it pits the interests of the user states of regional sea lines of communication (SLOC)—such as Japan, China, and the United States—against the interests of the coastal states (the Philippines, Malaysia, Indonesia, and Singapore). Further complicating the matter is that neither user states nor coastal states are united in their preferred approach to the problem. Nevertheless, there is no doubt that the regional response to piracy in Southeast Asia is in some way responsible for the decline in the frequency, severity, and cost of pirate attacks from their peak in 1999. Japan made a significant contribution to this initiative.

The importance of Southeast Asian sea lanes to Japan’s national security cannot be overstated. As a resource-poor island nation, the country relies on secure seas to provide for the well-being of its citizens. Japan imports 99% of its oil—80% of which travels through the Malacca Strait—and 60% of its caloric intake. As a trading state, 99% of Japan’s trade by value travels by sea. Therefore, policing its maritime approaches and SLOCs is a cornerstone of the military dimension of Japan’s comprehensive national security.\(^2\) It is thus unsurprising that Japan led the response of user states to the piracy problem in the Malacca Strait. This essay examines the impetus for Japan’s efforts to combat piracy in Southeast Asian waters, particularly in the Strait of Malacca, and assesses how these initiatives were received by coastal states. The essay argues that the bulk of Japan’s efforts have been aimed at treating the symptoms of maritime piracy (broadly defined) rather than the root causes. By contrasting Japan’s efforts to combat piracy off the coast of Africa, the essay concludes that Japan could reduce the incidence of piracy by doing more to build state capacity and foster development.

Japan’s Interests in Sea Lane Security

During the Cold War the Japanese economy’s reliance on secure sea lanes, combined with the limits Japan’s constitution imposed on its military, created an engrained sense of insecurity on the part of Japanese military officials. U.S. pressure on Japan to assume a greater share of the defense burden and Washington’s expectation that allies would defend their own convoys highlighted critical deficiencies in Japan’s naval force structure.\(^3\) This was compounded by concerns that attacks against Japanese ships were the most likely form of Soviet aggression.\(^4\) As a consequence, the protection of vital sea lanes became a priority mission for the Maritime Self-Defense Force (MSDF) by the late 1970s.\(^5\) According to Mihara Asao, then director-general of the Japanese Defense Agency (JDA), Japan was prepared to defend its sea lanes as far as 1,000 nautical miles (nm) offshore as early as 1977.\(^6\) In a departure from convention, this objective was later alluded to publically by Prime Ministers Suzuki and Nakasone. It was outlined more explicitly in the 1983 defense white paper with the expectation

that sea lane security beyond 1,000 nm was the responsibility of the United States. While the end of the Cold War removed the threat of Soviet interference with Japan’s sea lifelines, SLOC security retained its policy relevance in Tokyo for four reasons.

The first reason SLOC security remained relevant was structural. The post–Cold War security environment was full of uncertainty. Following the 1991 Gulf War, the prevailing academic wisdom was that East Asia would become dramatically less stable as old animosities, long buried under shared Cold War prerogatives, resurfaced. Low-level conflict was expected over disputed land and maritime boundaries, facilitated by the region’s marked growth in military spending. The 1993 North Korean nuclear crisis and the possibility of Japanese participation in a blockade of the peninsula further reinforced these threat perceptions. Japan’s first post–Cold War strategic assessment, the 1994 Higuchi Report, argued that while multilateral cooperation would be the defining characteristic of the post–Cold War world, several security challenges would endure that necessitated continued military spending. The report identified the continued interference with maritime shipping as a potential threat and argued that sea lane security was “a matter of life and death to Japan.” This perception of SLOC vulnerability was reinforced by the rise of maritime piracy in East Asia. Southeast Asia emerged as the most piracy-prone region in the world, witnessing 501 attacks in 1991, predominantly in the Malacca and Singapore straits.

The second reason was institutional. As an island state, Japan’s navy had developed the status of *primus inter pares* among the three branches of the Self-Defence Forces (SDF). The MSDF had undergone a dramatic modernization effort to meet the objective of defending shipping as far as 1,000 nm off Japan’s shores. This justification for improved naval capabilities remained a prominent theme in Japanese defense circles. Defense publications did not abandon the possibility of Russian interference with Japanese shipping until the mid-1990s, despite the atrophy of the Russian Far East fleet after the Cold War. The Higuchi Report is credited with maintaining the bulk of the MSDF force structure despite pressure to downsize. In the context of debates over Japan’s post–Cold War security policy, several constituencies pushed for a more active Japanese defense posture, either as a peacekeeping nation or as a “normal” military power. Furthermore, the MSDF and Japan Coast Guard (JCG) stood to benefit from the perpetuation of the SLOC defense mission. According to one author, these institutions helped ensure that post–Cold War issues such as piracy were interpreted through a security lens for popular consumption.

A third reason is that Japan was increasingly viewed as a victim of piracy. As attacks became more frequent during the 1990s, the threat of piracy was perceived as one that disproportionately affected Japanese shipping interests and, more importantly, Japanese people. The hijacking of the Japanese-owned *Alondra Rainbow* shortly after leaving Indonesia was a watershed event for

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12 Graham, *Japan’s Sea Lane Security*, 175.
Japanese threat perceptions. The ship was hijacked in October 1999, and the Japanese captain and chief engineer were among the seventeen member crew that was cast overboard and left to drift. The vessel was later found in waters off India under a Belizian flag and different name. Attacks like this, and the resultant media attention, raised the profile of piracy issues in Japan.

A final impetus for Japan’s preoccupation with SLOC security was the emergence of China, particularly the mounting threat posed by China’s growing military and naval ambitions. Suspicions of Chinese state-sponsored piracy attacks in the East China Sea in the early 1990s gave way to more concrete concerns that China sought to project power beyond the Japanese islands into the Pacific Ocean. One side effect of China’s ambitions to control the “first island chain” is that the area includes the bulk of the sea lanes used by Japan. First articulated in the mid-1990s, this issue is now raised in defense publications as a source of concern for Tokyo. Furthermore, according to a prominent Japanese think tank, Japan’s activism on sea lane security, particularly its overtures to member states of the Association of Southeast Asian Nations (ASEAN), reflected its desire to be perceived as a regional leader at the expense of China.

Japan’s Efforts to Combat Maritime Piracy

As a result of these pressures, Japan embarked on a concerted effort to combat piracy in Southeast Asia, with a focus on the Malacca and Singapore straits. Spurred by the public outcry following the Alondra Rainbow incident, the government’s efforts were initially ambitious, state-centric, and clumsy. These were tempered by the reluctance of the coastal states to admit that there even was a piracy problem in Southeast Asia, much less that this problem required a solution imposed from the outside.

Prior to 1999, the bulk of Japanese anti-piracy efforts focused on Track II initiatives to raise awareness of piracy as well as encourage private sector assistance to improve navigation safety. Following the Alondra Rainbow affair, Prime Minister Keizo Obuchi proposed joint JCG patrols with coastal states with the aim of eventually forming a regional coast guard force. The proposal was initially well received but collapsed as coastal states remained reluctant to accept foreign interference in their territorial waters. Perhaps as a symptom of regional power jockeying, Beijing also resisted the idea. One Chinese delegate at a regional anti-piracy conference wondered why joint patrols of the straits were necessary at all. Japan subsequently opted for a less direct path, using bilateral and multilateral collaboration with coastal states to provide technical assistance and to facilitate information-sharing and capacity-building. While piracy remained hostage to Chinese opposition at ASEAN-related meetings, Japan concluded bilateral agreements on anti-piracy training exercises with a host of regional states. The JCG was the lead organization and has held training exercises with two or more Southeast Asian states, as well as with India, every year

16 This description draws on Graham, Japan’s Sea Lane Security, 187; and Bradford, “Japanese Anti-Piracy,” 486.
since 2000. Building on these bilateral moves, in January 2002 Prime Minister Koizumi Junichiro proposed an ambitious multilateral plan to address regional maritime security. Japanese academics had previously proposed variations of multilateral initiatives under the auspices of the ocean peacekeeping concept that was advanced by the National Institute of Defense Studies in 1996. The concept called for joint JCG patrols with coastal state forces, which was particularly ambitious in light of the restrictive interpretation of Japan’s constitution at the time. Koizumi’s proposal called for a further strengthening of cooperation between the JCG and regional enforcement bodies and was accentuated by a perceived link between terrorism and piracy at the time. The Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP) was signed by the ASEAN +3 states as well as by Bangladesh, India, and Sri Lanka. ReCAAP called for the establishment of an information sharing center (ISC), which was set up in Singapore in 2004. The ISC is tasked with the collection, analysis, and dissemination of reports of incidents of piracy in the region. ReCAAP is a truly multilateral initiative; it has been the subject of two resolutions in the UN General Assembly as well as two meetings of the International Maritime Organization’s (IMO) Maritime Safety Committee.

Coastal states have received Japanese initiatives with mixed feelings. Singapore has by far been the most amenable, whereas Malaysia and Indonesia have been more cautious. Neither of the latter states has ratified ReCAAP, for instance. According to one scholar this is because neither party trusts Singapore to the extent that it is willing to share information and because Indonesia felt slighted that the ISC was based in Singapore. As a result of this mistrust, coastal states have been far more receptive to bilateral aid designed to improve navigation safety and build capacity. The central concern for coastal states is the perception of external interference into what they perceive as a domestic issue. As will be illustrated below, piracy is a product of weaknesses in governance in coastal states compounded by uneven economic development. Furthermore, from an enforcement standpoint, the Malacca and Singapore straits pass through the territorial waters of the three coastal states, and no party was willing to accept the presence of foreign authorities within its sovereign waters. Indeed, the three states did not begin the joint policing operations that would become the Malacca Strait Patrols (MSP) until the U.S. Pacific Command proposed its own Regional Maritime Security Initiative (RMSI), which the coastal states perceived as cover for U.S. patrols of their waters.

A second concern for coastal states is being caught up in the growing geopolitical maneuvering between China and Japan. Though initially hostile to Japan’s maritime security initiatives, China has recently become more attuned to its own “Malacca dilemma”; 80% of China’s oil imports travel through the Malacca Strait, as does a significant portion of the trade that drives the country’s economic growth. China’s concerns over the security of the strait also have a strategic dimension, given Beijing’s concerns about a U.S. blockade of Chinese sea lanes and delimitation disputes with neighboring countries. According to one analyst, “it is difficult to separate, from a strategic

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JaPan’s role in strengthening MaritiMe security in southeast AsIa

standpoint, Chinese concerns over Malaccan security from the ongoing legal status of two nearby maritime regions, the South China Sea and the East China Sea.  

Consequently, all three coastal states are wary of the geopolitical consequences of regional power games.  

These concerns exacerbate the inherent conflict of interest between coastal states and user states.  

Despite these fits and starts, there is evidence that piracy in the Malacca and Singapore straits is waning. Furthermore, it appears that Japanese initiatives like ReCAAP bear some responsibility for this trend. In light of the resistance from coastal states to direct Japanese participation in patrols, the bulk of governmental assistance from Japan has been in the areas of capacity-building. ReCAAP, for instance, is designed to raise awareness of piracy threats. Likewise, through considerable official development assistance (ODA) outlays to Southeast Asian countries, Japan has sought to build capacity in other areas. Funded by grant aid under the Program for Cooperation on Counter-Terrorism and Security Enhancement, Japan gave 1,921 million yen to Indonesia for three patrol vessels in June 2006; 609 million yen to upgrade maritime security communication systems in the Philippines; and 476 million yen to Malaysia to enhance maritime security in Malaysia in January 2008. This aid was followed by a grant of 5,573 million yen to upgrade the vessel traffic system to collect data on traffic patterns in the Malacca Strait. Likewise, in 2007, Japan trained two thousand Philippine coast guard officials in various aspects of maritime security operations, which included combined exercises with the JCG.

Japan’s capacity-building efforts have clearly contributed to the reduction in the number of piracy attacks in the Malacca and Singapore straits. According to one scholar, however, the 2004 Boxing Day tsunami that devastated much of Southeast Asia’s coastlines, including known pirate havens in places such as Aceh, bears as much responsibility. That a natural disaster could have such a profound effect on the incidence of piracy is a reminder that the roots of piracy are on land rather than at sea. Indeed, others have pointed out that the effect of the MSPs has been to drive pirates into other waters in Southeast Asia—hence, the rise of pirate attacks in the South China Sea. These trends indicate a further area where Japan could pursue a broader anti-piracy role.

What More Can Japan Do?

Maritime security specialists widely accept that the next step in the fight against piracy is to shift from treating the symptoms of piracy—attacks on vessels in ports or at sea—to fighting the root causes of piracy on land. Piracy results from the nexus of several factors, including a populace that is disenfranchised and marginalized from the mainstream state identity, experiences a high degree of socio-economic imbalance, lives proximate to a busy international waterway, and is of a

28 Ministry of Foreign Affairs, Japan’s International Counter-Terrorism Cooperation (Tokyo, October 2007), 7.
30 Ministry of Foreign Affairs, Japan’s ODA White Paper 2008: Japan’s International Cooperation (Tokyo, March 2009), 92.
seafaring nature. Most often, the state is incapable of addressing these issues because of weaknesses in governance, endemic corruption, and financial constraints. Indonesia is particularly striking in this regard. According to published fieldwork from the Riau Islands, a lack of opportunity in the fishing industry compounded by failed industrialization projects has created a core of young underemployed men with knowledge of the sea and easy access to passing ships. Local officials are either poorly equipped to combat pirates or complicit in their activities. In particular, a sense of frustration that the benefits of the “Asian miracle” have passed the region by fuels the feeling of marginalization. Addressing the root of the piracy problem, therefore, “will have the greatest ultimate value in terms for improving capacity and countering piracy.”

With this in mind, this essay proposes that Japan directly target ODA funding to reduce poverty, improve governance, and address human security challenges in known pirate havens in Southeast Asia. Such an effort would not run into coastal state resistance on the grounds of national sovereignty; these states are already among the leading recipients of Japanese ODA. If applied simultaneously to pirate havens in Indonesia, the Philippines, and Malaysia, the approach could address the rise of pirate attacks elsewhere in Southeast Asian waters, away from the strength of enforcement measures. Though most capacity-building measures noted above have come from ODA funding, it remains unclear what funding, if any, has targeted poverty reduction in known pirate havens. These include coastal communities in Sumatra, the southern Philippines, and the Riau Islands.

Addressing the roots of piracy is broadly consistent with the aims of Japan’s ODA charter. As one analyst has pointed out, piracy is ultimately a human security issue. Anti-piracy efforts thus dovetail with the ODA charter’s human security focus. Although ODA has traditionally been understood as a mechanism for the pursuit of Japanese commercial or geo-economic interests, the Ministry of Foreign Affairs has recently adopted a more humanitarian approach to the dispersal of grant aid with the aim of reducing the economic disparities among ASEAN states. However, while in a general sense Japan’s ODA to Indonesia, the Philippines, and Malaysia is clearly aimed at reducing national poverty, it is unclear whether these programs are targeted at areas that would affect the piracy “labor pool.” There is certainly recognition in Japan that socio-economic challenges lie at the heart of piracy. Speaking in April 2000, Tetsuma Esaki, senior state secretary for foreign affairs, argued that “factors such as poverty and high unemployment rate... lie in the background of maritime armed robberies in Asia.” According to a policy statement from December 2001, Japan pledged “support for poverty countermeasures in the regions where incidents of piracy take place frequently.”

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38 This term is from Young, *Contemporary Maritime Piracy*, 57.


However, it remains unclear what became of this program. Japan’s 2009 white paper on ODA notes that the country’s efforts to counter piracy are aimed at “strengthening maritime policing capacity of coastal states, stabilizing the situation in Somalia, enhancing information sharing, and developing human assistance.” These are consistent with the capacity-building efforts in Southeast Asian states noted above; such efforts are not aimed at the sources of piracy on land. Based on available data compiled from the Ministry of Foreign Affairs and the Embassy of Japan in Indonesia and the Philippines, it is unclear whether addressing the root causes of piracy is a priority of Japan’s ODA policy. ODA projects that build capacity to police maritime piracy, increase maritime awareness, and improve communication in the Malacca and Singapore straits strengthen enforcement measures but do not address root causes. In 2003, 5,567 million yen was earmarked for the installation of the Global Maritime Distress and Safety System and the Automatic Identification System—an important capacity-building measure but not one that is aimed at the sources of piracy. Efforts that could be interpreted as addressing root causes include money to reform the Indonesian National Police and to upgrade security at airports and seaports. In 2000, 7,669 million yen was allocated for the education of Indonesian seafarers, but this project was located in Central Java and South Sulawesi, which are not known pirate havens.

It is thus unclear what percentage of Japan’s considerable ODA budget is earmarked to reduce poverty and address governance challenges in pirate havens such as the Riau Islands and the coastal communities of Sumatra. For instance, the ODA website for the Embassy of Japan in Indonesia does not list any development aid projects targeting the Riau Islands, South Sumatra, Jambi, or the province of Riau itself that appear to alleviate poverty, address unemployment, or otherwise alleviate the nexus of factors that give rise to piracy. Most projects focus on improving infrastructure or promoting technical cooperation. Governance support has explicitly been identified in North Sumatra under the Human Resource Development for Local Governance, which reinforces governance structures and combats corruption. Likewise, the comprehensive list of projects targeted at Aceh clearly indicates an effort to build state capacity, alleviate poverty, and provide training. This is unsurprising in light of the ongoing peace process in that region. One reason for the inconsistent labeling of ODA projects may be administrative. Projects labeled “development policy loans,” described as promoting macro-economic stability and supporting anti-corruption efforts, are nation-wide, co-financed by the World Bank, and distributed by the Ministry of Finance in Jakarta. Therefore, such loans may not be identified on a provincial basis, which makes it difficult to ascertain whether funds are being used in pirate havens. Nevertheless, there has been a marked reduction in Japan’s rhetorical commitment to addressing the roots of piracy in Southeast Asia. Speaking at an anti-piracy conference in September 2006 Akio Suda, ambassador in charge of international counter-terrorism cooperation, emphasized enforcement mechanisms rather than poverty reduction in Japan’s counter-piracy strategy. By contrast, a survey of the country’s anti-piracy initiatives in the Gulf of Aden reveals plans for a more balanced approach to combating piracy.

41 Ministry of Foreign Affairs, Japan’s ODA White Paper 2009: Japan’s International Cooperation (Tokyo, March 2010), 65.
44 Ibid.
Japan’s posture toward piracy in the Gulf of Aden contains both capacity-building and root-cause dimensions. On the enforcement side, Japan deployed MSDF vessels and aircraft to escort the nearly two thousand Japanese vessels that transit these waters annually. Following the implementation of the Anti-Piracy Measures Law in June 2009, MSDF vessels escorted ships of all flags. Japan has also made a commitment to ameliorating the root causes of poverty in the region. According to then prime minister Aso Taro, “Japan is...expending its utmost efforts in support for security and people’s livelihoods as a means of remedying the underlying issues...This includes the restoration of security, job creation and improvement of the humanitarian situation.”

In ODA terms, this has meant funding for capacity-building and maritime security efforts in Yemen and Djibouti as well as humanitarian aid to Somalia. Indeed, the $67 million provided to the Somalia Transitional Federal Government was earmarked for security, and $3.6 billion yen is to be divided between IMO capacity-building measures, such as the establishment of a piracy reporting center in Kenya, and support for the African Union peacekeeping operation in Somalia. In 2006, Japanese grant aid to Somalia amounted to 360 million yen through the World Food Program. Tokyo clearly views state-building as part of the regional maritime security project in Africa. For example, Japan’s ODA plan for Yemen includes basic and vocational educational programs, agriculture and clean water assistance, and coast guard training. The author was unable to find explicit evidence of similar programs in known pirate havens in Southeast Asia.

Conclusion

This essay has argued that while Japan has done a great deal to provide for the maritime security of Southeast Asia, the bulk of the country’s efforts have been aimed at treating the symptoms of piracy through capacity-building initiatives to improve the enforcement of coastal state jurisdiction. This indirect approach is a product of coastal states’ concerns about violations of national sovereignty. Combined with the resolve on the part of these coastal states to combat piracy, such efforts have led to a reduction in the incidence of piracy in the Malacca Strait. However, piracy is on the rise elsewhere along the SLOCs to Japan. The essay has argued that one way for Japan to resolve this issue without interfering in the sovereignty of coastal states would be to address the sources of piracy. By earmarking ODA for poverty-alleviation schemes, employment generation, and state-building in known pirate havens, such as the Riau Islands, coastal Sumatra, and the southern Philippines, Japan could further reduce the incentive structure that makes piracy appealing.

This appears to be Japan’s approach in the Gulf of Aden. Whether such initiatives are feasible for Japan, particularly in an era of fiscal austerity, remains to be seen. Directly combating poverty and building governance in pirate havens is a long-term

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46 Aso Taro, “Japan’s Diplomacy: Ensuring Security and Prosperity” (address to the Japan Institute of International Affairs, Tokyo, June 30, 2009).


51 This does not include the ODA funds for peace-building initiatives in Mindanao and Aceh.

52 Not all pirates may be bought in this way, particularly “political pirates.” See Stefan Eklöf Amirell, “Political Piracy and Maritime Terrorism: A Comparison between the Straits of Malacca and the Southern Philippines,” in Ong-Webb, Piracy, Maritime Terrorism and Securing the Malacca Straits, 52–67.
project and may not survive internal audits in the context of declining ODA funds. It may also be the case that such initiatives are simply not a sound investment. Aside from the crippling effect of the 2004 tsunami, the dramatic progress made in combating piracy has occurred on the enforcement side. Indeed, Indonesia itself has made impressive progress in its efforts to combat piracy through increased patrols and intelligence-gathering operations in coastal communities. Though the cost of piracy is difficult to ascertain, it appears unlikely that costs will become so prohibitive as to undermine global trade or present an existential threat to the Japanese economy. In an era of belt tightening, efforts to address the root causes of piracy through poverty-alleviation schemes and improved governance may not be worth the cost. Although such a perspective risks complacency, particularly if economic conditions in coastal communities were to worsen as a result of the global recession, the alternative may simply be more than user states such as Japan are willing to pay.

The Challenges of the Jolly Roger: Industry Perspectives on Piracy

Neil A. Quartaro

Neil A. Quartaro is an attorney with Watson, Farley & Williams (New York) LLP and an Adjunct Professor at Columbia University’s School of International and Public Relations. He can be reached at <nquartaro@fw.com>.

NOTE The views expressed herein are solely those of the author.
EXECUTIVE SUMMARY

This essay presents viewpoints from nonstate stakeholders in the marine transportation system regarding the problem of piracy in the Gulf of Aden (GOA) region compared to piracy in the Strait of Malacca.

MAIN ARGUMENT

Although the concerns of individual actors within each group of stakeholders may vary, there is a growing consensus that the response to piracy in the GOA region must be significantly more robust than the response to piracy in the Strait of Malacca. Part of this growing consensus stems from the differing nature of the GOA attacks, which impose significantly higher costs on vessel owners, charterers, and crew members than attacks in the Strait of Malacca. Further fueling the belief that stakeholders must take aggressive action is the fact that providing armed security details to vessels transiting the GOA region has proven very effective, with no such vessels having been captured. However, the Strait of Malacca experience does provide some useful lessons that apply to piracy in the GOA, most notably the creation of a central information center to coordinate between commercial vessels and military assets in the area and the involvement of local states to assist in preventing attacks and punishing attackers where feasible.

POLICY IMPLICATIONS

- If ships carrying armed security details continue to avoid capture, this practice is likely to become a standard security response for many vessels transiting the GOA. However, the presence of armed guards raises many public policy issues, including the unintentional importation of armed guards’ weapons into jurisdictions where these weapons are not permitted; the potential to increase the level of violence used to capture a vessel; and the legality of an armed response by private persons in international waters.

- If stakeholders in the marine transportation system respond aggressively and proactively to the threat of piracy in the GOA, national governments with military assets deployed in the area are likely to continue the current high level of engagement. However, these responses are essentially prophylactic in nature, given that they do not address the root cause of the problem, which is the failure of Somalia to function as a normal state.

- Assuming that the current high level of coordination between stakeholders and information sharing centers created by nation-states continues, the ability to prevent and deter attacks in the GOA region will likely continue to improve. Somali pirates are aware of this coordination and its resultant success and are responding by attacking ships farther away from Somalia. This raises the specter of Somali-organized pirate attacks in waters far from Somalia, thereby diluting the effectiveness of the current response.
Piracy is not a new problem for maritime commerce, though it has been rare in modern times. Yet there has been a recent upswing in attacks, commencing in the mid-1990s with ship boardings and robberies in the Strait of Malacca region and continuing today, most notably off Somalia. Piracy has many forms, and so there are varying definitions. One of the broader definitions, supplied by the International Maritime Bureau (IMB), is that piracy is “the act of boarding any vessel with an intent to commit theft or any other crime, and with an intent or capacity to use force in furtherance of that act,” which is a suitable definition for this article.

To put the piracy problem in perspective, over 400 attacks took place worldwide in 2009, with 217 in the Gulf of Aden (GOA) off Somalia. South America saw 37 reported attacks, while Nigeria had 28 attacks. Indonesia and the South China Sea accounted for another 28 attacks, while the Strait of Malacca saw only 2. The attacks off Somalia have been particularly troublesome, often involving the hijacking and ransom of the victim ship. Nearly 700 crew members were taken hostage in the GOA in 2009, a record for the region. An unknown amount, but certainly in excess of $20 million, was paid in ransom to pirates based in Somalia to free these vessels and hostages.

The international security response to these predations in the GOA has been the deployment of naval forces from a number of countries and coalitions, including the North Atlantic Treaty Organization (NATO) and the European Union. Commercially, many vessel owners and operators have responded by taking more robust measures to deter the boarding of their vessels, to the point of employing armed guards in some instances. The combination of these responses has pushed the pirates further out to sea, with the result that attacks have occurred over a thousand kilometers (km) from the Somali coast, far out in the Indian Ocean. Such a large geographic area is difficult to patrol, especially for the ubiquitous small fishing vessels that Somali pirates tend to use as motherships for their attacks.

With over 20,000 vessels a year transiting the GOA, the piracy problem in this area poses a significant threat to international commerce. A comparison can be drawn with piracy in the Strait of Malacca region, which is also a very important strategic waterway. In that case, the cooperation of the neighboring states was crucial to reducing the number of incidents and restoring a measure of peace to the waterway. As this essay explores, there are significant structural differences between the two situations, but this should not preclude looking to the Strait of Malacca experience for important guidance in reducing piracy in the GOA region.

Stakeholders in the marine transportation system have responded in various ways to the problem of GOA piracy. This essay also offers a canvas of the responses of certain non-stakeholders to the GOA situation and compares some of these responses to those in the Strait of Malacca.

Key Nonstate Stakeholders in the Global Marine Transportation System

There are numerous stakeholders in addition to nation-states in the international marine transportation system. Given the disparate threats posed by piracy to these interests, it is perhaps

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Piracy consists of any of the following acts: (a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed: (i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft; (ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State; (b) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft; (c) any act inciting or of intentionally facilitating an act described in sub-paragraph (a) or (b).
unsurprising that stakeholders do not have a common level of concern in addressing the issue or taking measures to avoid piracy incidents. Moreover, each stakeholder in the international marine transportation system actually comprises a number of individual interests and thus has a range of concerns and issues regarding piracy.

For the purpose of this paper, the nonstate stakeholders in the international marine transportation system include (1) vessel owners and operators, (2) charterers and cargo interests, (3) crew, and (4) protection and indemnity clubs and marine insurance. Although this list is by no means exhaustive, each of these stakeholders can fairly be defined as a “commercial stakeholder” in reference to their underlying pecuniary motivation for involvement in the international marine transportation system (which is different than the underlying national security and strategic concerns that primarily motivate nation-states). In addition to these commercial stakeholders, all of whom have existed in some form for millennia, is a relative newcomer, the private security company (PSC). In their most typical seafaring role, PSCs provide armed guards, usually former military servicemen, for vessels transiting areas where the risk of piracy is high, especially the GOA area off the coast of Somalia. Many PSCs are currently actively providing security services, in particular, to shipowners.

The Strait of Malacca Experience

Piracy in the post–World War II era has been exceedingly rare until recently. That said, post–World War II incidents can be divided into two basic types: robbery of the target vessel’s supplies and the hijacking of an entire vessel, cargo, and crew for ransom. The former type has probably always existed and likely always will. Ports, by their nature, tend to be somewhat lawless places that are difficult to police with so many people, vessels, and goods constantly coming and going. Ships at anchor in or near port offer an opportunity for suitably minded locals to illicitly board and steal whatever can be had, and robberies are common in countries such as Nigeria, Brazil, the Philippines, and Indonesia.

In particular, ship robbery has been endemic in Southeast Asia, with certain exceptions such as Singapore. This is notable because Singapore sits at the bottom of the Strait of Malacca, a long and narrow body of water also bounded by Malaysia and Indonesia that functionally separates the Indian Ocean from the Pacific. Well over 50,000 commercial vessels per year transit the Strait of Malacca, and it has been estimated that a quarter of the world’s goods traded by water go through this area. The Strait of Malacca is widely considered one of the most strategically important maritime chokepoints in the world. It is thus somewhat ironic that the more pernicious form of modern piracy, involving the boarding and hijacking of vessels, began its resurgence in this highly sensitive waterway.

Beginning in the 1990s, a series of attacks took place in the Malacca Strait that involved the attacking pirates coming alongside in small boats and boarding vessels underway. Once aboard, the pirates restrained the crew and stole whatever they could, usually focusing on the captain’s safe. Japan, which receives a large portion of its energy supplies through the Strait of Malacca, took the lead in establishing regional cooperation to combat this problem. This effort resulted in the 2004 Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP) between the 10 members of the Association of Southeast Asian Nations (ASEAN) and Japan, China, the Republic of Korea, India, Sri Lanka, and Bangladesh. ReCAAP
calls for “cooperation among member countries, based on three main pillars of information sharing, capacity building and operational cooperation, with information sharing as the main pillar.” To this end, ReCAAP established the Information Sharing Center (ISC) in Singapore. The ISC has proven effective in coordinating responses to piracy reports, and the ReCAAP agreement has been credited with reducing piracy in the Strait of Malacca region.

In recent months, an increased number of piracy incidents have occurred just outside the Strait of Malacca in the area east of Malaysia. These attacks exhibit the pattern typical for the area, with vessels boarded by knife-wielding pirates while underway, cash and valuables stolen, and the vessel then abandoned back to the crew. These incidents have largely involved tugboats and tows, which present particularly easy boarding targets due to their low freeboard and slow speeds. There have also recently been robberies of more sizable ocean-going vessels: on April 7, 2010, the 17,000 deadweight tons (dwt) MV Theresa Libra was boarded and robbed while underway; and on April 9, 2010, a cape-sized bulker, MV Star Ypsilon, was boarded and robbed. These incidents highlight an increase in attacks in the region, particularly off Indonesia, where eight vessels reported attacks in the first quarter of 2010, compared to just one in 2009.

Piracy in the Gulf of Aden Region Compared to the Strait of Malacca

The most immediate difference between piracy in the GOA and the Strait of Malacca is of course the presence of a failed nation-state, Somalia. The lack of central authority and the rule of law along the majority of Somalia’s lengthy, rugged coastline is often cited as the root cause of piracy in the GOA, as well as the primary reason that such activities cannot be stopped. Although Somalia’s neighbors have largely been as cooperative as their means allow, the GOA is a vast physical area of open ocean that is beyond the means of any or all the countries in East Africa to effectively control.

This is fundamentally different from the situation in the Strait of Malacca in the 1990s or now. There, all the neighboring states have functioning governments, albeit with different levels of resources and ability to control the strait and its environs. Certainly, the writ of Jakarta or Kuala Lumpur may not always be present in the more remote areas at all times, but both those central governments are perfectly capable of extending their authority at any time they choose. Additionally, the geographic area of coverage is smaller and thus more conducive to patrolling with the smaller vessels typical of the Indonesian, Malaysian, and Singaporean militaries. In contrast, the GOA area covers over one million square miles, most of it open ocean, rendering the region hard to effectively police.

Another key difference between piracy in the two areas is the nature of the attacks. While both Somali pirates and some of the attackers in the Strait of Malacca boarded and took control of vessels while they were underway, the Southeast Asian experience has been largely limited to robbery of the ship’s stores and the contents of the master’s safe (which usually contains cash). Occasionally cargo has been taken, and in a few cases the entire ship disappeared, but these have been the exceptions rather than the norm. In the GOA incidents, the entire object of piracy is usually to take control of the ship, crew, and cargo for a prolonged period of time in order to negotiate a ransom.

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Piracy in the GOA is also quite fluid and dynamic compared to elsewhere. The presence of a large naval force offshore of Somalia—including vessels tasked by the EU’s Operation Atalanta, NATO’s operation Ocean Shield, and other forces operating in the area—has clearly deterred prospective attacks, halted some that were underway, and allowed some captured vessels to be recovered. This military presence has forced Somali pirates to change tactics, most notably by heading out farther from shore in order to prey on unsuspecting vessels. Spatial analysis of Somali pirate activity in 2009 shows an ever-increasing number of attacks far from the immediate coast of Somalia, with several vessels taken well over 1,200 km from the coast (and hence outside the maritime patrol areas).³

Politically, GOA piracy is affected by myriad factors not present in the Strait of Malacca region, most notably the situation on the ground in Somalia. The cooperation of the Somali transitional federal government has largely been limited to allowing other forces to interdict pirates inside Somali waters. In addition, the transitional government has a very limited capacity to take action on its own, and its authority does not extend to the areas where the pirates are based. Fortunately, the government has invited foreign forces to assist in preventing piracy emanating from Somalia, with the practical result that the UN Security Council has authorized foreign forces cooperating in the fight against piracy to enter Somali waters.⁴ There have been a number of incidents where such intervention has occurred, ranging from active military intervention to simply positioning foreign warships near captured vessels to ensure that the crew remains safe and the cargo is not offloaded.

Complicating the cooperation of the Somali transitional government is the radical Somali Islamist group al Shabaab. Al Shabaab has links to various Islamist groups identified as terrorist organizations, and is itself considered a terrorist organization. Although al Shabaab has publicly stated that it will prevent piracy in areas under its control, the organization’s relationship with the various clans that engage in piracy is not clear. Notably, al Shabaab appears to have made recent military gains that may allow it to control Harardhere, long a pirate-controlled town, the threat of which apparently led pirates in that town to flee north to Hobyo along with three hijacked vessels under their control.⁵

These differences should not, however, lead to the automatic conclusion that regional cooperation agreements such as ReCAAP have no place in combating GOA piracy. In fact, countries in the GOA region have looked to ReCAAP as a model for addressing certain issues already, such as for defining what acts constitute piracy. Agreements similar to ReCAAP in the GOA region are likely to assist in reducing and eliminating piracy in this area as much as possible and lend legitimacy to, in particular, Western naval forces operating in a political environment where the colonial legacy remains a sensitive topic. Kenya’s acceptance of a number of piracy suspects for prosecution has been a welcome example of such cooperation.

Further, although capacity and geographic issues in the GOA may prevent the region’s littoral states from stemming piracy on their own, a regional agreement may also add a moral imperative to challenging Somali pirates. As the attack on MV *Maersk Alabama* demonstrated, many vessels sailing close to the Somali coast are transporting food aid to East Africa. Recipients of this aid,

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which include Somalia, would be particularly good candidates for a regional agreement because their national and humanitarian interest in safeguarding food shipments is unchallengeable and makes them stakeholders in the safety and security of vessels in the GOA. While it may be too much to ask these countries to contribute military or other resources, vocal criticism of the GOA pirates and continued political support for anti-piracy operations would lend further legitimacy to international efforts to address this problem.

At some level, there is already a significant level of regional cooperation. The Code of Conduct on the Suppression of Piracy and Armed Robbery against Ships in the Western Indian Ocean and the Gulf of Aden (usually called the “Djibouti Code of Conduct”) was adopted by a regional meeting on the issue as well as by many states in the area. Essentially, the Djibouti Code of Conduct requires signatories to criminalize piracy and armed robbery against ships, to investigate incidents when possible, and to prosecute alleged offenders. Though the ability of the signatories to capture pirates in the GOA is limited—and the Djibouti Code of Conduct does not set up an information center as ReCAAP does—the idea is a good one. Capacity may improve to capture or accept pirates for trial, and a good information sharing center already exists, so that an exact mirror of ReCAAP would not be appropriate for the GOA region.

There are also the widely reported agreements with Kenya, under which the country has agreed to prosecute pirates and imprison those convicted. A number of alleged pirates have been brought to Kenya for this purpose, but Kenya announced in spring 2010 that its capacity to handle such cases is limited to the pirates currently in custody, with the result that other countries, such as the United States, have begun to prosecute alleged pirates under their national laws. Kenya’s announcement also spurred international action, as a number of countries quickly authorized funding Kenya’s courts so that piracy prosecutions could continue under a “fast track” process. From the perspective of commercial stakeholders in the marine transportation system, any organized defense against piracy is probably a good thing, given that commercial stakeholders are typically the first line of defense when pirates attack.

Commercial Stakeholder Positions Regarding Piracy

Shipowners and Ship Operators

The primary concerns of shipowners and ship operators are generally the continued generation of revenue by their vessels and the safety of their assets. The former concern may relate not just to revenue generation but to the ability to satisfy underlying debt obligations, such as ship mortgages. In the Strait of Malacca incidents, the robberies were typically short in duration, there was seldom any threat that control of the vessels would be surrendered for more than a brief time, and the monetary loss to the owner was usually low. For example, the April 7, 2010, attack on MV Theresa Libra was typical of such an incident: pirates boarded the vessel and took cash from the ship’s safe and valuables from crew before escaping after roughly twenty minutes.

In contrast, a successful attack in the GOA usually removes a vessel from service for some time, and entails significant operating and other costs in the interim, as well as an eventual ransom payment in the millions of dollars. For example, the owner of the hijacked MV Amiya Scan paid a $1 million ransom to Somali pirates, but incurred a total cost of over $5 million for

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intermediaries, lawyers, and the logistics of the money drop. Given the potentially high cost to shipowners, and their access to resources, it is not surprising that many have reacted to the threat in the GOA in a robust way.

The most common response by shipowners appears to be the use of routes that avoid the Somali coast and offer some degree of cover from the various military forces deployed in the GOA. Many vessels transiting the GOA are doing so as part of a voyage that takes them through the Suez Canal, either en route to Europe or the Middle East and Asia. Accordingly, many of the incidents reported prior to mid-2008 occurred in the waters between Somalia and Yemen. With the August 2008 implementation of the Maritime Security Patrol Area (MSPA), anti-piracy efforts were concentrated in a corridor along the coast of Yemen, which allowed military forces to concentrate on a smaller geographic area than the entire GOA. Also, vessels could travel in convoys, which are much easier to protect than a number of vessels travelling separately.

For various operational reasons, the MSPA was changed in February 2009 to the Internationally Recommended Transit Corridor (IRTC), which also incorporates a vessel traffic separation scheme. The MSPA now refers to the larger area covered by anti-piracy patrols, while the IRTC is the corridor in which commercial traffic should travel along the Yemeni coast. The establishment of the MSPA and IRTC had a marked effect on GOA piracy, with the result that an increasing number of attacks began to occur outside these areas, including attacks far out in the Indian Ocean. The IRTC, which remains in effect, is used by a significant number (but not all) of the ocean-going vessels transiting from the Red Sea to points east, and vice-versa.

The second most common response by shipowners appears to be the use of low tech measures while transiting the GOA. Many of these measures have been recommended by industry groups that represent or take into account the needs of shipowners. The Oil Companies International Marine Forum (OCIMF) is typical of such organizations. In conjunction with other organizations friendly to shipowners, including the IMB, Intercargo, and INTERTANKO, the OCIMF has prepared a series of practical recommendations to avoid, deter, or delay piracy attacks (the “OCIMF recommendations”). The International Maritime Organization (IMO) has also published a guide for shipowners that is widely referenced, and the Maritime Administration (MARAD) has issued a number of notices on the topic.

The OCIMF recommendations are focused on a vessel’s ship security plan (SSP), which is essentially a series of contingency plans for various security scenarios. Under the International Ship and Port Facility Security (ISPS) Code, which is enforced by the flag state, every ship must have an SSP. In order to help address the GOA piracy problem, leading flag states Liberia, Panama, the Marshall Islands, and the Bahamas issued the New York Declaration, the cornerstone of which is the requirement that SSPs include internationally recognized best practices to avoid, deter, or delay acts of piracy (i.e., the OCIMF recommendations or their equivalent).

The SSP typically calls for increased watchkeeping while a vessel is in an area considered at high risk for incidents of piracy. Ships in the GOA region usually post extra watches and communicate regularly with naval forces in the area. In the event of an attack, vessels are advised to immediately

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8 For the current version of the OCIMF recommendations, supported by more industry groups, see Best Management Practice 3: Piracy Off the Coast of Somalia and Arabian Sea Area (Edinburgh: Witherby Seamanship International, 2010), http://www.icc-ccs.org/images/stories/pdfs/bmp3.pdf.


increase speed and begin evasive maneuvering, which makes boarding more difficult and occasionally capsizes the small boats typically used by the pirates. Vessels that believe they may be imminent victims of an attack or that are being attacked are further advised to immediately contact the maritime organizations that liaise with naval units in the GOA, particularly the UK Maritime Trade Operations (UKMTO). The UKMTO is a clearing center for reports of piracy and can assist in vectoring available military assets to a vessel if an attack occurs.

Other recommendations include the use of alarms both to notify the crew of an attack and to demonstrate to the attacking pirates that the vessel’s crew is aware of the attack. The use of deck lighting after dark is suggested to deny attackers the cover of night where possible and to assist in determining if a successful boarding has occurred. The use of physical barriers to deter boarding, such as razor wire or electric fencing placed around the ship’s perimeter, is also suggested. Some vessel owners and operators have also invested in water cannons to deter boarding, and a number of attacks have been deterred when the ship’s crew directed high pressure water from fire hoses at pirates attempting to board. Rigging fire hoses to spray down the hull to deter boarding is a commonly used technique, though it has a mixed record of preventing illicit boarding.

In the event a boarding has occurred, the OCIMF recommendations advise that access to the ship’s accommodation and machinery spaces be controlled, so that if pirates board, they cannot easily penetrate the vessel’s interior or superstructure. The IMB in particular has recommended a strategy called the “citadel defense,” in which the crew of a vessel under attack or boarded by pirates can be alerted and directed to muster in a part of the vessel that is protected and relatively secure. Such a citadel should be capable of communication with other parts of the vessel (especially the bridge and engine room), contain basic supplies and a bathroom, and be able to communicate with the outside world. An ideal place to establish a citadel is the steering gear room, because the crew can also disable the vessel’s steering apparatus from this location and will have likely shut down the main engine prior to retiring to the citadel. It is also recommended that the ship’s tools and equipment be secured so that boarders cannot use these items.

Some vessels have been fitted with secure rooms (usually hidden) where the crew can assemble and hide from attackers. This latter strategy has been used successfully a number of times, as it prevents pirates from controlling a vessel (the crew usually must do this) and allows time for a military response to arrive. Direct resistance by the crew is not recommended (but frequently occurs, with leading examples being the courageous resistance offered by the crews of MV Maersk Alabama and MV Zen Hua 4).

Much less publicized than the OCIMF recommendations has been the deployment of guards aboard commercial vessels transiting the GOA region. The use of guards from various third-party PSCs generally breaks down into two types: armed and unarmed. The unarmed guards are typically equipped with less lethal equipment, such as devices that project sonic waves designed to cause attackers inordinate distress (these are sometimes called long-range acoustic devices, or LRADs). The use of such measures has a mixed track record, especially in light of the fact that the attacking pirates are usually armed with automatic rifles and rocket-propelled grenades (RPG). Unfortunately, nonlethal devices such as the LRAD have failed to deter attacks in some instances, such as the attack and seizure of MT Biscaglia in fall 2008. In that incident, UK guards deployed
an LRAD device but were unable to prevent attacking pirates from boarding the ship. The guards wisely jumped overboard and were subsequently rescued by a German naval helicopter.

It has been estimated privately that at least 20% of the merchant vessels crossing the GOA have armed guards. The subject is somewhat delicate, however, because shipowners and ship operators are reluctant to advertise their willingness to use armed private guards (it should be noted that these guards are generally supplied by PSCs and do not consist of armed crew). Complicating the use of private armed guards is the uncertain legality of using lethal force and problems embarking and disembarking private armed guards. Since many countries do not allow the possession of firearms, it is difficult for a vessel with an armed private security force to call in certain countries. The author understands that some private guards embark just outside the GOA area and disembark once the subject vessel has cleared the area, so that the guards are not onboard during port calls.

Despite the difficulties posed by the use of armed private guards, their use appears to be increasing and has undoubtedly been effective. To date, no vessel with armed guards has been captured by pirates in the GOA. Incident reports involving vessels that have armed guards aboard often have a common narrative that once the guards return fire against the attacking pirates, the attack is broken off. The reluctance of pirates to attempt boarding vessels while under fire is understandable, and while the use of firearms to deter attacking pirates certainly implicates a lethal outcome, only one pirate has been reported killed by armed guards (a larger number have been killed by military forces). Interestingly, the vessel involved in that incident, MV Almezaan, had been successfully attacked by pirates on two previous occasions—May 1, 2009, and November 8, 2009—as it was delivering aid to Somalia. The third attempt, in which lethal force was used, occurred on March 24, 2010, and did not result in the capture of the vessel.

There is a great range of opinion among shipowners and operators regarding which measures are best to avoid pirate attacks in the GOA region. Some owners and operators are taking every possible measure to protect their vessels in this area, whereas others take no precautions at all. The majority of owners and operators probably fall into the middle, taking some precautions but not enacting others (the use of armed guards is probably the largest point of contention). However, as measures are proven to be effective, particularly the citadel concept and the use of armed guards, owners and operators will increasingly adopt them. It may be that a standard of protection will emerge as these measures are refined and become more effective. Such a standard could be informally adopted by a significant portion of the tonnage traversing the GOA region, which will likely deter attacks in this area (though this success may only push the high-risk area even farther from Somalia).

Cargo and Chartering Interests

Crew and cargo interests are largely the same as the interests of owners, except that the primary concern with respect to cargo and chartering is the timely and efficient delivery of goods. For vessels that have been time chartered (a time charter is an agreement to provide a ship and crew for a period of time, with the ship’s travels, but not operation, directed by the charterer), the time charterer is usually responsible for the expenses of preparing a vessel to transit the GOA area. Currently, the Baltic and International Maritime Council (BIMCO) draft piracy clause for time

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charters puts most of the onus and cost for such a voyage on the charterers. The BIMCO draft allows owners to refuse to sail through areas they believe to be high risk and for charterers to limit their exposure to continued hire payments in the event a vessel is captured. Often owners can insist that certain measures be taken, but this is essentially a commercial negotiation, the outcome of which depends on the relative bargaining position of each side. Both owners and charterers have a common interest in preventing a successful attack, given that the time charterer will likely remain responsible for hire if the ship is hijacked and the owner will have to pay the ransom and costs of the ship (such as insurance, crew wages, and class dues) while it is detained.

Crew

The primary interest of vessel crews undergoing an attack or captured by pirates is of course personal safety. Since the typical pattern of attack involves the use of a number of small boats wildly firing AK-47s and RPGs at the targeted vessel, with the fire concentrated on the bridge and accommodation spaces, there can be no doubt that an attack poses significant physical risk to those aboard a targeted vessel. If a vessel is captured, it is usually taken to the Somali coast and anchored until the pirates agree to release it. During this time, the physical environment for the crew is difficult, but it is unlikely that the pirates will harm the crew. Thus, the primary risk posed to crews in the GOA is during an attack and boarding of their vessel, with the physical risk declining after a vessel is taken.

The Somali pirates have apparently been sensitive to crew dynamics, often reassuring the crew that the pirates want only to be paid by the owner or operator and have no animus to the crew. To the extent possible, pirates appear to accommodate certain crew needs, in particular arranging for food and supplies that can be consumed by the crew, particularly non-Somali food. The rationale for this behavior by the pirates is clear: crews are less likely to resist if they believe that physical harm is unlikely. Though Somali pirate violence toward crew members may be low by historical standards, they are frequently injured and occasionally killed, and any period of captivity is extremely stressful and difficult for crew members and their families. No amount of accommodation can set a captured crew at ease before it is freed.

Most recommendations for the GOA, including the OCIMF recommendations and the IMO guidance (but not the MARAD notices), advise that crews should not actively resist pirates. However, certain forms of passive resistance, particularly retiring to a vessel’s citadel to wait for a military response, are advised under certain circumstances. The use of force against pirates by crew members has largely been a red line, at least for crew representative organizations. The general position (and this is true of many in the maritime industry) is that the use of any force to deter pirate attacks is likely to increase the amount of force used by the pirates and will thus increase the risk to crew members. This position largely seems to be speculative, as the use of force against pirates in every instance reported has either prevented the capture of the target vessel or resulted in its liberation.

The fact that armed resistance by PSCs has been so effective has led to a revision of policy by one of the principal seafarer representative organizations, the International Transport Workers’ Federation (ITF). Initially opposed to the deployment of armed guards aboard vessels in the GOA,

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the ITF has recently moderated its position and now supports the use of armed military personnel in certain situations in order to deter attacks.\textsuperscript{15} Whether or not this extends to PSCs is unclear, but the ITF has been increasingly vocal in calling on countries with significant maritime sectors to step up anti-piracy efforts in general, and it may well be that the ITF will also moderate its position regarding PSCs. It is crucial to note that the position of the ITF and most in the industry is that seafarers should not be armed and that any force should be deployed only by security forces. It is difficult to argue with this for a variety of reasons, including the lack of training and compensation for taking on such a skilled and dangerous assignment and the possibility that crew who should be performing crucial vessel-related work may become distracted by the additional guard duties.

Of course, there are some crews that either arm themselves with whatever they can or are considered to be quasi-military and thus authorized to use firearms to protect their vessel. In particular, U.S. Military Sealift Command vessels are crewed by sailors trained in the use of small arms, and such vessels usually carry a small store of firearms and protective equipment. Also, some crews, though essentially unarmored, have resisted boarders quite forcefully. The crew of MV Zen Hua 4, for example, locked the accommodation tower and deployed to the uppermost weather deck on the vessel. They brought along several cases of beer, and prepared a number of Molotov cocktails. When the pirates assembled on the main deck, the crew began throwing the full cans of beer and firebombs down at the pirates, who inaccurately returned fire. After some efforts to get into the vessel’s superstructure, the pirates eventually gave up and left. The defensive effort was well-documented by a crew member who took photos of the entire incident.\textsuperscript{16}

Perhaps more famously, the crew of MV Maersk Alabama concealed itself in the interior of the vessel when attacked, having first disabled the bridge controls and turned off the interior lights. When one pirate searched for the missing crew, crew members were able to capture him. Unfortunately, in the meantime the pirates had captured the vessel’s master, with the result that a swap was proposed whereby the pirates agreed to leave the vessel. The swap did not go as planned and the pirates did not release the master, but they did leave MV Maersk Alabama in one of its powered lifeboats. U.S. Naval Special Forces subsequently killed three of the four pirates and rescued the master in a widely reported operation. However, it was clearly the crew’s initial resistance that made this outcome possible.

These accounts do not suggest that all crews should resist pirate attacks directly, but they do illustrate that active resistance, though dangerous, has deterred attackers. Certain crews, particularly British and American, have particular concerns about being captured by Somalis. These crews have a much greater incentive to resist, as the consequences of capture may be much more severe than, for example, a crew from the Philippines. Crews from other countries, particularly North Korea, have fought pitched battles with attacking pirates and successfully retained control of their vessels. For example, the crew of MV Chol San Bong Chong Nyon Ho, a North Korean general cargo ship, fought with Somali pirates at the end of March 2010. The heavy fighting started a fire aboard the vessel and resulted in a number of crew members suffering serious injuries from gunfire and grenades. Yet the crew’s defense prevented the ship’s capture.\textsuperscript{17}

\begin{itemize}
\item \textsuperscript{16} The photos taken during the attack on Zen Hua 4 can be viewed online at “The Cargo Letter,” http://www.cargolaw.com/2008nightmare_zhen-hua.html.
\item \textsuperscript{17} “Crew Hurt in Bloody Battle,” Tradewinds, April 1, 2010.
\end{itemize}
Protection and Indemnity Clubs and Marine Insurance

Protection and indemnity (P&I) clubs and marine insurance both offer shipowners protection from risk and liability but in different ways and for different exposures. A P&I club is a pooled risk group in which an owner’s expenditures for certain types of liability will be repaid by the club. Typical P&I coverage includes claims for loss of life and injuries, cargo, wreck removal, and possibly pollution. Marine insurance is simply third-party liability insurance in favor of the owner, with typical policies such as hull and machinery (H&M) insurance. An H&M policy pays an owner if the engine fails or the vessel sinks.

Neither P&I nor marine insurance policies typically cover damages stemming from a pirate attack or the payment of ransom, although war risk policies often contain coverage. From the shipowner perspective, damages are most likely to consist of lost revenue from the ship’s seizure and the cost of any ransom payments. The former concern is often alleviated when a vessel is time chartered, because the time charterer directs the movement of the vessel and usually remains liable for hire in the event that a vessel is seized (at least for a time). Although ransom payments are normally the owner’s problem, a contribution can often be obtained from the cargo interests. It should be noted that some marine insurers have begun to offer kidnap and ransom policies, but these are not normally carried and are quite expensive. Moreover, their applicability to the GOA piracy problem, as well as potential cargo contributions and war risk policy payments, has been recently blunted by White House action.

On April 13, 2010, President Barack Obama issued an executive order “blocking property of certain persons contributing to the conflict in Somalia,” which prevents any kind of payment to people known to be involved in GOA piracy, as well as to al Shabaab.18 The stated rationale is that GOA piracy poses a threat to U.S. national security; however, the executive order has caused considerable concern in the maritime industry, particularly among insurers. While there has been some clarification that only payments to those named in the order are prohibited, two of the people on the list reportedly control over a thousand Somali pirates. It is thus not yet clear how the executive order will affect the payment of ransoms, though the order certainly complicates this. If a company subject to U.S. jurisdiction does become involved in a ransom situation, it will need to coordinate closely with the U.S. government before taking any action.

Conclusion

It is clear that the various stakeholders in the marine transportation system do not speak with a single voice when addressing the problem of piracy. However, there is broad agreement that Somali piracy poses a significant challenge to maritime commerce and that a comprehensive solution must be found. General agreement on these points was also shared by stakeholders in the marine transportation system of the Strait of Malacca. In that situation, the stakeholders were eventually able to come together and muster a collective response to piracy, albeit one that is dependant on the authority of the littoral states in that region. In particular, the creation of a regional reporting center that can process real-time information and evaluate data over time, combined with an enhanced state presence in the strait, has led to a significant reduction in attacks in and near the Strait of Malacca.

In the case of Somali piracy, the active participation of the most significant littoral state, Somalia, is not possible. Nevertheless, the use of a reporting center, increased military patrols, and the creation of the IRTC have reduced the number of attacks in the GOA. Unfortunately, this success has led Somali pirates to range farther afield, and there remains a very significant threat to shipping from pirates in the GOA and beyond. Because of the high cost of ransoming a captured vessel and the impossibility of effectively patrolling the entire area, some shipowners have elected to use armed security when transiting the Gulf of Aden. Though this decision has drawn criticism and raises interesting legal issues, the presence of armed guards is undeniably a significant deterrent to Somali pirates, as no ship with such security has been captured. Ultimately, however, the use of armed guards remains a symptomatic response, and it is incumbent on governments and commercial stakeholders to find an effective and efficient way to reduce and eliminate Somali pirate activity.
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