



Options to Combat Maritime Piracy in Southeast Asia

JOHN MO

City University of Hong Kong
Hong Kong

Modern maritime piracy has become one of the major threats to safety at sea. How to combat maritime piracy in Southeast Asia effectively is the major concern of this contribution. It is argued that some form of government cooperation involving most of the governments of the Southeast Asian region is the best way to combat maritime piracy, although it is not an easy task due to various political, economical, and historical reasons. A unilateral and expedient arrangement by one or a few governments to combat maritime piracy may be convenient but may also encounter resistance or raise suspicion from other governments.

Keywords IMB, maritime piracy, piracy control, shipping industry, Southeast Asia

Introduction

Since the early 1990s, modern maritime piracy has become one of the major threats to safety at sea.¹ In response to the rising danger of modern piracy to the safety of seamen, vessels, and cargoes, the International Maritime Bureau (IMB) Piracy Reporting Centre was established in October 1992 in Kuala Lumpur. IMB is a division of International Chamber of Commerce (ICC), an international nongovernmental organization based in Paris. The center has been financed by voluntary contributions from 16 ship-owner's associations and insurance companies. The center records and reports the incidents of pirate attacks over the Internet on a weekly basis and also provides assistance in searching for vessels which have been attacked by pirates. According to its Annual Report, a total of 469 incidents of pirate attacks were reported to IMB Piracy Reporting Centre in 2000.²

According to the Report on Acts of Piracy and Armed Robbery Against Ships, issued monthly by the International Maritime Organisation (IMO), a total of 2,129 pirate attacks were reported to IMO by December 2000.³ Most of these incidents are believed to have taken place in the last few years. Besides the reported pirate attacks, it is understood that many incidents have not been reported to the relevant authorities for various

Received 29 May 2001; accepted 27 September 2001.

An earlier version of this paper was presented at the SEAPOL Inter-Regional Conference on Ocean Governance and Sustainable Development in East and Southeast Asian Seas: Challenges in the New Millennium, March 2001, Bangkok, Thailand.

Address correspondence to John Mo, Associate Professor, City University of Hong Kong, 83 Tat Chee Avenue, Kowloon, Hong Kong. E-mail: lwmo@cityu.edu.hk

reasons.⁴ The large quantity of pirate attacks, both reported and unreported, have caused serious harm to both life and property at sea. There is, therefore, an urgent need, particularly in Southeast Asia, where most reported incidents of piracy have taken place, to find an efficient way to combat maritime piracy.

The statistics show that piracy acts have been arising continuously in recent years⁵ despite the various domestic and international efforts that have been made by both the governments adjacent to the troublesome waters, in particular in Southeast Asia, and private companies whose interests are under constant threat from pirates.⁶ Everyone agrees that maritime piracy is both dangerous and on the increase, yet no effective system or technique has been identified or created to deal with the problem. Are we facing some sort of inherent dilemma or insurmountable barrier to combatting modern pirates? This contribution will examine various options available to combat maritime piracy, in particular their advantages and disadvantages. The first part reviews the present danger of maritime piracy to international trade, international shipping, and human society in general. The second part examines the present international efforts to combat maritime piracy. The third part reviews the present national practices to combat and control maritime piracy. The fourth part analyzes major difficulties arising from the present system for piracy control. The fifth part investigates various possible options for combating maritime piracy. The conclusion will summarize the important points.

Rising Danger of Maritime Piracy

The history of pirates goes back as early as the history of ocean sailing. It appears that there has always been someone who is willing to steal, kill, and rob as long as the violent, brutal, and illegitimate means can satisfy his or her desire for money and wealth, which is otherwise not available to him or her. Violence and force have also occasionally been seen as a “necessary and justified means” to redistribute social wealth and even to access basic human necessities such as food and clothing. Such a view may explain the motive to commit violent offences against another person or property in special circumstances, often related to the notion of revolution. Of course, there is also someone who sees violence and illegitimate attacks or detention as an effective and extreme means to realize ultimate social, moral, and ideological goals. This view is often held by modern terrorists, including those attacking life and property at sea.⁷

The Division for Ocean Affairs and the Law of the Sea (DOALOS) of the Office of Legal Affairs of the United Nations has observed the activities of modern maritime piracy in the following words:⁸

Nowadays piracy still exists, albeit in new forms which require new means for its suppression. Pirate attacks occur with alarming frequency in many parts of the world. Attacks range from incidents in which the pirates have simply taken money and valuables from the crew and ship's safe to cases where the entire cargo has been stolen and in some cases the ship as well. Usually only the threat of violence is used but there have been injuries and sometimes crew members have been murdered. Reports of incidents show that apart from the danger to the crews who are the victims of an attack, the navigational and environmental dangers in cases where the crews have been tied up and the ships have been left to steam at full power with nobody in control while the robbers make their escape can scarcely be exaggerated, especially in areas where there is heavy traffic.

Whenever discussing issues of modern maritime piracy, there is always a problem of definition.⁹ Someone kills and robs for money, but another may kill and rob for political and social purposes. Others may kill and rob for both. At the same time, someone is willing to reach his or her goal by any violent, brutal, and barbarian means, but another is only prepared to take another's property by illegitimate but yet nonconfrontational means, such as theft. Depending on one's understanding of piracy, the same illegitimate act may or may not fall under the category of maritime piracy, in particular modern maritime piracy. This article is inclined to accept a definition of maritime piracy which is wider than the definition of piracy adopted in Article 101 of the United Nations Convention on the Law of the Sea.¹⁰

Article 101 of the LOS Convention defines piracy in the following words:

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:

(1) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;

(2) 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 of inciting or of intentionally facilitating an act described in subparagraph (a) or (b).

The definition emphasizes the illegality of any violence, detention, or act of depredation committed by a person on board a vessel or aircraft against another person, property, vessel, or aircraft. However, it must be noted that this definition applies only to any of the described illegal acts committed either on the high seas or outside the jurisdiction of any state. Thus, technically any of the described acts taking place within the jurisdiction of a state does not fall under the definition of Article 101. Aware of this technical point, the IMO has classified violent and illegal acts against ships, or property and persons on board ships, taking place in ports or territorial waters as "armed robbery."¹¹ This technical feature of Article 101 relates to the nature of the LOS Convention as a treaty regulating international relationships and cooperation among states, but does not restrict one's understanding of "piracy" for the purpose of combating modern maritime piracy. Article 101 simply means that the pirating act committed on the high seas or outside the jurisdiction of any state is caught by this provision, but does not suggest that such an act is not a criminal act if committed within the jurisdiction of a coastal state.

Modern maritime piracy has been described by IMB as "an act of boarding any vessel with the intent to commit theft or any other crime and with the intent or capability to use force in the furtherance of that act."¹² This definition is much wider than LOS Convention Article 101 in two respects. First, the IMB definition applies to an act of "theft" which is supported by the intent or capacity to use force in the furtherance of the act. Such an act is not covered by Article 101 unless any act of violence or force has been actually used by the "thief" when executing what was originally attempted to be an act of theft. However, an act of theft which has been completed without direct confrontation with the seafarers on board the "trespassed" vessel may or may not, depending on

the interpretation of “depredation” against a vessel or property on board the vessel as referred to in Article 101(a),¹³ fall under the category of piracy as defined in Article 101 even if the act has taken place on the high seas. Second, the IMB definition is wider than the definition in Article 101 in the sense that, unlike Article 101, the IMB definition regards a violent act against a vessel or property and persons on board a vessel within the territorial waters of a state as piracy.

Given the existence of these different understandings of maritime piracy, this article purports to develop a definition of piracy by taking into account the meaning of piracy in Article 101 and the definition used by IMB. Accordingly,

modern maritime piracy refers to an illegal act of boarding a vessel or aircraft for the purpose of committing a crime as defined by either an international treaty or a domestic law against the vessel or aircraft, property or persons on board the vessel or aircraft by a person or persons who are capable of using force or violence when committing the said crime.

This definition represents the meaning of maritime piracy as used in this article.

Maritime piracy, as defined above, has increased rapidly in recent years, in particular in the Southeast Asia region. It has been argued that there are four types of piracy in Southeast Asia: harbor boarding, short-term seizure, long-term seizure, and permanent seizure.¹⁴ In 1998, 202 cases of pirate attacks were reported to IMB. In 1999, 285 cases of pirate attacks were reported, and more than two-thirds of these incidents took place in Southeast Asia. In 2000, 469 attacks were reported, and again more than two-thirds of them took place in Southeast Asia.¹⁵ The estimated financial loss arising from these attacks and killings would amount to millions of dollars. Given the scope and accuracy of the pirate attacks, it is suspected that international syndicates have been involved in the pirate attacks in Southeast Asia.¹⁶ Therefore, how to improve maritime safety, prevent the occurrence of piracy, and punish pirates have become major concerns of the shipping industry, shippers, insurers, and other vessel and cargo interests across the world, in particular those travelling frequently in the waters of Southeast Asia.¹⁷

International Efforts to Combat Maritime Piracy

Defining International Efforts

International efforts to combat maritime piracy must be examined from two perspectives: the international legal framework for controlling maritime piracy, and international cooperation to combat maritime piracy. Since this article focuses on the piracy issues in Southeast Asia, only international cooperation affecting Southeast Asia will be reviewed.

The international legal framework for controlling maritime piracy largely consists of treaties and conventions which either set out rules for combatting maritime piracy or impose obligations upon contracting countries to control maritime piracy unilaterally or collectively. The major international treaties and conventions concerning piracy control are the 1982 LOS Convention and the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation 1988¹⁸ (referred to as the 1988 SUA Convention), which prohibits violent and unlawful attacks to vessels, property, and persons on board vessels and covers attacks which may not fall under the definition of piracy set out in Article 101 of the LOS Convention.

International cooperation implies two meanings. First, it refers to cooperation between private companies and organizations, for example, such as the IMB and the Comité Maritime International (CMI). Second, it refers to collective acts performed by countries and government-based international organizations, such as IMO and ASEAN. The second type of international cooperation also extends to joint efforts of neighboring countries to combat maritime piracy. It was reported that maritime authorities from 15 countries held a joint meeting in Kuala Lumpur in November 2000 to review antipiracy measures and international cooperation to combat in Southeast Asia.¹⁹ Japan and India have called for regional military cooperation to combat piracy.²⁰ Indonesia and Singapore reached a bilateral accord in February 2001 to allow Indonesian seafarers to work on Singapore-registered vessels in a bid to increase employment opportunities for Indonesian seafarers and to reduce the so-called “poverty-driven impetus” to commit crime by unemployed Indonesian seafarers.²¹

International efforts to combat maritime piracy have provided valuable experiences for dealing with piracy issues. This article examines the merits and weak points of the present international efforts to combat piracy for the purpose of weighing future options to combat and control piracy in Southeast Asia.

International Conventions on Piracy Control

The LOS Convention contains a number of provisions on piracy control. Articles 100–107 set out principles on piracy control and impose obligations upon contracting countries to engage in collective efforts to combat piracy committed on the high seas and outside the jurisdiction of a country. As of January 2001, 135 countries had ratified the LOS Convention.²² In Southeast Asia, Brunei Darussalam, China, India, Indonesia, Japan, Lao People’s Democratic Republic, Malaysia, Myanmar, Pakistan, Philippines, Republic of Korea, Singapore, and Vietnam have ratified the LOS Convention. It must be noted that Thailand, which is one of the major littoral countries in Southeast Asia, has not ratified the LOS Convention. The LOS Convention provides an option for combatting piracy in Southeast Asia. However, the treaty must be enforced by its members. So far, IMO has monitored the piracy situation closely, but the members of the LOS Convention have not taken any specific actions to combat maritime piracy directly.

The advantages and disadvantages of relying on the relevant provisions of the LOS Convention to combat maritime piracy can be summarized as follows:

- Article 100 imposes a duty on states to cooperate in the repression of piracy, requiring all states to “cooperate to the fullest possible extent in the repression of piracy on the high seas or in any other place outside the jurisdiction of any State.” This provision offers a possibility to organize certain collective actions to combat piracy.
- The limitation is that the convention applies only to piracy taking place on the high seas and outside the jurisdiction of any country. This limitation renders international obligations to combat piracy unenforceable once the pirates have moved into the jurisdiction of any coastal state. Similarly, the said international obligation does not expressly compel any country to crack down on suspected pirates who move within the territorial waters of the country. The limitation also opens a back door for countries to shy away from any blame laid against them for their inefficiency in controlling piracy such as in their territorial seas or areas subject to disputed jurisdiction.

- Another weakness of the LOS Convention is its organizational structure. As of March 2001, no agency or organization had been established for the purpose of combatting maritime piracy. The LOS Convention relies on the work of IMO, which, however, is not a specialized agency respecting piracy control.
- In addition, even if a long-term arrangement can be made under the LOS Convention, it must be noted that any arrangement binds only the member states. As noted, in Southeast Asia, Thailand has not ratified the convention yet.

In light of the above, the LOS Convention legal framework may not offer any expeditious and effective solution for combatting maritime piracy, in particular in Southeast Asia.

The 1988 SUA Convention is another international treaty which may affect piracy control in Southeast Asia. The SUA Convention does not adopt the expression “piracy.” However, it prohibits “unlawful and intentional acts” against vessels, cargoes, and persons on board vessels. Piracy or armed robbery fall into the category of unlawful and intentional acts as defined in Article 3 of the SUA Convention. As of January 2001, 52 countries had ratified the 1988 SUA Convention. In Southeast Asia, only China, India, Japan, Pakistan, and Sri Lanka have ratified the convention. Since many littoral countries in Southeast Asia are not members of the SUA Convention, the effect of the convention on combatting piracy in Southeast Asia is limited.²³

International Cooperation to Combat Piracy

International cooperation at both the private and governmental level has been carried out to combat maritime piracy in Southeast Asia.

The major international cooperation carried out by private companies and organizations is seen in the work of the IMB and the CMI. The IMB has established a piracy reporting centre in Kuala Lumpur. Its reports on piracy activities have been relied on by individuals and governments across the world. Besides its reporting function, it has increased the public awareness of the real danger and risk of modern maritime piracy both in human terms and to the national economies of the relevant Southeast Asian country. Its work will constitute part of any effective future international piracy control mechanism.

The major contribution of CMI to combat maritime piracy can be in its efforts to draft a model law on piracy control for consideration by IMO.²⁴ The CMI has also contributed to piracy control by organizing studies and conferences on contemporary issues of shipping law to raise public awareness of the danger of modern maritime piracy.

As far as Southeast Asia is concerned, the major government organizations which have or may have significant impacts on piracy control are Association of Southeast Asian Nations (ASEAN) and IMO. Presently, ASEAN’s membership consists of Brunei Darussalam, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand, and Vietnam. In addition, ASEAN has developed close cooperation with a number of neighboring countries, including China, India, Japan, Pakistan, and the Republic of Korea. Most countries which are adjacent to the troublesome waters of Southeast Asia are either ASEAN members or in close cooperation with ASEAN. This suggests that ASEAN may be one of the feasible options for working out arrangements to combat piracy in Southeast Asia. Piracy control has been one of the stated objectives of ASEAN cooperation as set out in the 1998 Manila Declaration on the Prevention and Control of Transnational Crime and the 1999 Joint Communique of the Second ASEAN Ministerial Meeting on Transnational Crime.²⁵ However, ASEAN has not yet developed any specific plan to combat piracy.

Piracy control has been one of the major concerns for the IMO. On 16 June 1999, IMO issued the documents entitled "Piracy and Armed Robbery Against Ships: Recommendations to Governments for Preventing and Suppressing Piracy and Armed Robbery Against Ships" and "Piracy and Armed Robbery against Ships: Guidance to Shipowners and Ship Operators, Shipmasters and Crews on Preventing and Suppressing Acts of Piracy and Armed Robbery Against Ships."²⁶ In addition, IMO has carried out research and studies on piracy control and issued the monthly Reports on Acts of Piracy and Armed Robbery Against Ships. In December 2000, IMO approved a Draft Code of Practice for the Investigation of the Crimes of Piracy and Armed Robbery Against Ships.²⁷ As of March 2001, however, no specific action had been taken by IMO directly against piracy in Southeast Asia.

International cooperation has been undertaken to combat pirates in Southeast Asia. However, due to reasons relating to the jurisdiction and the power of the relevant international organizations, unresolved conflicts between international and domestic laws concerning any coastal state's obligation and jurisdiction to combat pirates who are highly mobile across any national border, and financial implications for certain international organizations to enforce any effective control against pirates, international cooperation on combatting piracy in Southeast Asia has had only limited success. An innovative approach to piracy control or an innovative model of international cooperation must be developed if an effective system or mechanism of international control is to be achieved.

Domestic Practices to Combat Maritime Piracy

Most Southeast Asian countries are aware of the danger and potential damage of maritime piracy to their national economies.²⁸ An act of piracy or armed robbery falls under the category of punishable crimes in all Southeast Asian countries. The issue is whether the littoral governments in Southeast Asia have done enough to combat and control piracy. Alternatively, it may be asked whether a coastal country in Southeast Asia is obliged to do more to prevent and combat piracy within its territorial waters and waters adjacent to its territorial waters.

In recent years many Southeast Asian governments have taken an active role in cracking down on piracy within their jurisdiction. It is believed that Indonesian, Malaysian, and Singaporean agencies have increased their cooperation in combatting maritime piracy.²⁹ The Philippine navy has set up special forces to patrol a number of areas in the Philippine Archipelago.³⁰ Indian and Japanese navies have offered their assistance to the countries around the South China Sea in holding joint patrols.³¹ The Chinese courts have tried at least two cases of piracy since 1999. In the first trial, which was conducted in January 2000, 13 pirates were sentenced to death for the killing of 23 crew members of the Hong Kong-registered cargo ship *Cheung Son* in December 1998.³² In the second trial, conducted in August 2000 against 14 pirates who were Burmese nationals, the court handed down one suspended death sentence against the leader of the gang and jail terms ranging between three and ten years against the rest of the gang for their crime of piracy committed in March 1999 against a Panama-registered vessel.³³ There was no immediate death sentence in this case because the 21 seamen on board the hijacked vessel were later rescued by Thai fishermen. Both cases were tried under the relevant provisions of Chinese Criminal Code.³⁴

There are two main deficiencies in the present national practices against piracy. First, although a national government is no doubt willing to punish a pirating act once a pirate has been caught, the government may be reluctant to search for potential pirates.

The cost of doing such preventive work is prohibitive. In addition, there are a lot of technical difficulties in arresting someone who is a "suspected" pirate. In many poor and remote areas in a number of Southeast Asian countries, unemployed fishermen or seamen are driven by poverty to commit piracy.³⁵ This is a major difficulty in combating piracy in Southeast Asia. It is why the bilateral arrangement between Indonesia and Singapore to allow Indonesian seafarers to work on board Singapore-registered vessels is seen as a means to prevent and reduce pirating acts in the area. The second deficiency of the present national practices to combat maritime piracy in Southeast Asia is the lack of trust among some of the neighboring countries. The Japanese efforts to build up a strong navy and to offer antipirate patrols in the Malacca Straits and the South China Sea have been seen as a potential threat of Japanese militarism in the region by both ASEAN countries and China,³⁶ and as an effort to strengthen its military position in the region by Western observers.³⁷ The Indian calls for joint antipirate patrols and the offer of a naval presence in the Malacca Straits have also aroused scepticism from China and other countries. In addition, the unsettled territorial claims over the Spratly Islands (Nasha Islands), the Pratas archipelago (Dongsha Islands), the Macclesfield Bank (Zhongsha Islands), and Paracel Islands (Xisha Islands) among China, Taiwan, Vietnam, the Philippines, Malaysia, Indonesia, and Brunei have also made naval patrols in the South China Sea a sensitive issue to all these jurisdictions concerned.³⁸

Major Difficulties in Combating Maritime Piracy

The proposal for establishment of a feasible and efficient mechanism for piracy control in Southeast Asia creates multiple difficulties. Some of them overlap with each other. First, modern pirates are highly mobile and equipped with technology and heavy weapons. They can move from the territorial waters of one country to another, or to the high sea, quickly. Therefore, it is very difficult for any single country to control and prevent their activities. Second, some pirating acts have been committed by unemployed seamen or fishermen, who are not identifiable unless caught when preparing or committing pirating acts. As already noted, it has been argued that the economic situation has been one of the major factors in the rise of modern piracy in Southeast Asia. This new feature of piracy acts in Southeast Asia has made it more difficult to combat piracy. Third, there are a number of conflicting interests or considerations which create difficulties for organizing or implementing any system or mechanism for piracy control in Southeast Asia. These conflicting interests can be classified into four categories: conflicts between public interests and private interests; conflicts of interest between two public interests or considerations; conflicts between different national interests, including considerations for national security; and conflicts between international obligations of a coastal country and its domestic interests. These four categories of conflicting interests are elaborated below.

The conflicts between public interests and private interests can be seen in many aspects of any national plan or system to combat maritime piracy. First, when there is a need to protect the safety of ships and life of persons on board ships, there is also a public interest consideration in complying with the rules of law when searching, investigating, detaining, trying, convicting, and punishing any suspected or convicted pirates. Some of the procedural considerations make the enforcement of any preventative measures difficult and costly. Second, in terms of the cost for implementing any effective national system of piracy control, there is also a conflict of interest between the protection offered to a small group of interests, such as vessel owners, cargo owners, insurers,

and seafarers, and the cost which has to be borne by the public. Cost has presumably been a major obstacle for any Southeast Asian country establishing a powerful and ready task force to combat piracy. Third, although certain private companies have seen the establishment of their own private army as a way to combat piracy,³⁹ the relevant countries would be reluctant to allow such practices since allowing an armed cargo vessel into the territorial waters of a country may amount to a serious threat to the national security and sovereignty of the country.⁴⁰ In addition, a national government would be legitimately worried that such practices would give pirates the opportunity to guise as armed guards on board a commercial vessel sailing on the high seas or within the territorial waters of a state. Therefore, there is a conflict between the private interest of any company to protect its vessels and seamen by carrying a private army or armed security guards on board, and the public interests of a coastal state to ensure its national security and sovereignty and to prevent potential abuse of armed cargo vessels by pirates, or even by the private companies in the future.

The conflict between public interests exists if one examines the interests from a different angle. It can be argued that combatting maritime piracy is crucial for protecting the long-term interests of those countries whose national economy relies heavily on sea shipping, in particular those countries adjacent to the Malacca Straits. Indeed, most countries adjacent to the Malacca Straits have realized the importance of combatting piracy in the area.⁴¹ However, the cost of establishing and maintaining an effective piracy control system by a country is high. Consequently, when a country balances the public interest of combatting piracy and the public interest in limiting governmental expenditures, the latter is given weight since the long-term damage to a national economy is not as easily identifiable as the immediate financial burden placed upon the public if an expensive piracy control system is established. In addition, a national government would be reluctant to spend money when the immediate benefit of such spending is often seen in the safety of vessels and cargoes owned by individuals who are often foreigners, or in the safety of the seafarers, whether locals or foreigners, whose number is always relatively smaller than the general public expecting to benefit from public expenditures.

The conflict of national interests in piracy control between different countries can be seen in several aspects. First, the territorial claims of neighboring countries may create difficulties for any country chasing and catching pirates across the maritime boundary of another country. In order to enforce a territorial claim, a country would be reluctant to allow the navy or military force of another country to enter its territorial waters. Although arguably the relevant provisions of the LOS Convention may allow the warship of one country to chase pirates from the high seas into the territorial waters of another country,⁴² the exercise of such "right" may be very difficult because of the difficulties in identifying a pirate ship or a ship hijacked by pirates and also the conflict with the sovereign claims of the relevant coastal state. Second, due to national security consideration, a country is always suspicious of the presence of another country's navy near the former's *claimed* territorial waters. Similarly, a country is often suspicious of the deployment of another country's military force. This is why the Japanese efforts to build a strong navy force allegedly for the purpose of combatting piracy has been viewed by many Southeast Asian countries as a sign of re-emerging Japanese militarism. For the purpose of enforcing its claims over the Spratly Islands and other islands or islets in the South China Sea, China has refused any Indian and Japanese navies in the South China Sea, particularly within the waters claimed to be the territorial waters of China.⁴³

The conflict between the international obligations of a country and its domestic interests in combating piracy reveals the difficulties of achieving international cooperation from a different perspective. For example, when a country has an obligation to cooperate with other countries under the LOS Convention to combat piracy outside its territorial waters, it does not have such an obligation to cooperate in combatting “piracy” within its territorial waters, where the unlawful acts against ships are not regarded as “piracy” under the convention. For whatever considerations relating to its national interests, a coastal country may take a passive position in combatting piracy or so-called “armed robbery” within its territorial waters, because it does not have a legal obligation to take action unless it is bound by the 1988 SUA Convention. Even in the circumstances when a country has a clear obligation under the LOS Convention or any other relevant international treaty, it is still possible that the country may not wish to perform its obligation to the fullest extent due to its concern over the impact of such performance upon domestic interests. The matter is further complicated when it is argued that rich countries and companies should contribute more to the economic development of the poorer regions in Southeast Asia in order to cure the economic cause for some piratical acts.

Having analyzed the present efforts by the international community and national governments in Southeast Asia to combat piracy, and the difficulties in establishing and operating any system for piracy control, what options exist to combat maritime piracy?

Possible Options to Combat Maritime Piracy

Regional Agreement to Combat Piracy

Conclusion of a regional agreement involving ASEAN countries and other major littoral states and jurisdictions in Southeast Asia is the first option. The notion of making multi-lateral or bilateral treaties to combat piracy in Southeast Asia was discussed by legal experts in Southeast Asia in 2000.⁴⁴ The agreement should set out the principles for joint piracy control actions, and if possible, establish a special task force which should be managed separately through its relevant national headquarters under the same code of conduct and communications system.⁴⁵ There should be a special committee consisting of the representatives of the members to monitor the implementation of the agreement. The agreement should be open to both sovereign states and jurisdictions, such as Hong Kong and Taiwan. One difficulty in achieving such an agreement is cost. Some governments may be discouraged from pursuing such an idea because of a lack of immediate benefit for them to justify such an effort and cost. It is suggested that additional harbor or port charges could be collected by the governments participating in the agreement to provide funding for programs set up under the agreement.

International Treaty within the LOS Convention

The conclusion of an international treaty to combat piracy within the framework of the LOS Convention is the second option. IMO could be used to develop this treaty. The treaty should set out universal principles for piracy control and establish an international mechanism, which could include several regional mechanisms for piracy control. The potential and feasibility of resorting to an international treaty within the framework of the LOS Convention to combat maritime piracy can be illustrated by the success of, as well as the difficulties associated with, the LOS Convention in Southeast Asia.⁴⁶ Like

any major international treaty, the process of drafting, signing, and ratifying such a piracy treaty would be very time consuming. Another difficulty with this approach is that a treaty only binds the countries which have ratified it. If some Southeast Asian countries do not wish to sign or ratify the new treaty, this option loses its effectiveness.

International Cooperation within the World Trade Organization

Establishment of an international system of control within the World Trade Organization (WTO) is the third option. Shipping is covered by the WTO agreements, in particular the General Agreement on Trade and Services (GATS), as a form of services.⁴⁷ The WTO members have adopted a broad definition of maritime services in the further negotiations on the maritime services market under the GATS, including international maritime cargo and passenger carriage, forwarding services, marine insurance services, port services, and multimodal transportations. The meaning of maritime services can be seen in either the relevant Specific Commitments made by a number of WTO members in 1994 at the conclusion of the Uruguay round of negotiations and in certain documents signed by a number of WTO members concerning maritime services, for example, the Communication from the European Communities and Third Member States (Doc No. S/CSS/W/41).⁴⁸ Piracy has a detrimental impact upon international trade activities. Thus, there is a strong ground for WTO members to consider the issue of piracy control. The difficulty with this option is, however, that as of March 2001, the WTO members have not reached any specific agreement on the issues of transportation and shipping. Thus, it may take some time for the WTO members to respond to the urgent need for piracy control.

Development of Model Law

Development of a model law to combat piracy is the fourth option. The CMI has proposed a draft code on piracy control.⁴⁹ The major advantage, as well as the disadvantage, of any model law is the lack of binding force. The advantage means that countries have some liberty in determining how to draft their own antipiracy laws and when to do so. The disadvantage means that no effective system of piracy control can be established if some of the major countries in Southeast Asia decline to implement the model law. Even where a model law has been recommended by CMI or adopted by IMO, countries do not have an obligation to adopt the model law. If a model law is backed by an obligation to adopt it or to do something to effect piracy control, how to make all the countries accept such an obligation is problematic. Similar to treaties, no country can be compelled to accept such an obligation if it does not wish to do so.

Improvement of the Existing National Systems

Pressuring the relevant governments to establish or improve their existing national systems of piracy control, including improvement of national systems for ship registration and inspection and national criminal law on piracy control, is the fifth option. Pressure to improve national systems can arise from the interest groups, such as the shipping industry, exporters and importers, the insurance industry, and financial institutions. Governments have an obligation to protect vessels flying their flags. They also have an obligation to pressure the relevant national governments to improve their national laws and systems on piracy control under the relevant multilateral or bilateral treaties.⁵⁰ If uniform principles can be adopted for vessel registration and for punishing the sale of

pirated goods, it would be difficult for pirates to find a potential buyer to buy a hijacked vessel and pirated goods.

Establishment of Private Forces

Setting up a private task force funded by private companies to deal with piracy is the sixth option, although many coastal states may be reluctant to allow armed cargo vessels to enter into their territorial waters. This sort of self-remedy has been adopted by a number of shipping companies, which have employed armed personnel to protect their ships.⁵¹ In addition, offering special security services, such as antipiracy training and protection by armed personnel, to combat maritime piracy has become a form of business.⁵² Private responses of such a nature to maritime piracy may provide solutions to certain individual cases. However, while an armed vessel and its personnel may discourage potential pirates in some cases, in other cases the readiness of a ship and its crew to engage in military confrontation with pirates will aggravate the severity of pirate attacks, because the pirates who attack an armed ship must have also been prepared militarily to do so. The result may not always be in favor of the ship if such a violent and prepared attack takes place. Therefore, even if the coastal governments can be convinced that arming cargo ships is a feasible way to combat piracy today, there is still uncertainty and possible escalation of the problem.

Improving Existing Systems

The last option is to improve the existing system on piracy control. The IMB Piracy Reporting Centre is to be reinforced. So is the SHIPLOC, a vessel tracking system, developed jointly by IMB and CLS, a satellite tracking system operator.⁵³ The use of a satellite-based system to track vessels has also been suggested by the Japanese and a tracking system known as the Automatic Identification System is supposed to become available in July 2002.⁵⁴ ASEAN could produce concrete plans to combat maritime piracy in Southeast Asia. So should the other relevant countries, such as China, Japan, and India. This option is the most conservative one because it depends entirely on the initiatives of the relevant governments, which may not have the drive to do so.

Conclusion

Maritime piracy in Southeast Asia has become a serious danger to the shipping industry, exporters and importers, the insurance industry, banks, and seafarers. It also damages the national economies of the countries relying on the shipping lanes of Southeast Asian waters, because the damage caused by pirates to ships, cargoes, and seafarers will eventually push the shipping, insurance, and import and export costs up for all countries involved. Therefore, there is a common interest of the private companies and the relevant national governments to develop an effective system of piracy control, and the sooner the better.

The establishment of any effective system of piracy control in Southeast Asia depends largely on the political will of the Southeast Asian countries. One of the crucial elements affecting the consideration of all governments is the cost of establishing any form of effective piracy control in Southeast Asian waters. The second crucial element is that of national security and a lack of real trust among most countries of Southeast Asia due to various historical, cultural, racial, economic, and territorial considerations.

These two crucial elements have complicated the possibility of establishing any regional cooperation to combat piracy in Southeast Asia. In addition, the political instability in a number of Southeast Asia countries in early 2001, in particular, in Indonesia and the Philippines, has increased the difficulty of establishing effective regional cooperation in piracy control. However, it is expected that, as the situation improves, the relevant governments will be able to spend more time considering the issues affecting their economic development, including the issue of piracy control in Southeast Asia.

Since regional cooperation involving the Southeast Asian countries is the most effective way to combat maritime piracy in the region, all interested parties, private and governmental, should endeavour to advocate for and promote the notion of regional cooperation. Before the establishment of any regional system of effective control, all the relevant governments should improve their national laws on piracy control, including prevention and punishment of piracy acts. Since the shipping industry and the cargo owners are the immediate victims of pirate attacks, they will have to work hard to promote better national and international actions against piracy in Southeast Asia. Public awareness of the present and potential danger of maritime piracy to human society, national economies and international trade will certainly encourage the relevant governments to move in the direction of regional cooperation in order to develop an effective system to combat maritime piracy in Southeast Asia.

Notes

1. See, for example, Dana R. Dillon, *Piracy in Asia: A Growing Barrier to Maritime Trade*, The Heritage Foundation Backgrounder Paper No. 1379, issued on 22 June 2000, available at <http://www.heritage.org/> and International Maritime Organization, "Piracy and Armed Robbery at Sea," January 2000, available at <http://www.imo.org/>.

2. See International Maritime Bureau, "Piracy attacks rise to alarming new levels, ICC report reveals," issued on 1 February 2001, available at http://www.iccwbo.org/ccs/news_archives/2001/piracy_report.asp.

3. See the home page for the IMO at <http://www.imo.org/>.

4. It is believed that many ship owners choose not to report incidents of piracy due to various considerations, such as the increased cost of insurance, vessel delays caused by complying with the reporting system of local police, and unfavorable media coverage. See the relevant discussions in the Maritime Piracy web site, at <http://www.geocities.com/cdelegas/index.html>.

5. Incidents of piracy have been reported widely and continuously by the media, see, for example, "Piracy report reveals major increase in attacks in 1999," issued by IMB on 24 January 2000 available at <http://www.iccwbo.org/>; "Sea Scourge," *The Toronto Star*, 10 September 2000; and "Wider concerns underlie pirate threat in Asia," *The Vancouver Sun*, 3 February 2001; both available at <http://web.lexis-nexis.com/>.

6. Many private companies have endeavored to raise public concerns over maritime piracy; see, for example, "Southeast Asian shipowners call for action on piracy," issued on 29 June 1999 by IMB; "East Asian governments must clamp down on piracy together," issued by IMB on 20 March 2000; both available at <http://www.iccwbo.org/>; and "Shipowners assail China over rampant piracy," *The Vancouver Sun*, 13 March 1999; and "Piracy database to be launched by Japanese foundation," *BC Cycle*, 12 July 1999; both available at <http://web.lexis-nexis.com/>.

7. For example, there was the well-known incidents of *The Santa Maria* in 1961 and of *The Achille Lauro* in 1985. For discussion, see M. Halberstam, "Terrorism on the High Seas: The Achille Lauro, Piracy and IMO Convention on Maritime Safety" (1988), 82 *American Journal of International Law* 269.

8. See the document entitled "Piracy and Armed Robbery," available at <http://www.un.org/Depts/los/index.htm>.

9. The difficulties in defining the concept of piracy is examined, for example, in Samuel Pyeatt Menefee, "Anti-Piracy Law in the Year of the Ocean: Problems and Opportunity," (1999), 5 *International Law Student's Association Journal of International and Comparative Law* 309 and Zou Keyuan, "Piracy at sea and China's response," [2000] *Lloyd's Maritime and Commercial Law Quarterly* 365, at 365–376.

10. The 1982 United Nations Convention on the Law of the Sea (hereinafter the 1982 LOS Convention), adopted at Montego Bay, Jamaica, 10 December 1982, entered into force 16 November 1994.

11. See IMO, "Focus on IMO," issued in January 2000, page 2, available at <http://www.imo.org>.

12. IMB Piracy Reporting Centre, *Piracy and Armed Robbery against Ships*, 1 January–30 June 1998, Kuala Lumpur, as cited in Zou Keyuan, *supra* note 9, at p. 367, footnote 21.

13. It can be argued that an act of "depredation" must be executed by resorting to direct force or violence, or a demonstration of an intention to use force or violence, against a vessel, property, and seafarers on board the vessel. In other words, it can be said that, hypothetically, there is no piracy committed under Article 101 of the LOS Convention, if a group of pirates find and take possession of a vessel which carries no persons on board or which is not escorted or looked after by persons on board another vessel.

14. Vice-Adm. Eduardo Santos (Ret.), Philippine Navy, argued that these four types of piracy exist in the Philippine waters. See: Eduardo Santos, "Anti-Piracy Operations in the Philippines," a paper presented at the 3rd OTW Anti-Piracy Forum International held at FCCJ, Tokyo on 24 October 2000, available at <http://www.glocomnet.or.jp/okazaki-inst/>.

15. For details on the reported piracy instances in Southeast Asia see: IMB, *Piracy and Armed Robbery Against Ships, Annual Report* for 1998, 1999, and 2000 and the discussion in Robert C. Beckman, "Combatting Piracy and Armed Robbery Against Ships in Southeast Asia: The Way Forward" (2002), 33 *Ocean Development and International Law* (this issue).

16. This has been reported in, for example, "Japan white paper calls for international fight against piracy," *Jiji Press Ticker Service*, 12 September 2000, available at <http://web.lexis-nexis.com/>; and "International pirates have formed syndicates," *Chinanews.com*. (in Chinese), 3 March 2001, available at <http://www.chinanews.com.cn/>.

17. For a detailed account of modern piracy in Southeast Asia and across the world today, see Jayant Abhyankar, "Piracy—A Growing Menace," a paper delivered at the Conference "Combating Piracy and Armed Robbery at Sea," held in Bangkok 24–25 March 2001, available at <http://www.glocomnet.or.jp/okazaki-inst/>

18. The 1988 Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, done at Rome, 10 March 1988, entered into force 1 March 1991, reprinted in *Australian Treaty Series* 1993 No. 10.

19. See "Asian nations to seek tougher measures to fight rising piracy on ships," *BC Cycle*, 14 November 2000, available at <http://web.lexis-nexis.com/>.

20. See, "Japan offering ships for anti-piracy patrols," *The Vancouver Sun*, 4 March 2000; and "India calls for joint action in Asia's crime-plagued sea lanes," *Agence France Press*, 16 February 2001; both available at <http://web.lexis-nexis.com/>.

21. See *The Hindu*, 25 February 2001 and *The Straits Times (Singapore)*, 23 February 2001, available at <http://web.lexis-nexis.com>.

22. See the web site of Oceans and Law of the Sea, available at <http://www.un.org/Depts/los/los94st.htm>.

23. For a review of the 1988 SUA Convention, see Beckman, *supra* note 15.

24. See the Draft Model Law on Acts of Piracy and Maritime Violence, *Comité Maritime International Yearbook 2000*, pp. 415–423 and see "Model piracy law drafted for United Nations commission," *BC Cycle*, 20 February 2001, available at <http://web.lexis-nexis.com/>.

25. These documents are available from ASEAN web site at <http://www.aseansec.org/>.

26. Both documents are available from IMO web site at <http://www.imo.org/>.

27. "Draft Code of Practice for the Investigation of Crimes of Piracy and Armed Robbery Against Ships," MSC/Circ. 984, see IMO web site at <http://www.imo.org/>.

28. See, for example, "Choppy seas for Asia's pirates: Governments are finally waking up to the scale of violence being committed," *The Vancouver Sun*, 2 November 1999, available at <http://web.lexis-nexis.com/>.

29. See, for example, "Malaysia wants tough Indonesian action on piracy in Malacca Straits," *Deutsche Presse-Agentur*, 16 October 2000; "Marine police send clear message to pirates in Straits of Malacca," *New Straits Times (Malaysia)*, 14 January 2001; "Keeping these waters pirate-free," *The Straits Times (Singapore)*; and "Call for better cooperation to keep seas in region safe," *The Straits Times (Singapore)*, 13 February 2001; all available at <http://web.lexis-nexis.com/>.

30. See Eduardo Santos, *supra* note 14.

31. See, for example, "Japan offering ships for anti-piracy patrols," *The Vancouver Sun*, 4 March 2000; and "India calls for joint action in Asia's crime-plagued sea lanes," *Agence France Presse*, 16 February 2001; both available at <http://web.lexis-nexis.com/>.

32. The event was widely reported: see, for example, "China executes pirates behind brutal sea attacks," *The Vancouver Sun*, 29 January 2000, available at <http://web.lexis-nexis.com/>.

33. See Chinanews.Com (in Chinese), 22 August 2000, available at <http://www.chinanews.com.cn>.

34. See Zou Keyuan, *supra* note 9, at 374–376.

35. Many commentators shared the view that poverty or economic hardship is one of the major reasons for the occurrence of piracy in Southeast Asia. For example, see Jayant Abhyankar, *supra* note 17, at p. 4; and William Y Zhou, "Piracy—An International Problem," a paper published at the web site of Okazaki Institute in April 2001, available at <http://www.glocomnet.or.jp/okazaki-inst/>.

36. See, for example, "Japan offering ships for anti-piracy patrols," *The Vancouver Sun*, 4 March 2000, available at <http://web.lexis-nexis.com/>.

37. See, for example, "Japan ponders anti-piracy control," *The Vancouver Sun*, 17 April 2000, available at <http://web.lexis-nexis.com/>.

38. For a discussion of the territorial disputes in the South China Sea, see Omar Saleem, "The Spratly Islands Disputes: China Defines the New Millennium," (2000), 15 *American University International Law Review* 527; and Christopher C. Joyner, "The Spratly Islands Dispute: What Role for Normalizing Relations between China and Taiwan?" (1998), 32 *New England Law Review* 819.

39. See, for example, "Dutch hire marine to foil Asian pirates," *The Vancouver Sun*, 28 May 1999; "Mercenaries see niche in anti-piracy market," *The Vancouver Sun*, 10 July 1999; and "Gurkhas hired to frighten pirates," *BC Cycle*, 25 April 2000, all available at <http://web.lexis-nexis.com/>; and "Merchant cadets train to fight pirates," *National News*, 3 February 2000, available at <http://www.detbews.com/>.

40. See, for example, "Singapore port officials oppose arming ships to thwart pirates," *BC Cycle*, 25 May 1999, available at <http://web.lexis-nexis.com/>.

41. See, for example, "Asian nations seek tougher measures to fight rising piracy on ships," *BC Cycle*, 14 November 2000, available at <http://web.lexis-nexis.com/>.

42. Entering the territorial waters of another state for the purpose of chasing and catching a pirate ship under the right of hot pursuit appears to be impossible, because Article 111(3) of the LOS Convention states clearly that the "right of hot pursuit ceases as soon as the ship pursued enters the territorial sea of its own State or of a third State." However, it has been argued that the LOS Convention has not expressly prohibited the enforcement of antipiracy provisions within the territorial waters of states. See Dr. Barry H. Dubner, "Human Rights and Environmental Disaster—Two Problems that Defy the 'Norms' of the International Law of Sea Piracy," (1997), 23 *Syracuse Journal of International Law and Commerce* 1, at 38, referring to the comments by Thomas A. Clingan, Jr in "The Law of Piracy," in Eric Ellen, ed. *Piracy at Sea*, (Paris, ICC International Maritime Bureau, 1989), p 170. It can be argued that in order to enforce the provisions of the LOS Convention concerning piracy control, the military vessel of one state may be allowed with the "courtesy" of a coastal state to continue the chase of a pirate ship into the latter's territorial waters. It may also be argued that a coastal state has some sort of moral obligation under the LOS Convention to allow the continuous chase of a pirate ship by a foreign

military ship into its territorial waters to the extent which is necessary to enforce the antipiracy provisions of the LOS Convention. It must, however, be admitted that these arguments are not convincing enough to restrict the doctrine of territorial sovereignty enjoyed by coastal states. Thus, some sort of consent from the relevant coastal state is crucial for a military vessel to chase a pirate ship into the territorial waters of another state for the purpose of enforcing the antipiracy provisions of the LOS Convention.

43. See, for example, "Asia turf wars hamper fight against piracy," *The Vancouver Sun*, 29 April 2000, available at <http://web.lexis-nexis.com/>.

44. See, for example, "Forging an international front to combat piracy," *Berhad Business Times (Malaysia)*, 21 November 2000, available at <http://web.lexis-nexis.com/>.

45. The notion of establishing a special organization to manage maritime safety in the Straits of Malacca and Singapore was raised by the Nippon Foundation, a private nonprofit organization, in 2000. See: "Need to form joint body to combat piracy in Straits," *Berhad Business Times (Malaysia)*, 15 November 2000, available at <http://web.lexis-nexis.com/>. However, this article suggests the establishment of a special authority, which should have separate national authority in each relevant country, under a regional treaty.

46. See: Ian Townsend-Gault, "Pacific Rim: Compliance with the United Nations Convention on the Law of the Sea in the Asia-Pacific Region" (1999), 33 *University of British Columbia Law Review* 227.

47. See generally: World Trade Organization, *Annual Report, 1996*, at 127 regarding continued negotiations on maritime transport services after the conclusion of the Uruguay Round. See also the WTO web site: www.wto.org.

48. Available at www.wto.org.

49. See *supra* note 26.

50. For example, it was argued that China has the authority as well as obligations under the LOS Convention and the 1988 SUA Convention to arrest and prosecute pirates. See Zou Keyuan, "Enforcing the Law of Piracy in the South China Sea," (2000), 31 *Journal of Maritime Law and Commerce* 107.

51. A recent report on the establishment of a private army by private companies is seen in an article entitled "UK: Sandline chief sets up new company," *AAP NEWSFEED*, 5 March 2001, available at <http://web.lexis-nexis.com/>.

52. See, for example, the services provided by MaritimeSecurity.Com available at <http://www.maritimesecurity.com/>.

53. For details, see <http://www.shiploc.com/>.

54. See Hiroshi Higuchi, "Combating Piracy by Space-Based Ship Surveillance and Tracking," available at <http://www.glocomnet.or.jp/okazaki-inst/>.