# Managing Maritime Piracy in Southeast Asia: a technical or sovereignty issue?

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### 《Abstract》

This paper will discuss about the growing incidence of maritime piracy in Southeast Asia. This issue has been existed long time ago but it has been a major concern for the last decade.  Maritime Piracy also related to the grey area phenomena (GAP). There are some various economic and political factors triggered this issue. However, the management of maritime piracy issue is complicated due to the different views between state actors in the region, and between government and non-government institutions.

These differences influenced the problem solving action. Using the perspective of neoliberal institutionalism it is found that sovereignty, conflict interests and technical matters are still the main obstacles to solve maritime piracy issues. At the same time, the maritime piracy issue created a terrible image that related to business opportunities in such region.

However, all actors involved in this issue has big concern. Meanwhile, several unilateral and regional mechanisms already launched, but the response from actors involved are various. In addition, these mechanisms created the overlapping of the   management of maritime piracy issues.

**Keywords:** Maritime Piracy, transnational organised crime, non-state actors, regional cooperation.

# I.    Introduction

The end of the Cold War has brought changes. Previously conventional security issues such as war dominate the discussion on relations among states. Nowadays, the non-conventional issues, related to environment, health, human rights, and organized crime, have become more prominent. The increased interdependence between nations, the ease of international travel and communication, and the globalisation of international finance [63] become a trigger to this issue. Drugs and human trafficking, arms trafficking, money laundering, and maritime piracy are the examples of organised crime.

The maritime piracy has been existing since long time ago. Recently this issue has just raised public awareness. It involves various kinds of actors, includingthe non-state actors. It is also caused by various factors. Furthermore, due to its borderless character, the maritime piracy needs a comprehensive and multilateral cooperation, either in regional or international scope.

The maritime piracy in Southeast Asia is a severe problem because the Sea Lanes in this region is significant for East Asian Countries. More than half of the world's merchant fleet capacity sails through the Straits of Malacca, Sunda and Lombok and the South China Sea.64   The Malacca Strait and the Phillips Channel (near Singapore) are shortcuts for international shipping routes. The Sea Lanes of Communication (SLOC) cross the waters of several countries, including Malaysia, Indonesia and Singapore, with Singapore's port facilities serving as a major node for refuelling and transhipment. Two-way trade transiting these SLOC is significant not only for the economies of Southeast Asia but also for supporting business activities in Northeast Asia, Europe, and the US. These business attract the pirates because those ships carry valuable trade commodities.

Indonesia as the biggest country near Malacca Strait is considered incapable in handling maritime piracy issues. Lack of technical resources, internal economic and political problems took Indonesian government's energy, so that maritime piracy has not received the major concern. Furthermore, the neighbouring countries such as Singapore and Malaysia have insisted the significance of managing maritime piracy issues properly, because of its economic impact and the fear of terrorism threats. Other countries such as the USA, Japan and China offered technical assistance because the safety of the Malacca Strait is related to their economic interests.

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[63]  Phil Williams, Transnational Criminal Organisations and International Security, *Survival,* Vol. 36, No.1, Spring 1994, p. 96-113

[64]  Zou Keyuan, Seeking the effectiveness for the crackdown of piracy at sea, *Journal of International Affairs*, Vol. 59, No.1, Fall/Winter 2005, p.117-134

The ASEAN as a regional organisation also reacted slowly to recognize maritime piracy in their area, mainly because of the different perspectives among its member states. Sovereignty and the different capabilities are still the main concern among ASEAN member states. This is related to how they perceive maritime piracy issue.

This paper will explain about maritime piracy as a significant issue for Southeast Asia for the sake of their economic and political interests. Technical capabilities are still the main obstacles among several Southeast Asian countries to manage this issue. At the same time, the 'outsider' states (Japan, USA, China) came up with their own mechanism. It is not acceptable by the Southeast Asians and it created an overlapping. Inter-state cooperation is strongly recommended because maritime piracy is also a part of regional and international issues. Furthermore, several recommendations are offered to avoid the enlargement of the scope of maritime piracy issue in Southeast Asia.

## II.   Frameworks of Analysis

### II.1  Maritime piracy

There are several definitions of maritime piracy. According to the UN Convention on the Law of the Sea, the definition of piracy is:[65]

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, property in a place outside the jurisdiction
            of any state;
b)      Any Act of voluntarily participation in the operation of a ship or aircraft with knowledge
        of facts making it a pirate ship or aircraft; Any act of inciting or of intentionally
        facilitating an act described in subparagraph (a) or (b

The International Maritime Bureau reveals another definition:

An act of boarding and attempting to board any ship 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

Those definitions have weaknesses. The first one mentions that the pirates are the 'insiders' (the crews or passengers of the ship). The second definition does not recognise who is actually 'the pirates'. It made the maritime piracy be difficult to be

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[65]      http://www.admiraltylawguide.com/conven/unclospart7.html

exposed. Meanwhile, there is a tendency to put piracy as crime and their activities are beyond the borders, so that maritime piracy is categorised as transnational crime. Transnational crime is defined as offences, whose inception, prevention and/or direct or indirect effects involved more than one country.[66]   Such crimes must be differentiated from international crimes, which are recognised by and can therefore be prosecuted under international law, and domestic crimes that fall under one jurisdiction. The other examples of transnational crime are money laundering, smuggling and trafficking, which all of them sometimes are related to each other.

## II.2.  Grey Area Phenomena (GAP)

The grey area phenomena or GAP is the threats to the stability of sovereign states by non-state actors or non-governmental processes and organizations. They represent a direct threat to the underlying stability, cohesion and fabric of the modern sovereign state.[67] Two characteristic forms can be distinguished: non-violent and violent phenomena. Non-violent GAP is related to threats posed by non-governmental processes and influences. They can appear as uncontrolled and illegal immigration, as famine or as diseases. Violent GAP, however, are generally related to activities of non-state actors, e.g. international crime syndicates, drug trafficking organizations or terrorists groups. These violent threats, in particular, are "generally well organized, employed for political or economic purposes, and fall short of conventional warfare".[68]

## II.3. Neoliberal Institutionalism

The key propositions of neoliberal institutionalism are:[69]

(1) States are the key actors in international relations, but not the only the significant actors. States are rational or instrumental actors, always seeking to maximise their interests in all issues areas;

(2) States seek to maximise absolute gains through cooperation. Rational behaviour leads state to see value in cooperative behaviour. States are less concerned with gains or advantages achieved by other states in cooperative arrangements;

(3) the greatest obstacles to successful cooperation is non-compliance or cheating by states;

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[66] The United Nations definition of transnational crimes, as quoted by Ralf Emmers, ASEAN and the securitization of transnational crime in Southeast Asia, *The Pacific Review* 2003, Vol. 16:3, 2003, p. 420

[67] Peter Chalk, Grey Area Phenomena in Southeast Asia: Piracy, drug trafficking and political terrorism *(Canberra Papers on strategy and defence, No. 123)*, Canberra 1997, p. 5 (henceforth: Chalk, Peter: *Grey Area Phenomena*), quoted by Sebastian Hiltner, Facing Grey Area Phenomena – Transformation through Transnational Crime and Violence in Southeast Asia, *ASIEN 109 (October 2008)*, pp 54-64 http://www.asienkunde.de/content/zeitschrift_asien/.../109_5_hiltner.pdf

[68] Peter Chalk, ibid, 1c

[69] Steven L. Lamy, *Contemporary mainstream approaches: neo-realism and neo-liberalism*, in John Baylis & Steve Smith (eds), *The Globalization of World Politics: An Introduction to International Relations*, 2nd Edition, Oxford University Press, 2001, p. 189

(4) Cooperation is never without problems, but states will shift loyalty and resources to the institutions if these are seen as mutually beneficial and if they provide states with increasing opportunities to secure their international interests. These perspectives are relevant in issue areas where states have mutual interests.

## III. Maritime Piracy in Southeast Asia

The maritime piracy in Southeast Asia is not a new phenomena. Historically, It has started since before the tenth century but was not really well documented. This phenomenon strengthened in the nineteenth century. Ger Teitler divided three patterns of piracy:70  The first two resembled each other closely and differed only in scale. Both followed the classical pattern of piracy in that they directed their depredations against other regular users of the seas: fishermen and traders. The second pattern specialized pirate communities came into existence, in which the local elite was heavily involved. The third variety in which piracy manifested itself in Southeast Asia was the most dangerous and inflicted the greatest damage. However, it was not all of them are the true form of piracy. The sea robbers did not roam the high seas, but sought their prey mainly in the coastal areas of the islands.

According to Spicer, there are two types of Piracy:71  (1) the small scale, which the opportunist raiders are only interested in what they can steal on board. They crew are often left alone or cast off in one of the ships boats. The ship itself may be stolen or set a drift (they may links to corrupt officials). (2) the organised piracy, which pre-arranged stealing of cargoes and or ships; stealing of ships to order – repainting flagging; using pirated ships to steal cargo; the re-flagging scam.

The classic attack is at sea. The pirates will come to prepare to act with force. Boarding is usually from astern from a fast boat, or alongside where ships such as tankers have a low freeboard. There are three general types of attack:72

- A quick boarding and rapid departure, taking money and other readily portable valuables;
- A temporary seizure, to take the ship to some prearranged place off loading the cargo stolen, then releasing the ship and its crew;
  A long-term seizure involving illegal re-registering of the ship under a fake name.

Pirates are usually well informed about their targeted ships and its composition

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70  Ger Teitler, *Piracy in Southeast Asia: A Historical Comparison*, at
    http://www.marecentre.nl/mast/documents/GerTeitler.pdf, 2000 p. 69
71  Tim Spicer, Lt.Colonel, OBE, *The involvement international /transnational organised crime in maritime piracy*,
    http://www.sils.org/seminar/1999-piracy-10.htm
72  David G Wiencek, The Growing Threat of Maritime Piracy, China Brief, Vol. 1, Issue 1, 2001, at
    http://china.Jamestown.org/pubs/view/cwe_001_001_004.htm

of their cargo. They are also well equipped with radar to locate vessels, radio transmission, mobile phone and person hired, to obtain information, using motorized boat automatic weapons, for example AK-47 to attack their enemy. The ships carries oil and economic commodity such as sugar, steel, gas and oil, usually become their targets.73 74

Nowadays, the maritime piracy in Southeast Asia is triggered by three factors: the failure of governance, poor socio-economic problem and a diffuse set of technological and geographical factors.[75] The first factor includes various aspects of weak political control, poor governance, and lack of state capacity, all of which have undermined the ability of governments to control events outside of their immediate environs. The weak political control is caused by the government inability to govern urban and rural areas outside the capital and the practice of corruption. Corruption has contributed partly to the rise of maritime crime in Southeast Asia. The corrupt officers cooperated with the pirate gangs and enabled the gangs to choose the target. Moreover, the state responses to piracy are delayed by weak regional cooperation resulting from the absence of trust, huge sensitivity over the issue of national sovereignty and lack of interoperability. Without any strong regional cooperation on border control, sea borne criminals find it easy to cross from one national jurisdiction into another without fear of capture.

Next, poor socio economic condition is often both a cause and an effect of weak political control and poor governance. Members of coastal communities facing economic hardship in some cases turn to maritime crime to supplement meagre incomes. Fishermen faced with bleak economic prospect have the boats and required nautical skills to engage in acts of piracy and sea robbery. In terms of state capacity the 1997-1998 Asian Financial Crises let the government spending, especially defense spending, severely suffered accordingly. Defense spending cuts not only force governments to cancel new acquisitions but also starve the military of funding for fuel, maintenance, and training. Remuneration for active military personnel may also be reduced, giving individuals further incentive to engage in illegal activities to supplement their incomes.

Lastly is a diffuse set of technological and geographical factors. Maritime criminals –especially member of organised crime gangs – can have easy access to high-speed boats, satellite navigation, cell phones, and the internet, as well as to automatic and heavier weapons. At the same time geographical features such as narrow waterways, small islets and river access is a good place for pirates to make use of those technological equipments.

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[73] *Shipping firms call up pirates busters*, BBC News, August 6, 2002, 12:50 GMT, http://news.bbc.uk/1/hi/business/2175819,p.2

[74] Eric Ellis, *Piracy on the high seas is on the risen Southeast Asia,* Fortune, 29 September 2003, http://www.singapore-window.org/sw03/030919fo.htm.

[75] Ian Storey, "Securing Southeast Asia Lanes: A Work in progress, *Asia Policy*, Number 6 (July 2008), p.106

Meanwhile, there are two groups of states whose interests are related to this issue. First, Coastal or Littoral states – Countries with extensive coastlines on the South China Sea such as Indonesia, Malaysia, Vietnam, and China – mainly want to protect their recently declared sovereign rights and resource control over an exclusive economic zone (EEZ) up to 200 nautical miles (nm) off their coastlines, as provided by the United Nations on the Law of the Sea (UNCLOS). These countries are reluctant to have other parties  involvement on securing their waters. Second, International user states – countries with major distant shipping and naval interests, such as Australia, India, Japan, and the United States – want to maintain freedom of navigation through the straits and sea lanes of the South China Sea for their merchant shipping and naval vessels. These states emphasised the significance of freedom of navigation and the safe maritime access because they carry trade goods and energy resources through the sea. Furthermore, Those different interests between the Coastal (or Littoral) and the international users' states in promoting safe navigation through its busy sea lanes creates problems on managing maritime piracy issue. It also portrayed how serious of this issue for them and how necessary to formulate the mechanism on managing maritime piracy issue.


## IV.  EFFORTS ON MANAGING MARITIME PIRACY


The issue of managing maritime piracy is complicated. First of all, there are various actors involved in this issues and they have some differences in viewing this issue. The secondly, those differences lead the way to handle maritime piracy in a proper way. The maritime piracy is also a disturbing and borderless phenomenon. It involves the various actors from state actors to non-state actors such as the pirates syndicates, the private companies (the shipping companies, the companies, senders the items, the insurance companies, and the private security companies if needed). Therefore a comprehensive mechanism is crucial to accommodate all actors' interests.

International efforts to combat piracy have been established. There are some legal frameworks for controlling maritime piracy.[76] The major international treaties and conventions concerning piracy control included the 1982 LOS Convention and the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation 1988 (the 1988 SUA Convention or Rome 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.

This convention complements the previous UNCLOS Treaty in its definition of piracy and suppression, which punish a person, who conducts pirates attack the ships

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[76]  John Mo, Options to Combat Maritime Piracy in Southeast Asia, *Ocean Development and International Law*, 33, 2002, p. 346.

crews and destroy it. Each party should take necessary measures to establish its jurisdiction over the above offences or extradite the offender or the alleged offender to the other Contracting party who has the correspondent jurisdiction.

The convention applies to the offences committed in the ships which is navigating or is scheduled to navigate into, through or from the waters beyond the outer limit of the territorial sea of a coastal state or applies when the offender or the alleged offender is found in territory of a contracting party other than previous case. The Rome Convention applies to all maritime terrorist acts, whether private or political. Maritime Piracy is also subject to the convention.

The other product is 1988 Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (the Rome Protocol) and the United Nations Conference on Trade and Development (UNCTAD) Committee on Shipping in 1982 Resolution 49 (X) which will establish an Ad Hoc Intergovernmental Group to consider 'means of combating all aspects of maritime fraud'.

In the meantime, there are other kinds of cooperation:[77] Firstly the cooperation between private companies and organizations, for example, such as the IMB and the Committee Maritime International (CMI). Secondly, it refers to collective acts performed by countries and government-based international organizations, such as IMO and ASEAN. Besides, several neighbouring countries also conduct the joint efforts to combat maritime piracy.

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. The CMI has also contributed to piracy control by organising studies and conferences on contemporary issues of shipping law to raise public awareness of the danger of modern maritime piracy.

Meanwhile, there are other numerous international organizations involved in combating maritime issue such as: The International Marine Organization (IMO), International Chamber of Shipping of Commerce-International Maritime Bureau (ICC-IMB), the International Chamber of Shipping (ICS) and the International Shipping Federation (ISF). The IMO, based in London, is the most active international organization, which has been involved in the safety ships and combating piracy. In 1983, IMO adopted a resolution measure to prevent acts of piracy and armed robbery against ships, which urged government to take as a matter of highest priority, all measures necessary to prevent and suppress acts of piracy and armed robbery against ships in or adjacent to their waters. The International Maritime Bureau also runs a special Piracy Reporting Centre to warn crews of hot spots and to report where suspicious boats have been seen, on a daily basis. In 2002, The IMO adopted comprehensive maritime security measures, which is set to enter into force in July 2004.[78]

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[77] Ibid. p. 348

[78] *IMO Adopts comprehensive maritime security measures*,
http//www.imo.org/Newsroom/mainframe.asp?topic_id=538&doc_id=2689#code

Since the cases of maritime piracy happened in Southeast Asia, ASEAN had to consider this problem seriously. ASEAN has thus developed close cooperation with a number of neighbouring countries, including China, India, Japan, Pakistan, and the Republic of Korea which are related to the troublesome waters of Southeast Asia. They are either ASEAN members or in close cooperation with ASEAN. The piracy Control has been one of the stated objectives of ASEAN cooperation as set out in the 1988 Manila Declaration on the Prevention and Control of Transnational Crime and the 1999 Joint Communiqué of the Second ASEAN Ministerial Meeting on Transnational Crime. However, ASEAN as a whole has not yet developed any specific plan to combat piracy.

Individually, the Littoral and Coastal states have their own views on the maritime piracy.    Littoral states or user states see piracy as a frequent and violent problem in the region. They urged the Coastal states to provide safe and secure navigation through the South China Sea. The Coastal States are seen not doing many efforts to manage this issue. Therefore, it is likely to further develop into another bigger threat such as maritime terrorism.

The examination of the data on piracy cases showed a different interpretation. In 2005, over 63,000 ships sailed through the Strait of Malacca and Singapore Strait but IMB only reported 12 cases of actual and attempted attacks on ships in the straits.[79] Moreover, many of these piracy attacks are considered as a petty theft against ships at anchor in port. The IMB estimation on average haul of an attack is around US $ 5,000 and it is excluded hijackings of tugs, barges and commercial ships, which had not been reported over the prior 3 years.[80]

In addition, many ship owners are reluctant to report pirate attacks to the authorities or to assist in the investigation of pirate attacks.   They are afraid of company's bad image. Therefore, the ship owners also have to bear the expense of delays and losses due to the attack. If the suspected pirates are arrested, crew members of the victim ship may have to testify in the trial, which would incur other costs to the shipowners.

Although there are some low cost antipiracy measures such as equipping the superstructure with proper locks and providing anti-piracy training, little economic incentives are obtained by the ship owners and insurance companies. Actually, Indonesia and Malaysia have already asked shipping companies and the international community to share the costs of policing the Strait of Malacca against pirates. However, most ship owners did not responded seriously and tended to view the that maritime piracy not a serious threat to international shipping.

Nevertheless, several Coastal states in Southeast Asia have various taken actions on piracy issues. Indonesia has the highest record of maritime piracy in Southeast Asia. Between 2002 and 2006 approximately a quarter of all reported piracy and sea robbery attacks around the world, and nearly two-thirds of attacks in Southeast Asia, occurred in

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[79]   Ibid

[80]   Ibid

Indonesian waters, especially ports and anchorage.[81]

**Reported Piracy and Sea Robbery Attacks in Indonesia, 2002 – 2007**

|  | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 |
|---|---|---|---|---|---|---|
| Number of attacks | 103 | 121 | 94 | 79 | 50 | 43 |
| As a% of global attacks | 28.0 | 27.0 | 28.6 | 28.6 | 21.0 | 16.3 |
| As a% of attacks in Southeast Asia | 61.0 | 64.7 | 55.3 | 67.0 | 57.5 | 55.0 |

Source: Ian Storey (2008), "Securing Southeast Asia's Sea Lanes: a Work in Progress:
A Research Note", *Asia Policy* Number 6, p.108

Furthermore, Asian Financial Crisis, which also hit Indonesia, had made socio-economic unrest. The unemployment rate rose from 4.7% in 1997 to 21% in 1998 while poverty rate increased from 11% to 40% over the same period.[82] As a result, Indonesian defense spending has decreased; the defence acquisition plan for Marine Corps had to be delayed, including the training and maintenance program.  Therefore, it was difficult for Indonesia to enforce maritime law, due to the budget constraints. However, Indonesia does not allow the foreign ships enter Indonesian waters to conduct patrol but Indonesia is open to the regional cooperation program.

Singapore has taken the most serious efforts to address maritime security. Singapore port joined the US-sponsored CSI programme and provided sea security teams to escort selected vessels transiting the Singapore Strait. It also spends a lot of money to install tracking devices on all Singapore registered small boats in order to identify their location, course and speed. Together with Indonesia, it operates a radar tracking system on Batam Island to identify, track, and exchange intelligence on shipping in the Singapore Strait. Singapore also hosted the first PSI exercise to be held in Southeast Asia in 2005, involved military, coast guard, customs, and other agencies from 13 countries.[83]

In 2003, Malaysia and Thailand started coordinated patrols along their maritime frontier. Then in 2004 Singapore, Malaysia and Indonesia began coordinated navy patrols in the Strait Malacca. The Philippines has proposed building on its maritime border patrol exercises with Malaysia and Indonesia by formalising a tripartite agreement to exchange information and intelligence.[84]

Most countries also modernised their regional naval and coast guards capabilities. Malaysia, Singapore, Indonesia, Vietnam, China, Myanmar, Thailand, and the Philippines all purchased or ordered new or second hand submarines in the past three years.[85]

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[81]  Ian Storey, p. 107

[82]  Ian Storey, p. 108

[83]  "Singapore, Allies to stage Maritime Security Drill," Reuters, 15 August 2005

[84]  Robert Karniol, "Manila Calls for stronger Ties at Sea," Jane's Defence Weekly, 22 June 2005, 15

[85]  Michel Brooke, "Asia's Naval Requirements," Asian Defence Yearbook 2005 (Kuala Lumpur: Asian Defence Journal, 2005), p. 25

Singapore has launched five of its six formidable class frigates. Malaysia has authorised two new frigates, the KD Lekiu and the KD Jebat, and then ordered more than 20 new patrols vessels. Indonesia has ordered two 90-m corvettes from the Netherlands to undertake patrols against piracy, terrorism, and smuggling.[86] Indonesia also planned to add 14 new ships to its naval fleet and hopes to attain "green water" navy status by 2020.[87] Malaysia's coast guard, the Malaysian Maritime Enforcement Agency, began operations in 2005 with a fleet of 72 vessels. Indonesia's coast guard also got three patrol boats, donated by Japan in 2005, to be used for anti-piracy and counterterrorism operations.[88]  Vietnam coastguards, established in 1998 are to be strengthened with the addition of six new locally built patrol vessels, each displacing about 150 tons.[89]  By modernising their naval capabilities, those countries preference on managing maritime piracy issues, with their own capabilities, rather than receiving assistance from the User States.

## V.  The User States strategy

### V.1.  Japan

Japan is regarded as one of the great maritime power in Asia. Japan is also the major player in international trade, ranking fourth in world merchandise trade in 2004 with exports worth almost US$ 566 billion.[90] The two-way trade with the member countries of the Association of Southeast Asian Nations (ASEAN) in 2004 in totalled US$ 140 billion, making it Japan's fourth ranked trading partner after China, the United States, and the European Union-15.[iv] Furthermore, Japan is a major commercial maritime power in terms of deadweight tonnage registered and controlled; in January 2006, it

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[86]  J.M Jamaludin, "The Indonesian Armed Forces: Modernisation and Addressing Deficiencies," Asian Defence Journal 11 (2004): 14

[87]  Tim Huxley, "Southeast Asia's Naval Forces. Aligning Capabilities with Threats," *IISS Strategic Comments*: 12 (2006).

[88]  Ministry of Foreign Affairs of Japan, *Grant Aid to Indonesia for the Project for Construction of Patrols Vessels for the Prevention of Piracy, Maritime and Proliferation of Weapons*, 16 June 2006.

[89]  Robert Karniol, "Vietnamese Coast Guard Acquires Electro-Optic Sensor System, "*Jane's Defence Weekly*, 30 March 2005, p. 14.

[90]  World Trade Organization, International Trade Statistics 2005 (Geneva: World Trade Organization 2005), p. 21, as quoted by David Rosenberg and Christopher Chung, Maritime Security in the South China Sea: Coordinating Coastal and User State Priorities*, Ocean Development & International Law,* 39, 2008,
p. 55. Nowadays, Japan are still at the same position but its exports increased to US $ 712.8billion, after Germany, China and USA.

ranked second behind Greece on these two measures.[91]

Japan's energy import dependence is extremely high. Most of Japan's oil supply is imported from the Middle East through the South China Sea or the archipelagic sea-lanes on its periphery. Japan imports 99% of its petroleum and 70% of its food by sea, mostly through the Strait of Malacca. Therefore, maritime security is an integral part of its comprehensive security strategy. Then Japanese Navy was viewed as a fundamental pillar of the state in protecting its Sea Lane of Communication (SLOC), securing access to energy sources and raw materials and delivering its industrial exports.

However, since the end of the Second World War, Japan has been prohibited from developing offensive military forces. Article 9 of Japan's Constitution states:

"Aspiring sincerely to an international peace based on justice and order,

the Japanese people forever renounce war as a sovereign right of the nation

and the threat or use of force as means of settling international disputes.

In order to accomplished the aim of the preceding paragraph, land, sea, and

air forces, as well as other war potential, will never be maintained.

The right of belligerency of the state will not be recognised."

Therefore during the Cold War, Japan maintained the low risk and non-offensive defence posture supporting US foreign policy under the defence umbrella of the United States. This position has been changed after the end of Cold War.

Japan started to be interested in maritime piracy issues in 1990s because of a number of high profile sea-jacking affecting Japanese shipping interests (for instance the Petro Ranger, Tenyu, and Alondra Rainbow incidents). In 1993 Japan conducted an informal talks with China regarding to pirate attacks in the East China Sea. In 1995 the Japan Defense Agency (JDA) published the National Defence Programme Outline (NDPO) which sought an increased military role for the Self Defence Forces in responding to unconventional security threats such as natural disasters, terrorism and maritime piracy. In 1999 the Nippon Foundation lobbied the Japanese government to respond the phenomena of piracy. Then Former Prime Minister Obuchi raised this issue in the 1999 ASEAN leaders' summit. He suggested the development of joint patrols by the region's national coast guards, enhanced information exchange, and an offer of financial assistance. This suggestion is commonly known by Obuchi Initiative.

The Obuchi Initiative was well received by the most of ASEAN countries. This is

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[91] ASEAN-Japan Centre, Statistics, available at www.asean.or.jp (accessed 20 June 2006), as quoted by David Rosenberg and Christopher Chung, Maritime Security in the South China Sea: Coordinating Coastal and User State Priorities, *Ocean Development & International Law, 39, 2008*, p. 55

the first time for Asian government to consider a regional security role for Japan, after the end of World War. Later on, Japan was seriously engaged in all events which discussing maritime piracy issues. Tokyo contributed to the joint patrols by exclusively relying on its civilian controlled Japan Coast Guard rather than the Maritime Self Defence Forces (MSDF).

Japan showed a proactive and assertive profile in International security issues, especially after September 11, 2001. It had made a several proposals to combat piracy and maritime security threats, showed by several indicators: such as (1) participated on the dispatch of Maritime Self Defence Forces to the Indian Ocean in support US Forces in 2002; (2) launched two spy satellites in 2003, demonstrating an increasing desire to collect intelligence independently from its close ally, the United States;(3) Japan increased their defence budget for arms acquisitions;(4) expand the participatory role of the Japan Self-Defence Forces (SDF) in military actions outside the country. The legislation allows Japanese forces to operate not only in times of war but also in response to terrorist incidents, kidnapping, abduction, and all other situations that threaten the lives of Japanese nationals and property.[92]

The key factors underpinning Japan's proactive policy in combating piracy in East Asia are:[93]

1. Japan's dependence on sea borne trade and resources;
2. the opportunity to make a "physical" contribution to regional security;
3. the opportunity to enhance Japan's regional image and prestige; and
4. Its supports Japanese claims for permanent seat status on the United Nations Security Council.

Japan intensified its anti-piracy diplomacy through multilateral and bilateral approaches to another international users and Coastal states. First, Japan established the Asia Maritime Security Initiative (AMARSECTIVE) with other regional coastguards, government officials, and representatives of the International Maritime Bureau (IMB) in 2004. This is to provide regional technical assistance and information sharing. Secondly was the 2004 Regional Cooperation Agreement on Anti-Piracy in Asia (ReCAAP) aimed to prevent and respond to piracy and armed robbery against ships as well as strengthening cooperation among member countries in the areas of information sharing, capacity building, and operational matter. So far fourteen Countries already ratified the agreement [94] and information centre has been established in Singapore and

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[92] United Nations Conference on Trade and Development, Review of Maritime Transport 2006 (New York: United Nations Conference on Trade and Development 2006), p. 33 quoted by David Rosenberg and Christopher Chung, Maritime Security in the South China Sea: Coordinating Coastal and User State Priorities, *Ocean Development & International Law*, 39, 2008, p. 55

[93] Greg Chaikin, Piracy in Asia: International Cooperation and Japan's Role, in Derek Johnson and Mark Valencia (eds), *Piracy in Southeast Asia: Status, Issues, and Responses*, ISEAS Singapore 2005, p 132-133. Furthermore see Prime Minister's homepage for a translation of this legislation at <www.kantei.or.jp>

[94] 14 Countries which had ratified the agreement are Bangladesh, Brunei, Cambodia, China, India, Japan,

commenced operations in November 2006.    In addition, Japanese bilateral approaches are conducted through Japanese Coast Guard (JCG). JCG has provided training, equipment, and funding to all the coast states of the South China Sea, and has concluded joint training exercises with a number of Southeast Asian States.

## V.2. USA

The USA have already had a strong commitment to protect international shipping rights through the South China Sea. In 1995, then the Assistant Secretary of Defence Joseph Nye said that the US Navy would be prepared to escort and protect any civilian ships passing through the area if freedom of navigation were threatened.[95]   Nye mentioned the three components of the US policy of "active neutrality": The United States would remain neutral on the issue of territorial disputes in the South China Sea, it would oppose the use of force in settling them, and it would not allow any threats to peace and stability in the region to go unchecked.   US then employed its military power plus the intelligence military personnel. It is integrated under the unified command of the Pacific Command (PACOM).

The US involvement in the maritime piracy issue was due to two factors: a long-term interest in maintaining freedom of navigation and, since September 11, 2001, its global war on terrorism.[96] Later, the South China Sea is significant because it is between the Pacific Ocean and the Indian Ocean. The United States sends its military powers such as warships and aircraft carriers from its Pacific Fleet, through the South China Sea in supports of its military missions in the Arabian Sea and Persian Gulf. It will connect US prime ally, Japan with its Middle East Energy suppliers.

Three major maritime security initiatives were launched by the Bush administration: the Container Security Initiative (CSI), the Proliferation Security Initiative (PSI), and the Regional Maritime Security (RMSI). The first two are global in scope, but the third was directed specifically at the Strait of Malacca.

The CSI's purpose is to identify high risk containers and use technology to screen them in originating ports rather than in the destination ports in the United States. This is a major change in global shipping practices by shifting inspection from arrival port to the loading port. Many ports and states have complied with CSI requirements because they can get high economic incentives by getting one's goods to market as soon as possible. On the other hand, the costs of non-compliance could be very high through possible delays in inspecting cargo, unloading cargo, or both.

The PSI aims to seize shipments of weapons of Mass Destruction (WMD) and

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Laos, Myanmar, the Philippines, Singapore, South Korea, Sri Lanka, Thailand, and Vietnam.

[95]   David Rosenberg and Christopher Chung, Maritime Security in the South China Sea: Coordinating Coastal and User State Priorities, *Ocean Development & International Law*, 39, 2008, p 53

[96]  "Crack US Troops May Be Used to Flush Out Terrorists in Key Southeast Asian Waterway." Channel News Asia, 5 April 2004.

missile-related equipment and technologies by sea, land, or air before they fall into the hands of terrorist organisation or their state sponsors. Participant states have agreed on a statement of interdiction principles, including a commitment to share information related to suspected proliferation activities, to interdict the transhipment of WMD, and to strengthen national and international law to allow aggressive interdiction vessels suspected of carrying WMD. The interdiction principles further state that members have a commitment to board suspicious vessels sailing within their national waters, to board vessels flying their own flag in international waters, and to 'seriously consider providing consent' to boarding of their own flagged vessels by other PSI states.

Another program, RMSI is different than the other two programmes. RMSI proposed by the United States because of their critical security concern around South China Sea. Admiral Thomas Fargo explained how to implement the RMSI like looking at high speed vessels, putting Special Forces on high-speed vessels so it will be able to use boats that are incorporated with these vessels to conduct effective interdiction in, once again, these sea lines of communication where terrorists are known to move about and transit throughout the region.[97]

## V.3.  China

China is both a coastal state with an extensive coastline and EEZ resource claims as well as a user state with a large shipping fleet and a growing dependence on energy imports. Historically, China has been reluctant to recognise international law, which its government has used as a bidding instrument to state-to-state relations.[98] However, since the economic reform and open -door policy of the late 1970s, China has been more compliant with international law. China has signed UNCLOS in 1982 and ratified it in 1996. The UNCLOS is the major international convention that addresses piracy on the global level. China has also ratified the two 1988 documents (the SUA Convention and Protocol) against maritime terrorism, and has participated in activities relating to piracy, which were sponsored by relevant international organisations such as the IMO.

Under the Chinese legal system, there is no law on piracy; therefore practical acts are subjected to Chinese law enforcement via its criminal code. However, under criminal law, certain crimes, particularly those endangering public security, are deemed relevant to piracy so that they can be punishable under this law. This law also allows China to enforce anti-piracy conventions within its territory, as it provided that "for the crimes defined in international treaties, concluded or acceded to by the People's Republic of China, which are under the jurisdiction of the People's Republic of China within the

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[97] "Crack US Troops May Be Used to Flush Out Terrorists in Key Southeast Asian Waterway." Channel News Asia, 5 April 2004. David Rosenberg and Christopher Chung, *Maritime Security in the South China Sea: Coordinating Coastal and User State Priorities,* Ocean Development & International Law, 39, 2008, p 53

[98]  Zou Keyuan, op.cit , p. 55

framework of the treaty obligations, this Law shall apply."[99]

With the rapid growth of its economy, China has become more dependent on energy resources from abroad. This energy demand led China to intensify its offshore exploration, to acquire or invest in exploration and production projects overseas; to enter into supply contracts with various countries and to establish a strategic oil reserve. China's Ministry of Commerce estimated that crude oil imports in 2005 reached 130 million tons, about 6.8% of the world's total and just over 19% more than it imported in 2004.[100] Any interruption of maritime traffic through South China Sea would affect China industrial and economic development. Despite of China's high dependence on imported oil from the Middle East and its strong interest in SLOC security for its seaborne trade, there are only limited attempts to contribute to regional cooperative efforts in tackling piracy or maritime terrorism threats in the Strait of Malacca or the South China Sea.

The Chinese contribution is seen through its involvement in the soft forms of cooperation such as information exchange or bilateral exercise with coast guards. Signing up to ReCAAP enhances China's regional antipiracy credentials.[101] However, China also realised that its Navy vessels deployment in the Strait of Malacca could be unwelcomed by other states.

The perspective of neoliberal institutionalism can explain the maritime piracy issues as follows: First of all, states are still the important actors but not the only significant actors. There another actors, such as international organisations and the private companies. They all are concerned enough. They realised how importance of the South China Sea, especially Malacca Strait, where is one of the busiest lane for world trade seaborne for business matters. In addition, maritime piracy is also the borderless issue that needs to be     managed together properly.

Secondly, states seek to maximise absolute gains through cooperation. Cooperation involves interests, cost and benefits, and for states, sovereignty matters. The International User' states (Australia, India, Japan, and the US) have different ideas of cooperation. The freedom of navigation is very significant for them. Some of them already set their own mechanism and even invited the Southeast Asian states. If there is any cooperation, it should not be overlapping with theirs.

The Littoral states have different conditions. Each of them has various economic and political conditions. However, to formulate what kind of cooperation suitable for them, these states still deal with sovereignty issues and other practical ones, such as authority, financial matters. When the User states (U.S. Japan and China) come with their own mechanism, Southeast Asian countries position was divided. Singapore agreed

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[99] Ibid p. 125; "Crack US Troops May Be Used to Flush Out Terrorists in Key Southeast Asian Waterway." Channel News Asia, 5 April 2004.

[100] "China to Import 130 million tons of Crude Oil in 2005,", Xinhua, 3 August 2005.

[101] David Rosenberg and Christopher Chung, *Maritime Security in the South China Sea: Coordinating Coastal and User State Priorities, Ocean Development & International Law, 39, 2008*, p 59

and joined it, while Indonesia and Malaysia were objected to this proposal.

Thirdly, the greatest obstacle to successful cooperation is non-compliance or cheating by states. The obstacles for this cooperation are not the non-compliance of the involved states, but rather the overlapping mechanisms. Some Southeast Asian states has joined patrol programme, while 'the Outsiders' (U.S, Japan, China and India) has their own system. Meanwhile, the non-state actors (e.g. private security companies) also join the club, for the sake of their benefits. It creates the issue of coordination here. If something happened, then it will have two conditions: either each part will deploy their power or each of them will be reluctant to be involved, if they think that is not their responsibilities.

Fourthly, Cooperation is never without problem, but states will shift loyalty and resources to institution if these are seen as mutually beneficial and if they provide states with increasing opportunities to secure international interests. The overlapping mechanism to manage the maritime piracy issue in the Strait of Malacca illustrates how each state perceives this issue. If one state considers it is very crucial, then it will create a system or join the current system or the existed cooperation. They will share funding and resources to show its commitment to this institution. For instance, Thailand and Singapore joined US effort to conduct piracy, because these both countries already had a bilateral defense agreement with the US. In fact, US policy is extensive, because it does not only cover maritime piracy or sea robbery but also maritime terrorism. The area of coverage is in tri-border area (Sulu Sea, Celebes Sea and Malacca Strait).   Thailand and Singapore also ratified ReCAAP, which is formulated by Japan. It showed that these two institutions /mechanism are more suitable for their interests.

Nowadays, the involvement of private security company (PSC) in maritime piracy has also increased. They provide a wide range of services[102], including risk and vulnerability assessment and consulting for ship owners and port operators, the training of naval and maritime security forces, insurance fraud and cargo crime investigation, the protection of oil platforms and offshore storage facilities against rebel or terrorist attacks in politically volatile regions and much more. Private companies used their services to protect their assets, investments and crews of their ships because the government authorities and their agency are seen not capable to manage the maritime piracy problem.

However, the maritime piracy, like other transnational crimes needs to be managed collectively. Many mechanisms already formulated to handle this problem, now is the time to make all those stakeholdersones work together. Especially, since the maritime piracy problem has been enlarged to the issue of terrorism, the International User States reacted strongly and proposed their own mechanism, to secure their interests in Southeast Asian waters. However, part of the Coastal or Littoral States against the presence of foreign naval intervention because it is considered as foreign

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[102]     Carolin Liss (2005), *Private Security Companies in the Fight Against Piracy in Asia*, Working Paper NO. 120, Asia Research Centre, Murdoch University, Australia, at http://www.arc.murdoch.edu.au, p.1

intervention and it will also show that their naval capabilities might not be extremely strong to deal with maritime piracy issues. Also, they are affraid of loosing authority of their territory and loosing trusts from their people.

Moreover, many available mechanisms are overlapping and uncoordinated. So that the main problems are not solved. Therefore, intensifying regional cooperation could be the most effective way because: firstly, Maritime piracy is a borderless issue. Southeast Asian states which involved in maritime piracy issues has different interests and different naval capabilities. Cooperation and coordination among Southeast Asian states is crucial for the sake of regional security. Secondly, maritime piracy is part of grey area phenomena. These activities are conducted by the non-state actors (e.g the crime syndicates) and they might cooperate with local officials. Therefore, partnership between the state actors, internatonal organisations and the other non-state actors such as private sectors is also important. As mentioned above, now a lot of Private Security Companies (PSC) are asked by the private companies (e.g shipping or trading companies) to secure their goods, carrying through the sea. PSCs are able to be invited to   discuss on how to formulate antipiracy mechanism with the state actors. So that the policy results would be more comprehensive and would be more representatives. Thirdly, by establishing a strong regional cooperation or mechanism, It would balance the domination of the foreign naval power. Because the Littoral states, individually or in groups will have bargaining power in dealing with the International User States.

In the meantime, the presence of the International User States is unavoidable because they also have some interests in the Strait of Malacca. However, the implementation of their own mechanism did not work smoothly, due the objection of several Southeast Asian states. Nevertheless, the role of International User States' can not be ignored because these states gave a significant contribution to the management of maritime piracy issues. Japan donated some funding and technical equipment to improve the Littoral State naval capabilities. The Japanese coast guards also conducts regular anti-piracy training exercise with Malaysia, Indonesia, Vietnam, Thailand and Singapore. Its military capabilities limitation led Japan less exposes its contribution to maritime piracy issues.

Besides contributing some funds to improve Indonesian Marine Police, the US government also provided some various training programmes with several Southeast Asian states, such as CARAT (Cooperation Afloat Readiness and Training) exercises and SEACAT (Southeast Asia Cooperation Against Terrorism) exercises focusing on maritime interdiction with Singapore, Malaysia, Thailand, Brunei Darussalam, Philippines and Indonesia. The U.S Coast Guards also conducted training programmes with various maritime law enforcement agencies in Southeast Asia. Despite of its huge interests on the maritime piracy issues, US support was responded carefully because receiving foreign security aid is considered as a sensitive issue in Southeast Asia.

China and India also use bilateral cooperation with the Littoral states to help solving maritime piracy. China is committed to financed and participated in several projects on improving safety and security in the Strait of Malacca. China also has offered

the Littoral States help with the capacity building. At the same time, India also looked beyond Indian Ocean to advance the country's economic interests and political influence in Southeast Asia. India sees the significancy of Strait of Malacca as a strategic maritime chokepoints.[103] In 2002 India and Indonesia already build cooperation on joint naval patrol in Andaman Sea and since 2006, India offered the littoral states capacity building assistance.[104] These two states involvement on managing maritime piracy issue is predicted   to be expanded and continued.

## VI.   Concluding Remarks

As discussed above, the maritime piracy is a complicated issue. There are some contradictory opinions on how to see it. This is particularly difficult to handle when   it happened on the South China Sea, especially in the Strait of Malacca, which is one of the busiest lane for the world trade seabornes. However, technical issues and sovereignty are still the main obstacles for the Southeast Asian States to manage this issue. In addition, the other states outside this region, have responded to the same situation via different mechanisms. As a result, the maritime piracy issue will not be easily resolved.

Nevertheless, the Littoral and the International User states should make use of the current mechanisms such as bilateral or regional cooperation and expand to be a good coordination among them. This approach will be more effective and more efficient than establishing a new mechanism. The private sectors are also recommended to   be involved because their expertise, networking skills and experience can complement the management of maritime piracy issues by states.

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[103]     Donald L. Berlin, India in the Indian Ocean, *Naval War College Review* 59, no. 2 (Spring 2006): 76

[104]     "RI, India to conduct join patrol in Andaman Sea," Antara News, August 22, 2007

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Reported Piracy and Sea Robbery Attacks in Southeast Asia, 1994-2007

| Location | 1994 | 1995 | 1996 | 1997 | 1998 | 1999 | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Indonesia | 22 | 33 | 57 | 47 | 60 | 115 | 119 | 91 | 103 | 121 | 94 | 79 | 50 | 43 | 28 |
| Malacca Strait | 3 | 2 | 3 | 0 | 1 | 2 | 75 | 17 | 16 | 28 | 38 | 12 | 11 | 7 | 2 |
| Malaysia | 4 | 5 | 5 | 4 | 10 | 18 | 21 | 19 | 14 | 5 | 9 | 3 | 10 | 9 | 10 |
| Singapore Strait | 3 | 2 | 2 | 5 | 1 | 14 | 5 | 7 | 5 | 2 | 8 | 7 | 5 | 3 | 6 |
| Philippines | 5 | 24 | 39 | 16 | 15 | 6 | 9 | 8 | 10 | 12 | 4 | 0 | 6 | 6 | 7 |
| Thailand | 0 | 4 | 16 | 17 | 2 | 5 | 8 | 8 | 5 | 2 | 4 | 1 | 1 | 2 | 0 |
| Myanmar | 0 | 0 | 1 | 2 | 0 | 1 | 5 | 3 | 0 | 0 | 1 | 0 | 0 | 0 | 1 |
| South China Sea | 6 | 3 | 2 | 6 | 5 | 3 | 9 | 4 | 0 | 2 | 8 | 6 | 1 | 3 | 0 |
| Cambodia | 1 | 1 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | N/A | N/A | N/A |
| Vietnam | 2 | 4 | 0 | 4 | 0 | 2 | 6 | 8 | 12 | 15 | 4 | 10 | 3 | 5 | 11 |
| Total | 46 | 78 | 126 | 102 | 94 | 166 | 257 | 165 | 165 | 187 | 170 | 118 | 87 | 78 | 65 |

Source: International Maritime Bureau, "Piracy and Armed Robbery Against Ships Annual Report", various
issues 2001-08. Figures include actual and attempted attacks.