

# Countering Maritime Piracy in Southeast Asia

*Marshall Reid*

*Marshall Reid graduated from Rhodes College in Memphis, Tennessee in 2015 with a degree in History and International Studies. He is currently pursuing his M.A. in International Affairs at the Elliott School of International Affairs with a focus on U.S. foreign policy and Asia. Marshall is currently an intern with the German Marshall Fund of the United States' Asia Program where he conducts research on Taiwan and India.*

## ABSTRACT

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While Southeast Asia has experienced substantial economic and commercial growth in recent years, transnational criminal organizations have sought to prey upon the success. Among these groups, few are more economically draining than maritime pirates. These actors operate outside the bounds of traditional state control, crossing international boundaries, and flouting international and national laws. While individual attacks are typically limited in scope, consisting primarily of minor robberies and assaults, they have had devastating cumulative effects on international trade. If Southeast Asia is to continue its precipitous economic rise, states with interests in the region must take substantial steps to combat maritime piracy. This paper proposes four distinct yet complementary policy recommendations to address the root issues of poor coordination, weak institutions, cultural rivalry, and economic insecurity. By doing so, states with significant interests in Southeast Asia can decrease the risk of maritime piracy and its negative effects on trade and development in the region.

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## INTRODUCTION

Over the course of past several decades, few regions have experienced greater transformation than Southeast Asia. Previously seen as an international backwater plagued by political turmoil and post-colonial instability, the area has developed rapidly in recent years. Centered on the crucial Straits of Malacca – through which roughly 25 percent of global oil trade and tens of thousands of commercial vessels pass – the region has become an indispensable component

of the world economy.<sup>1</sup> This process has been largely facilitated by prescient economic policies and shifting trade dynamics.

However, the rapid development of Southeast Asia has not been without obstacles. From its outset in the early 1980s, the process has been accompanied by an emergence of significant transnational security concerns. These threats, ranging from an expansive network of illicit drug trade to a substantial increase in international terrorist activity, have worked to undermine regional cooperation, exacerbate existing tensions, and erode crucial relationships.

Among such issues, few are as flagrant and economically-draining as maritime piracy. Though frequently depicted as endemic to lawless stretches of the African coastline, maritime piracy has become a problem of grave concern for Southeast Asian states. This concern is no exaggeration given the region's recent crowning as the top destination for piracy (as a percentage of global occurrences).<sup>2</sup> This paper will shed light on the threat of maritime piracy in Southeast Asia by providing its historical background, surveying existing attempts to combat it, and exploring potential multilateral policy solutions. In doing so, it contends that the piracy which plagues Southeast Asia is a complex, multifaceted problem, requiring a combination of both short- and long-term international, regional, state, and local policy solutions in order to comprehensively address its many drivers.

## **DEFINING PIRACY**

Prior to exploring these policy solutions, however, it is critical to first understand what constitutes piracy – in general as well as in the specific context of Southeast Asia. According to the United Nations Convention on the Law of the Sea (UNCLOS), piracy consists of “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,” which are typically undertaken on the high seas.<sup>3</sup> Unlike traditional violent warfare, piracy does not include actions taken by state actors against other states; rather, it is perpetrated by private actors acting in their own (typically financial) self-interest. Notably, UNCLOS’ definition distinguishes piracy as only occurring in international waters, describing crimes committed in national waters as armed robbery.

While useful to some degree, the UNCLOS definition excludes countless acts which would otherwise be considered piracy on the basis of their private motivation and armed/illicit nature. Additionally, piracy statistics often suffer from the same problem as many other transnational crime statistics: they seek to explain crimes which are undertaken by groups which prize secrecy and discretion and are only sporadically reported.<sup>4</sup> UNCLOS’ narrow definition therefore seems to further hamper the measurement of this inherently illusive activity.

Alternatively, the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA), a secondary U.N. convention, defines piracy more broadly. The SUA definition includes smaller, more common acts of maritime violence—including those committed in national waters – rather than limiting its scope to high-profile crimes undertaken in international waters (such as the 2009 hijacking and hostage incident on the *Maersk Alabama*).<sup>5</sup> The crimes covered by the SUA definition may include acts such as unwarranted boarding of ships, theft of cargo, kidnapping, and hostage taking. For the purposes of gaining a more comprehensive perspective on the issue of piracy in Southeast Asia, this paper will use the SUA definition as a framework.

## **HISTORICAL BACKGROUND**

While the issue of piracy in maritime Southeast Asia has recently gained greater international attention, it is by no means a new phenomenon. Beginning with recorded accounts as early as the fifth century and intensifying as European traders explored in the mid-1500s, the waters which sustain the region's vast trade networks have long harbored an expansive array of criminal actors.<sup>6</sup> From individual corsairs to more organized syndicates, these actors preyed upon commercial enterprises and developing state-led economies, seizing cargo and disrupting financial arrangements.<sup>7</sup>

These groups typically acted outside the bounds of traditional conceptions of sovereignty, operating across national borders and flouting organized attempts to counter them.<sup>8</sup> Launching raids from isolated inlets and sparsely-populated atolls, Southeast Asia's pirates significantly impacted trade efforts of numerous powers, from dynasties of China to colonial empires of the Dutch, the Portuguese, and the British. While their power has fluctuated over time – typically in response to unilateral crack-downs from regional or colonizing powers, or weakly coordinated anti-piracy efforts by concerned parties – it is nevertheless true that maritime pirates played a substantial role in shaping the area's economic development throughout its history.

The modern pirates plying the waters of Southeast Asia are similar to their predecessors in terms of their motivations and strategy. Driven by financial gain, these actors may participate in numerous illicit activities in order to fund other transnational criminal activities, including terrorism and drug trafficking.<sup>9</sup> Rather than operating in the service of a specific national entity, these groups act independently, largely ignoring national boundaries and international law and circumventing already weak institutions.<sup>10</sup> Today's pirates frequently seek to exploit the intense rivalries and long-term territorial disputes which define the region, fleeing across borders and making cooperative policing efforts difficult. This phenomenon was well-illustrated by Indonesia's unwillingness to join a Singapore-based counter-piracy

initiative, arguing that it should have a more central role in the agreement than neighboring Singapore.<sup>11</sup> Like many others in the region, this pair of countries shares a long history of conflict born out of soured alliances, assassinations, and self-serving internal political narratives.<sup>12</sup> In turn, this historically-rooted disagreement has weakened existing multilateral efforts and complicated future cooperative measures. Much like pirates of the past, modern pirates use Southeast Asia's unique geography to their advantage. A vast area composed of thousands of islands, hidden lagoons, and impenetrable jungles, the region naturally lends itself to illicit activity.<sup>13</sup>

As unique as Southeast Asia's geography is the region's rapid and uneven economic development. As a result of rising labor costs in China, low-skilled Southeast Asian communities are quickly becoming attractive assembly hubs for the world's global production.<sup>14</sup> This shift has played a significant role in increasing the volume of commerce flowing through the region and facilitating the rise of modern piracy by exacerbating inequality. While many have benefited from the increased economic integration and modernization of the area, vast rural populations have become increasingly marginalized. With few alternative prospects, many individuals in these communities—particularly fishermen and farmers residing in isolated, coastal regions—have turned to piracy to survive.<sup>15</sup> Thus, while the pirates of Southeast Asia have deep historical roots, they are increasingly motivated by modern economic anxieties and trade dynamics.

Conceivably more lawless regions like the Horn of Africa have gained international reputations as the global centers of pirate activity; however, piracy in these regions pales in comparison to the levels experienced by maritime Southeast Asia.<sup>16</sup> This has been particularly true in recent years. Greater international focus on the African coast has resulted in a reduction in the number of large-scale attacks, with zero instances of hijacking occurring between 2012 and 2017.<sup>17</sup> Despite similar – albeit more limited – efforts in Southeast Asia, the results have been decidedly less promising. Over the course of the past decade, the region has again peaked as an international hub of maritime piracy<sup>18</sup> and a number of trends have become clear through this increased activity.

## MODERN TRENDS

Beginning in the early 1990s, Southeast Asia witnessed a pronounced trend towards lawlessness in its maritime zones. Incidents of piracy in the region escalated steeply during this time, with 237 attacks in 2000—up from just 15 in 1993.<sup>19</sup> The proliferation was the result of a diverse array of regional and international factors. Regional factors included government instability and corruption (particularly in Indonesia), rapid and weakly-regulated industrialization, marketization of local economies that increased trade and

marginalized rural inhabitants, and declining fish stocks that resulted in widespread unemployment.<sup>20</sup> Internationally, the trend was primarily driven by the increasing emphasis on liberalizing East Asian economies, particularly China.<sup>21</sup> Naturally, this shift resulted in massive increases in shipments through Southeast Asia, providing pirates with an unprecedented number of valuable targets to prey on.<sup>22</sup> The 1997 Asian financial crisis in particular proved to be a powerful shock to this rapidly developing region, plunging many back into poverty and further incentivizing black market forms of employment.<sup>23</sup>

Numerous pirate attacks continue to disrupt the supply chains of firms and interdependent economies throughout the region. Cumulatively, these activities cost billions of dollars to the global economy.<sup>24</sup> While piracy exists in every part of the region, it is concentrated in the Indonesian waters surrounding the Straits of Malacca, where an estimated 43 attacks of varying severity occurred in 2017.<sup>25</sup> Many commercial vessels have chosen to avoid the heart of the region entirely by taking longer, more expensive routes between the Indian and Pacific oceans.<sup>26</sup> Additionally, numerous attacks on freighters carrying valuable cargo such as petroleum, palm oil, and weapons have demonstrated the significant threat that piracy in maritime Southeast Asia poses to global trade and regional security.<sup>27</sup> Understanding the policies that have allowed this externality to persist in Southeast Asia is vital to crafting new, more effective policies to address the issue.

## **EXISTING COUNTER-PIRACY INITIATIVES**

Piracy in maritime Southeast Asia is not a new phenomenon; nor, therefore, are policies aimed at its eradication. For centuries, nations with interests in the region have gone to great lengths to counter crimes on the high seas. These initiatives have ranged from relatively limited efforts by local kingdoms to safeguard their own waters to more expansive, coordinated counter-piracy measures undertaken by colonial powers. While these attempts were occasionally successful, they consistently failed to fully address the issue's root causes. Since the initial proliferation of pirate activity in the early 1990s, eradication efforts have generally fallen into two categories: limited, unilateral policing actions by individual nation states and larger, multilateral, regional efforts. Both types of initiatives have seen limited success, but their impact on overall piracy levels in Southeast Asia has been insufficient. This failure is the result of a variety of financial, logistical, and geopolitical factors.

Prior to the recent pivot towards multilateral cooperation in combating transnational security threats, the nations of maritime Southeast Asia relied on small, localized counter-piracy efforts. This norm was a product of limited financial flexibility and intense rivalry between neighboring states, meaning that such initiatives were typically aimed at protecting national waters above

all else.<sup>28</sup> Localized anti-piracy campaigns, such as those pursued by Malaysia and Indonesia during the 1990s, were primarily executed by coast guard vessels and consisted of patrols, limited police operations, and strict enforcement of anti-piracy laws.

Past strategies helped slow the precipitous growth of pirate activity at the time, but they were hampered by a number of daunting obstacles. First, insufficient funding and manpower meant that national forces were frequently incapable of operating effectively. Second, the vast, complex geography of the region (especially in Indonesia) provided refuge for pirates and made comprehensive patrols nearly impossible. Finally, long-standing rivalries and territorial competition between regional powers allowed pirates to exploit national boundaries and evade national police forces. Though limited initiatives have seen greater success in recent years—a product of increased funding and operational capacity—they remain insufficient. Consequently, stakeholders in the region have increasingly focused on multilateral approaches to address the aforementioned root causes and enabling factors of piracy.

Despite the many cultural, political, and religious cleavages which define Southeast Asia, the area has experienced an explosion of multilateral cooperation over the past decade and a half. Motivated by a shared desire for economic gains and guided by expansive regional institutions such as ASEAN and the East Asia Summit, regional players have demonstrated a greater willingness to cooperate on a wide range of issues. With regard to counter-piracy efforts, this joint process has been highly beneficial. Starting slowly with a relatively limited 1992 information sharing agreement between Indonesia and Singapore, multilateral cooperation has demonstrated tangible results.<sup>29</sup> Furthermore, early success has incentivized further coordination and cooperation.

This trend is perhaps best exemplified by the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP). Founded in 2006, ReCAAP includes most parties with interests in the region, allowing for greater collaboration, intergovernmental dialogue, and joint security operations. In addition, numerous nations have agreed to participate in joint training exercises. Finally, Indonesia, Malaysia, and the Philippines have recently agreed to allow “hot pursuits” of pirates across their national borders, thereby eliminating a powerful advantage previously exploited by pirates.<sup>30</sup> While a great many of these collaborative arrangements have been orchestrated by local nations, others have been organized by external powers with significant trade interests in the region. One example of this can be seen in Japan’s aggressive counter-piracy initiatives during the early 2000s.<sup>31</sup> Overall, the multilateral anti-piracy approaches have seen significant success. Reported pirate attacks in the region have gradually declined from their peak in the late 1990s.<sup>32</sup> Attacks in Indonesia, one of the region’s most affected areas,

have fallen by nearly 60 percent from 2013–2017 alone.<sup>33</sup>

Nevertheless, numerous organizational and logistical flaws, such as measurement issues born from incomplete piracy definitions, have persisted. Many Southeast Asian nations have been driven by a desire to protect national sovereignty and maintain tenuous diplomatic relationships, leaving recent multilateral efforts unable to confront the piracy issue directly. As such, wholesale changes will be required to comprehensively combat piracy.

## RECOMMENDATIONS

The pirate activity which plagues the waters of Southeast Asia has no simple solution. A complex, multifaceted problem driven by economic marginalization, geography, institutional weakness, global trade, and cultural dynamics, piracy resists traditional preventative efforts. Left unchecked, piracy in the area will continue to present numerous threats. Regionally, such activity places thousands in danger, threatens the livelihoods of countless individuals, and frays the already tenuous ties between Southeast Asian nations.<sup>34</sup> Globally, it represents an unacceptable drain on international trade by regularly placing critical cargo in danger and destabilizing markets.<sup>35</sup> Policy solutions must reflect the nature of the problem in order to be effective. That is, they must be transnational and marshal a wide range of enforcement mechanisms towards a common goal. With this in mind, this paper will provide four counter-piracy policy recommendations, each representing a critical layer of enforcement from the supranational to local policy levels.

First, the United Nations must develop a more comprehensive, well-informed definition of piracy to be enshrined in an amended United Nations Convention on the Law of the Sea (UNCLOS). While piracy's immediate impacts are relatively localized, affecting only those firms and ship workers directly involved in the attack, its long-term ramifications are far reaching, affecting the rest of the supply chain and the global trade system as a whole. As such, a broad, international solution is vital. The U.N. – with its near-universal influence – specializes in broad, global solutions, yet its current efforts with regards to piracy in Southeast Asia have proven inadequate. While this failure is likely the result of an array of factors, from inadequate resources to lack of interest, it is rooted in a simple, definitional issue.

As previously discussed, the U.N.'s legal definition of piracy, codified in the UNCLOS, is fundamentally incomplete. In an effort to avoid infringing on national sovereignty, it defines piracy as a crime endemic to international waters, designating the same activity in national waters as armed robbery.<sup>36</sup> Complicating matters, a second U.N. convention, the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation

(SUA), includes acts occurring within national waters in its definition of maritime crime.<sup>37</sup> This inconsistency injects uncertainty into what should be a straightforward enforcement process. The U.N. should streamline its current framework and develop a definition of piracy that includes acts occurring in both international and national waters. Doing so would ensure that piracy statistics accurately represent the magnitude of the threat facing not just Southeast Asia, but other regions as well. Comprehensive U.N. definitions of concepts such as violence against women and human rights have shown how great an impact this largely technical process can have—even garnering it a label: the “Helsinki effect.”<sup>38</sup> Refining the definition of piracy and anti-piracy norms to which all U.N. members subscribe sets an example for regional institutions. Finally, this change encourages cross-regional, North-South collaboration by improving reporting accuracy and by bringing awareness to the scale of this issue and its effects on global trade and development.

Second, regional multilateral organizations – particularly those focused exclusively on reducing piracy – must be strengthened and granted legitimate enforcement capabilities. Though it is perhaps the most powerful multilateral organization, the U.N.’s influence in Southeast Asia is dwarfed by that of regional groups such as ASEAN, the East Asia Summit, and APEC. Products of the area’s shift towards multilateralism, these organizations have accomplished a great deal—fostering greater economic and political integration, bridging cultural divides, and developing multinational cooperation towards solving common problems. Nevertheless, their efforts have been inadequate in the fight against piracy and its underlying causes. This lack of progress is primarily the result of the structure of many Asian international institutions. Driven by a desire for dialogue and fearful of inflaming historical rivalries, many of these groups have prioritized non-intervention over legitimate enforcement. While this has improved the political climate of the region, it has led to the creation of numerous “toothless” organizations that are incapable of carrying out treaties and agreements. This is perhaps most clearly illustrated by ASEAN, whose broad mandate and utopian values have consistently failed to inspire true multilateral cooperation and enforcement. In order to best combat piracy, the nations of Southeast Asia must make up for years of empty cooperation agreements by granting regional anti-piracy organizations more enforcement power and creating frameworks closer to that of the European Union. This could be accomplished by reforming existing institutions or by creating a new, dedicated anti-piracy organization (with far more power than ReCAAP). Such an organization would allow the region to better contain its rampant piracy while simultaneously maintaining its cherished multilateral character.

Third, regional powers, such as Indonesia, Malaysia, and the Philippines, must divert greater resources to the fight against piracy, strengthen local police



actions, and work to develop more inclusive, equitable economies for their diverse populations. While piracy is fundamentally a transnational issue, flowing across national boundaries, national governments must continue to play a significant role in combating it. Small, unilateral anti-piracy actions, such as those taken during the 1990s, were indisputably inadequate, especially without widespread multilateral cooperation occurring elsewhere. A significant portion of these failings were the product of insufficient resource allocation. Frequently, national police services did not have enough money, manpower, or naval resources to adequately patrol their vast, complex maritime territories. With significantly more funds at their disposal—a result of rapid economic development—regional governments should divert far greater resources to the fight against piracy. In a region defined by its growing reliance on international trade, a reallocation of capital would perhaps best be accomplished by documenting commitments in future regional and international trade agreements. Operationally, this would entail making bilateral and multilateral trade deals contingent on commitments by all participants (both within and outside the region) to devote a larger portion of their respective GDP to counter-piracy efforts. By doing so, national governments could better supplement regional multilateral counter-piracy initiatives, protect their own national interests and the interests of global trade partners, and deny pirates critical sources of asylum.

Fourth, regional governments should work to develop more inclusive, equitable economies for their citizens, tackling one of the most fundamental roots of the piracy issue. Ultimately, this is likely to be the most difficult policy recommendation, requiring widespread coordination and awareness to be implemented properly. Nevertheless, it is perhaps the most critical step towards solving the problem, as recent empirical studies indicate.<sup>39</sup> Though piracy is occasionally driven by nefarious actors – from organized crime organizations to extremist cells – it is predominantly the pursuit of economically desperate men and women. These individuals have been left behind in the region's globalization, abandoning now obsolete traditional occupations and resorting to piracy as a means of survival.<sup>40</sup> Rather than merely seeking out and punishing pirate activity, local governments should work to better understand the links between economic disenfranchisement and criminal behavior and adjust their policies accordingly. Operationally, this should include local-level policies aimed at better integrating marginalized individuals into the modern regional economy, such as job-training initiatives, improvements to primary education and truancy policy, and tax and subsidy incentives for growing small-scale farming and fishing enterprises. Though the financial costs of such policies may be high in the short-term, they will be outweighed by the benefits accrued in the long-term.

The piracy which plagues Southeast Asia is a transnational threat with global implications. While existing efforts to combat it have been admirable, a

great amount of work remains to be done. Critically, past initiatives have been largely one-dimensional. Rather than tackling piracy on several fronts, they have generally focused on a single, limited area of prevention. In combating an issue as complex and variegated as maritime piracy, this approach is fundamentally insufficient. In light of the ongoing inadequacy of counter-piracy measures in Southeast Asia, this paper has sought to provide a path towards a more comprehensive, multifaceted counter-piracy strategy by combining a wide range of supranational, regional, state, and local solutions. By pursuing such recommendations, the nations of Southeast Asia can finally gain an upper hand in their fight against maritime piracy, thereby diminishing a problem which has plagued them for centuries. In doing so, Southeast Asian countries can once again use their critically important seaways without fear and ensure the continuation of their economic ascendancy into the future.

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