Introduction

It was a pertinent and true answer which was made to Alexander the Great by a pirate whom he had seized. When the king asked him what he meant by infesting the sea, the pirate defiantly replied: “The same as you do when you infest the whole world; but because I do it with a little ship I am called a robber, and because you do it with a great fleet, you are an emperor.”

— St Augustine¹

Lord I’m no thief, but a man can go wrong when he’s busted.
The food that we canned last summer is gone, and I’m busted.
The fields are all bare and the cotton won’t grow,
Me and my family gotta pack up and go.
Where well make a livin the Lord only knows,
And I’m busted.

— Johnny Cash²

This book explores the security problematique of contemporary maritime piracy in Southeast Asia, using historical context to highlight causative factors of piracy, and provide insight into why piracy has expanded in scope and frequency over the last fifteen years in the region. This understanding will suggest several remedial approaches in order to address the roots of contemporary maritime piracy in Southeast Asia. These approaches will emphasize the need for building national capacities of states in the region, emphasizing long-term structural development, increased operational policing capabilities, better information gathering, and international co-operation.

Incidents of maritime piracy in Southeast Asia have increased dramatically during the last decade of the twentieth century and into the first years of the new millennium.³ Piracy, however, has been a persistent presence in the waters of Southeast Asia for approximately 2,000 years up to and including the last fifteen years, evolving with social and political changes in the region over the centuries. The
nature of the waters of Southeast Asia, the meeting place of the Pacific and Indian Oceans, an ancient as well as contemporary crossroad, makes them strategically vital, economically and militarily. Contemporarily it is the importance of these waterways that has made piracy an important security issue in Southeast Asia. Seaborne trade accounts for roughly 80 per cent of world trade, approximately one-quarter to one-third of which passes through the Singapore and Malacca Straits and into the Bay of Bengal and the Indian Ocean, or into the South China Sea and the Pacific Ocean beyond. These waters connect the oil fields of the Middle East with the energy-hungry economies of China, Japan and the Koreas, accounting for approximately 80 per cent of Japan’s oil. South Korea which has no domestic oil reserves, imports approximately 2.1 million barrels daily, and China imports approximately 5.56 million barrels daily, much of which comes through the Straits of Malacca and Singapore. Moreover, current estimates suggest 150 to 500 ships (large freighters and tankers, not including local traffic) pass through the Strait of Malacca daily, which is upwards of 50,000 ships annually. These waterways are also the shortest route between the Pacific and Indian Ocean theatres of operation for regional and extra-regional navies, such as the United States, Russia, India, China, and Japan. Any threat to the security of these vital sea lanes will be considered seriously.

Beyond posing a direct threat to human life and monetary cost, one of the biggest worries is that a pirate attack against an oil tanker, or other vessel carrying hazardous materials, may cause an accident that even if unintentional could result in an environmental catastrophe, potentially closing off shipping (ironically reducing the number of targets for pirates), and destroying fisheries that provide a livelihood for thousands if not millions of maritime-oriented peoples in the region. Additionally, as Stanley Weeks notes “Piracy raises insurance rates, restricts free trade, increases tensions between the affected littoral states, their neighbours and the countries whose flagged ships are attacked or hijacked.” Additionally, there is the potential economic fall out stemming from damage done to regional states’ reputations, as shipping companies may choose alternative ports and routes to avoid the threat of piracy.

Adding to the seriousness of these threats is the apparent involvement of organized crime, allegations of state involvement, or at least complicity, in piracy and the conflation of piracy and terrorism. Even though piracy has gained some measure of attention through these connections, it is primarily a low-level security threat in a highly
strategic zone and is predominantly endangering local commerce and lives. The resurgence of piracy in the region is symbolic and symptomatic of weak economic and political development that has not kept pace with the rapidly changing economies and societies, and ultimately represents a challenge to the legitimacy of regional states that is not being effectively met.

In a region where maritime security has come into the foreground of regional security concerns, piracy in Southeast Asia is a threat gaining increasing attention as a transnational security issue that demands multilateral and international attention. However, the domestic priority accorded to piracy by the littoral nations of Southeast Asia, combined with fears of internationalizing security in the region and perceived threats to national sovereignty, has hindered effective international and multilateral co-operation. International attention is also predominantly focused on high-end piracy attacks orchestrated by organized criminal networks, particularly as they are conflated with terrorism, ignoring the vast majority of lower-end piracy, which is largely motivated by issues of poverty and disenfranchisement that afflicts vulnerable targets like fishermen and local traders. Thus policies from these forums do not address the motivations of the vast majority of piracy. Additionally, the multilateral and international efforts that are trying to address piracy are focusing on short-term solutions such as co-operative patrols, which are important and useful, but ultimately are like trimming the leaves of a particularly invasive weed rather than pulling it out by its roots.

The roots of contemporary maritime piracy in Southeast Asia lay in the cultural, economic, and political environment of states in the region, and their inability to effectively control or regulate this environment. Various socio-cultural views, economic growth without concomitant political development, poverty and inefficient distribution of wealth, and fragmented or challenged political hegemony, are some of the roots of piracy both historically and contemporarily. These continuities, among others that will be discussed in the coming pages, highlight perennial problems that are structural in nature. Accordingly, policies aimed at addressing piracy need to prioritize structural development such as economic development in coastal regions, dealing with rampant corruption, settling immediate threats to national integrity, and providing various elements of society with a stake in the national economy and identity.

Contemporary maritime piracy in Southeast Asia has been shaped by modern economic, political, and social forces, but it did not evolve in
a vacuum. Indeed, maritime piracy has been a reality in Southeast Asia for centuries. There is a continuous thread of piracy that has evolved and adapted over the centuries, trailing from current times to the limits of recorded antiquity in the region, which can provide insight into contemporary phenomena.

WORKING DEFINITION OF PIRACY

There are no essential qualities of piracy; no platonic ideal of piracy hovering in the ether which can be contained in one definition, even in legal terms. There are only approaches to understanding piracy, each with agendas and goals that shape piracy into a convenient form for that particular discussion, very much including this book. The agenda for this book’s approach to piracy is to define piracy flexibly and make it applicable to the context of contemporary Southeast Asia, and therefore acceptable for analysis as a security problem. The first section will explore several epistemological issues in discussing piracy, looking at the inherent subjectivity of the term and how this relates to the research presented in this book. Next, in constructing the working definition of piracy, a brief history of the evolution of the Western term “piracy” is presented, as an introduction to how modern international law on piracy evolved. This section will also be used as an introduction to Western concepts of piracy that will be discussed further in Chapter 2 as they interacted with historical concepts of piracy in Southeast Asia. Then two definitions of piracy under international law will be looked at — Article 101 from the United Nations Convention on the Law of the Sea (UNCLOS), and Article 3 from the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (SUA) — and the influential International Maritime Bureau’s (IMB) definition that is very common in the media and security literature, but is not a legally binding definition. The UNCLOS and SUA definitions will also be further discussed in Chapter 3, starting on p. 80, in terms of their policy implications, and issues surrounding the IMB definition will be discussed further in Chapter 4 starting on p. 122. Drawing on these definitions, a working definition of piracy for this book will be presented and discussed.

Epistemological Considerations

The study of piracy is fraught with epistemological problems, for as with “the word ‘crime’ itself ... ‘piracy’ is a term that both describes and
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passes a (negative) judgment ... addresses an object that is a priori normatively defined, and is based primarily on sources in which this value judgment goes without saying.13 Although the literature used for this book by and large is grounded in a negative assessment of piracy, there have been several notable attempts to portray piracy without moralizing, and yet trying not to minimize its brutal reality.14 An objective stance is important because the topic of maritime piracy in Southeast Asia is approached using a vocabulary rooted in a particular Western academic, cultural paradigm far removed from the reality of historical and contemporary piracy.

Post-modern critiques, and the whole debate surrounding Orientalism initiated by the late Edward Said, make us more aware of using outside definitions to describe local phenomenon such as piracy in Southeast Asia. As Said suggests, however, while it is impossible to divorce oneself from one’s intellectual heritage totally, the effort can be made to free one’s research from biases, and in the case of piracy a self-conscious awareness of indigenous perspectives can help alleviate this situation.15 This goal is complicated, however, by the ubiquitous complaint and fact that indigenous sources are scarce in Southeast Asia, both historically and contemporarily. Accounts of Southeast Asian piracy largely derive from foreign sources: Chinese, Arabic, and later, European. In this situation judicious use of foreign accounts and ethnographic studies is quite helpful, but still problematic for trying to understand piracy in Southeast Asia, and this will be addressed in Chapter 2. As we move into the modern era there is plenty of literature on piracy, but there is still a general lack of local Southeast Asian scholarship on contemporary piracy.

A major limitation of the approaches to contemporary piracy used in this book is that they address piracy on macro-level scales, making generalizations across maritime Southeast Asia. While these generalizations are useful in establishing broad approaches to addressing piracy, and effectively highlight perennial issues contributing to cycles of piracy, they lack local details that could provide an important depth to the discussion. From historical accounts there is material available on this local scale, and much of it has been incorporated into the historical discussions of this book. However, this kind of material is not available for contemporary piracy, so comparison and contrast on this scale is difficult. When possible, generalizations are avoided, and it is in part to this end that a diverse spectrum of historic case studies were chosen. However, where these generalizations directly impact on analysis and
In discussions of contemporary piracy there is almost no attempt to avoid generalizations across cultures, because there is no research that the author is aware of on which to base analysis of different peoples and different practices of piracy. In fact there is very little primary research on contemporary piracy and so generalizations for the time being must be accepted, with the tacit recognition that they are being made. The limitations of the approaches to piracy used for this book should be taken as important future directions of research and analysis of piracy in Southeast Asia, addressing the "local" and focusing more closely on the people themselves, both impacted by and engaging in these activities.

In this book, piracy is always understood as a subjective concept as it is problematic in definition and has been subject to a multitude of different understandings over centuries of use. However, for the sake of practicality the word "piracy" will only appear in quotes when its subjective nature requires particular attention, or of course when in a direct quote. In order to clarify the terminology that will be used in the following discussions of piracy, the word "piracy" will be used mainly to refer to those predatory maritime activities that are carried out by agents without the acknowledged support of a recognized, legitimate political entity. While still vague, it offers a contrast to "raiding" (in a Southeast Asian context) or "privateering" (in a Western context), which will be used to refer to those predatory maritime activities that had the support or acknowledgement of a recognized legitimate political entity. This delineation between piracy and raiding/privateering involves a large grey area as there could be a fluid movement of agents between legitimacy and illegitimacy, but overall it provides a useful framework for future discussions. These terms will also frequently be interchanged according to the perspective from which they are viewed. For example, Spanish views of Iranun predatory activities were frequently referred to as "piracy", but the Iranun perspective saw it as "raiding". In this respect when multiple view points are being addressed "piracy/raiding" may be used to show this ambiguity of perspective. In discussions of the contemporary period this becomes less problematic as distinctions between illegitimate and legitimate piracy largely disappear.

**Western Definitions**

Modern international law on piracy evolved largely from Western legal history, shaped in part by the expansion of European economic interests
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and political power into Southeast Asia. The concept of piracy in a Western tradition has evolved and developed over at least 2,000 years, being reinterpreted to fit the needs of the times. The word itself originated from Greek and Latin, the words *peirato* and *pirata* both connoting political legitimacy or belligerency; the former being those included under the Roman hegemony, and the latter being those who lived a way of life outside Roman hegemony, and therefore illegitimate. Certain concepts in the law of piracy became particularly important, such as criminality, *animo furandi*, and *hostes humani generis*, which evolved from medieval and renaissance interpretations of ancient classical literature, where the word *pirata* changed in meaning from a belligerent in the context of war, to mean an unauthorized privateer. It described a risk of participating in the burgeoning trade of the times, but it was not yet considered in terms of criminality.

In the sixteenth and seventeenth centuries influential publicists and jurists such as the Dutchman Hugo Grotius (1583–1645), who is often termed the “father of modern international law”, and the Britisher John Selden (1584–1654) were redefining the concept of piracy, based in large part on the need to defend expanding trade networks throughout the world, and particularly in maritime Southeast Asia. Grotius conceived of piracy as a criminal disturbance of lawful commerce, thereby in conflict with states’ sovereignty. Therefore, state jurisdiction could be extended through naval occupation of waters, just as in the military occupation of land, thus providing impetus for justifying martial action to protect commerce. Selden’s classic *Mare Clausum* was directed at extending a particular interpretation of maritime law that would allow England to claim parts of the seas in a quasi-occupation, and thus also extend their municipal jurisdiction on the seas. These interpretations justified using military navies in defense of trade, as policemen, without having to declare war and thus abide by the rules of war. Moreover, this interpretation coincided with imperialist needs to deal with Southeast Asian “piracy”.

Complicating European practice and understandings of piracy as a criminal activity was the wide use of privateers. Privateers in international law were defined as “vessels belonging to private owners, and sailing under commission of war empowering the person to whom it is granted to carry on all forms of hostility which are permissible at sea by the usages of war.” The use of privateers to supplement meagre naval forces in time of war was a standard practice among Western states from the thirteenth to the nineteenth century. Privateers were a resource of
skilled mariners that the state did not have to pay for, and could actually provide revenue. Empowering non-state actors with legitimatized means of violence, however, had its dangers, as reining in privateers once their purpose had been served often proved difficult. As a result of frequent wars in Europe, combined with the practice of privateering, piracy became rampant by the seventeenth and early eighteenth centuries in European “controlled” waters, as Daniel Defoe noted in the beginning of the eighteenth century: “Privateers in time of war are a nursery for Pyrates against a Peace.” In the nineteenth century, by the time Britain had become the naval power in the world, privateering, which had become a weapon of the weak (those nations that couldn’t afford a large standing navy), was finally outlawed by the majority of European naval powers in the Declaration of Paris in 1858 (at Britain’s behest), following the end of the Crimean War. The nineteenth century was the official end of “legitimate piracy” in the West and these attitudes would be brought to bear on local practices of piracy in Southeast Asia, as well as forming the underpinnings of modern international law on piracy.


The Western evolution of the concept of piracy, in part stimulated by economic and political circumstances arising in Southeast Asia, led directly to the definition of piracy incorporated in the 1958 Geneva Conventions, the United Nations Convention on the Law of the Sea (UNCLOS I), the 1960 UNLCOS II negotiations, and finally the 1982 United Nations Convention of the Law of the Sea (UNCLOS III) that was put into force. Article 101 of UNCLOS defines piracy as follows:

*Article 101*

**Definition of “piracy”**

*piracy* consists of any of the following acts:

(a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:

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

(ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;

(b) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;
Of particular concern in Southeast Asia is the requirement that piracy takes place beyond the jurisdiction of any state, on the high seas, as piracy frequently occurs in territorial waters, excluding piracy in strategic choke points like the Singapore and Malacca Straits. Another concern is that under UNCLOS piracy requires ship-to-ship conflict, which could exclude crimes in port. Additionally, the exclusion of political acts is seen as problematic for many, although this book’s working definition supports this. These issues will also be discussed in more detail in Chapter 3 starting on p. 80.

**Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation**

SUA was not designed to address definitional or jurisdictional issues of piracy per se, but rather was meant to address international terrorism, although it is being promulgated as an anti-piracy document, partially in order to address some of the perceived deficiencies in UNCLOS noted above. Article 3 of SUA outlines a broad definitional framework of acts that constitute a threat to maritime navigation. It sidesteps definitional pitfalls by not mentioning any specific acts such as “piracy” or “terrorism”, but rather referring to

1. Any person who commits an offence if that person unlawfully or intentionally:
   a. seizes or exercises control over a ship by force or threat thereof or any other form of intimidation; or
   b. performs an act of violence against a person onboard a ship if that act is likely to endanger the safe navigation of that ship

Despite its ability to sidestep some of the problems inherent in UNCLOS, SUA also raises many issues, including concerns of national sovereignty, its utility in addressing piracy given the vague terms it would use to describe piracy, and the fact that it was designed as an anti-terrorism convention. These issues have caused reluctance on the part of key maritime nations in Southeast Asia to accede to the Convention. As with UNCLOS, these issues will be addressed in more detail in Chapter 3 starting on p. 80. Also see Appendix A for further details on SUA.
The International Maritime Bureau

The International Maritime Bureau (IMB) is a subsection of the International Chamber of Commerce’s Commercial Crime Services (ICC Commercial Crime Services, abbreviated as ICC), a private organization whose task is “to prevent fraud in international trade and maritime transport, reduce the risk of piracy and assist law enforcement in protecting crews”.

Further in this chain is the Piracy Reporting Centre (PRC), a division of the ICC-IMB, started in 1992 in Kuala Lumpur, Malaysia, which focuses on piracy. The IMB Piracy Reporting Centre (IMB-PRC) is a key hub for disseminating piracy information such as statistics and area warnings where recent hotspots of pirate activity have been reported. The IMB-PRC statistics have become ubiquitous in literature and media dealing with piracy. The statistics coming out of the IMB are a driving force in discussions of piracy, from policy literature to mass media, and deserve special attention. Issues surrounding the ubiquity of IMB statistics will be further addressed in Chapter 4.

The IMB defines piracy as: “An act of boarding or 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.”

Interestingly the definition that the IMB uses for collecting their information is not legally binding, and does not conform to international legal definitions like Article 101 from UNCLOS, Article 3 from SUA, or the national laws of any country. As a non-binding definition used for their collection of statistics the IMB is at liberty to disregard jurisdictional concerns as well as nuances of definition such as animo furandi versus political motivations.

Working Definition of Piracy

- Working definition of piracy: An act of boarding or 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, excepting those crimes that are shown or strongly suspected to be politically motivated.

The working definition of piracy for this book essentially follows the IMB definition of piracy, but purposefully separates out politically motivated maritime crime. This definition is being used for similar reasons why the IMB uses it — to more accurately reflect the dangers faced by the victims; an inclusive understanding that ignores what
has become a hallmark of the modern piracy problematique—jurisdiction. Jurisdiction is an important consideration in how best to tailor policy to address piracy, and will be discussed at some length in Chapter 3. It often complicates assessing what the real issues behind piracy are that need to be addressed. The UNCLOS definition would exclude the majority of incidents of piracy in Southeast Asia as they occur in the territorial waters of states. This working definition draws in for analysis a plethora of maritime criminal activity under the rubric of piracy, which will in turn allow a gross dissection of the phenomena to facilitate figuring out why it has become a problem once again, and how it can best be dealt with.

Politically motivated crime was left out of this definition, unlike the IMB and SUA definitions of piracy, because rather than helping to clarify the issue of piracy it clouds it in jurisdictional issues of national sovereignty and associated international power struggles. Moreover, the conflation of piracy and terrorism itself is questionable as there are important philosophical differences in the maritime violence perpetrated by each. Terrorists are motivated by broader political goals and want to draw attention to themselves, which to a pirate could endanger the furtherance of their primary motive, personal gain. For example, the worst case scenario of an oil tanker or other large vessel being scuttled in the straits as part of a terrorist plot could be detrimental to the livelihoods of pirates, as trade would likely be shut down for an indefinite period of time. Additionally, while terrorism is frequently linked to religious motivations, there is no evidence of religiously motivated piracy for private gain, i.e. specific targets are not chosen based on religion.

Terrorism has often been conflated with piracy as there are tempting potential operational links and potential overlap in tactics and goals at the high end of piracy when vessels are hijacked. However, perceived links and potential connections have been played down in recent months following the Tri-annual Conference on Piracy and Maritime Terrorism, held in Kuala Lumpur in June 2004, sponsored by the International Maritime Bureau. Senior Advisor for Rand Corporation, Brian Jenkins, a recognized expert on terrorism, announced the general conclusion of the conference that "I don’t think it is appropriate to blend the increasing problem of piracy with the potentially more dangerous consequences of terrorism ..." Captain P. K. Mukundan, director of the ICC-IMB, reiterated this, saying that there was "nothing to show that terrorists and pirates have joined up". At the closing
round table discussion of The Workshop on Maritime Security, Maritime Terrorism and Piracy in Asia, held in Singapore in September 2004, similar conclusions were also drawn. These important distinctions and separations between piracy and terrorism indicate that different approaches need to be taken in addressing the root causes of each, although in controlling the symptoms there will be some potential overlap as increased operational capacities may affect both pirates and potential maritime terrorists.41

TYPOLOGY OF CONTEMPORARY MARITIME PIRACY IN SOUTHEAST ASIA

This typology describes phenomena based on the working definition of piracy detailed above, placed on a fluid scale that “corresponds to an escalating scale of risk and return. As the risk and potential return increase so do the threat and degree of violence ... [and] so does the apparent degree of organization of the attackers.”42 See Figure 1.1. This typology of piracy should not be seen as a concrete construction, because in the real world there is likely to be a fluid movement of agents depending on specific circumstances between various points on this

FIGURE 1.1
Typology of Piracy

Increasing Returns, Violence, Organization

Sneak Thieves

Hit and Run

Short-Term Seizure

Hijacking/Phantom Ship

Long-Term Seizure

Low-End, Ad Hoc Piracy

High-End, Organized Piracy

Total number of incidents reported

Note: Hypothetical representation of typology of piracy as a proportion of total incidents, with placement of various kinds of piracy on the scale.
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scale, and there is no absolute rules separating the use of violence, expected returns and organization. Along this line, the typology is not predictive of behavior, but rather descriptive of recorded incidents. On one side of the scale is low-end ad hoc piracy with relatively less chance of violence, lower expected returns and less risk, and on the other side is high-end organized piracy with relatively higher expected returns, a greater chance of violence, and requires more organization and risks on the part of the pirates. Contemporarily there are many levels of piracy active in maritime Southeast Asia; “the criminals run the gamut from the maritime equivalent of bank robbers … to members of well-connected and well-organized rings that can arrange for transfers of large quantities of stolen cargo at sea or at port without detection.” Piracy includes everything from petty theft to the hijacking of entire vessels, and pirates could be anyone from opportunistic fishermen, to members of syndicates and even rogue military units.

The most common incidents of piracy are on the low end of the typology and can be classified as sea-robbery, simple hit-and-run thefts involving individuals to small gangs with ad hoc organization, which usually result in violence only if confronted. Within this category, attacks against fishermen and other local traffic make up the probable majority of incidents. The next level involves the short-term seizure of a vessel, often for less than 30 minutes, but the crew is held hostage and often threatened or inflicted with violence to reveal locations of valuables, such as the vessel’s safe. This step up requires more people, more equipment and, therefore, more organization, and can also involve more violence and greater returns for their efforts, although the attacks still appear to be largely opportunistic. These seizures often end up on the low end of the typology, but can also move towards the high-end spectrum as all the variables involved can move towards the high end of the scale. An example of this is the attack on the Valiant Carrier, a fuel oil tanker that was forcibly stopped with Molotov cocktails, where the crew was threatened and in two cases received injuries. The twelve attackers made off with the ship’s electronics and other valuables, but were not interested in the cargo. These attacks are also serious because, as was the case with the Valiant Carrier, the ships are left uncontrolled for much of the attack, creating a serious risk of collision and the potential for an environmental disaster.

At the top of the scale on the high-end organized side are long-term and permanent seizures where the entire ship is ransacked, or the target was the cargo itself, often valuable and/or easily resellable goods such as
CONTEMPORARY MARITIME PIRACY IN SOUTHEAST ASIA

Palm oil, fuel oil, electronics, or refined metal ores. The ships themselves can also become a target. These ships are called "phantom ships" because they simply disappear; the ships are repainted and reflagged (registering the ship with a different nation). Often the ship’s name can be changed multiple times, as these services are provided via the Internet. Like stolen cars on land, these ships are often used for further illegal activities, such as smuggling goods or scamming cargo shippers by offering cheap shipping costs and then absconding with the cargo.47 These attacks require greater organization and materials as the entire cargo needs to be dealt with, and necessitate violence as the crew is either subdued for long periods of time or disposed of.48

Off the scale as a type of piracy, but interesting to consider, is "social piracy", a concept largely based on Hobsbawm’s description of "social banditry", outlined in his book Bandits.49 These pirates rob and attack people outside their own community for the benefit of not only themselves and their families, but their community as well. This type of piracy seems to fall into the low-end scale of piracy, but not necessarily so. This phenomenon will be further examined in Chapter 3 under the section heading "Social Piracy" (p. 65) in a broader context of economic and social marginalization.

APPROACHES TO PIRACY
Policy–History Nexus

Much good research has been directed at examining contemporary maritime piracy in Southeast Asia within certain academic and policy analyst circles, such as those that study maritime security, non-traditional security threats including transnational crime, and "grey area phenomenon" (GAP).50 This research has provided many useful insights into the nature of contemporary piracy in Southeast Asia, and is at the heart of a growing effort to combat this resurgent phenomenon. The academic discipline of history has also provided many good accounts describing and contextualizing past practices of piracy, to which this book is much indebted. However, each of these disciplines dealing with maritime piracy is mutually unconscious or largely unconcerned with each other’s material.

Most policy literature dealing with piracy seems to assume the supremacy of the present, the unfolding of contemporary affairs in "real time" “realpolitik”, to which history is simply the past, what came
before the important events of today. Continuities and/or change are assumed rather than examined or analysed. Accordingly, historical context is often lacking or treated simplistically, largely outside the scope of their discussion. This leads to broad assumptions that surreptitiously link phenomenon over vast stretches of time or ignore important threads of continuity. Moreover, this process leads toward a lack of contextualization within the socio-political and cultural framework of Southeast Asia, the biggest hotspot of contemporary piracy in the world. While much policy literature has focused on the present, historical accounts of piracy are frequently isolated from contemporary circumstances, making them quite literally "academic" in their usefulness to analysts. However, in order to better understand the roots of contemporary piracy in Southeast Asia, the context from which it has emerged, including the historical context of piracy and its links to modern piracy, need to be explored.

Piracy is not a new phenomenon in the waters of Southeast Asia, so in order to better understand it we must look to the past for what it can tell us. This use of history is not to advocate the cliché that those who do not learn from history are doomed to repeat it because this book recognizes that contemporary phenomenon are in many ways distinct from their antecedents. They are phenomena largely shaped by a modern world, but a modern world and phenomena that did not spring from a void, or from a clean slate. As Michael Aung-Thwin has purported for Burmese history, and as a possible model for understanding Southeast Asian history broadly, "strength was maintained and expressed by spirals or structural cycles, a process of expansion and contraction of the same institutions, rather than the elimination of old ones, and the creation of fundamentally new ones." In this situation the continuity of history is assumed and change must be proven. The nature of this book precludes any kind of detailed examination of such an assertion with respect to piracy, but it is a pertinent reminder for those dealing with contemporary Southeast Asia to give due regard to the past.

There are some notable works in recent years that have moved in the direction of utilizing both history and policy literature, but the majority of academic and policy literature on piracy still seems largely uninformed about the other, or simply outside their professional concern. This book seeks to contribute to bridging the gap between historical context and policy analysis of piracy, and from this broader understanding suggest ways and means of addressing the root causes of contemporary maritime piracy in Southeast Asia.
State Approaches to Piracy

The state is the focal point of analysis for this book. It is primarily a discussion of a contemporary security threat from a criminal enterprise, and as such revolves around what is being threatened: lives, the environment, trade, and fundamentally the threat posed by piracy and what its existence symbolizes, to the integrity and legitimacy of affected states. Piracy could be analysed from numerous perspectives, such as through processes of globalization, as it is an important factor affecting the economic and political context from which maritime piracy has re-emerged. However, piracy in Southeast Asia is not a security threat to processes of globalization, but to the state. Moreover, piracy in Southeast Asia does not emerge from globalization but from within the territory of particular states. The state, and relations between the international system of states, is the central feature of contemporary policy.

The state is also an important link to the history of piracy as much historical analysis has focused on the emergence of "states" and authority structures in the region. Understanding how piracy fit into these structures, framing the perceived legitimacy and illegitimacy of piracy, and how these perceptions change through time and across cultures, is an important factor in understanding how historical context is relevant in addressing contemporary maritime piracy. In the past, as today, the tenuous control exerted by state structures was often disregarded by non-state agents, as they often acted independently of state power until they could be brought back under control again.54

Two primary understandings of states and their authority will be used. First, in discussion of historic power structures in Southeast Asia, and in analysing cultural continuities, a flexible state structure based on an understanding of authority rooted in concepts of charismatic leadership will be predominantly used. For discussion of European, colonial, and modern nation-states, a state model based on Weberian understandings of power will be emphasized. In this model, power is based on the monopolistic control of violence within proscribed territorial boundaries. Underlying both these aspects of the state is a current of neo-liberal capitalist thought that emphasizes the role of economic processes in the exercise of state power.

An intriguing aspect of piracy is the state’s role in defining understandings of piracy, both historically and contemporarily. However, in both systems these lines were frequently blurred, and state structures often actively encouraged and supported non-state agents of violence,
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like privateers, when their activities were to the benefit of the political centre.55 State control as it regards piracy is a dynamic system of power and depends on who has the authority to determine political legitimacy and illegitimacy through agreement or assent of its people, or by force and persuasion.56

States have provided structure and organization for piracy both in terms of support and resistance. When states have directly supported piracy they have lent it the official authority and structure of the state itself, but when states have actively suppressed piracy they have also given it structure, defining it as opposite of the state, in contrast to its goals. Until the nineteenth century the boundary between state support and state suppression was frequently blurred, and continues to this day to present problems due to implications of state complicity. Because the frame of reference for piracy has been so thoroughly incorporated with states, either in co-operation or in contrast, the measure of piracy is to what extent a given state can exert its control. Does the state have sufficient control to disperse any non-state condoned maritime activity? In any given arena through time and space where a state claims some kind of authority, does it have the power or desire to control non-state actors, or even those within the state structure, and what are the implications for piracy? Does the state have the capacity or will to control the economic, social, and political processes stimulating piracy? Does or can the state control the physical means of enacting piracy?

To address these questions and issues, three aspects of state control that extend across historical and contemporary piracy will be focused on. First, the state’s ability to exert some minimal control over the people in its territory through “binding commands, rules, and laws backed by force” and reciprocal social contracts, thereby controlling those who become the agents of piracy.57 Second, the state’s ability to maintain a political hegemony by dominating and controlling the use of violence, as piracy is an eruption of unauthorized violence through gaps in state control. Piracy is an illegitimate hub of power, which itself further widens these gaps and questions the state’s ability to control, and/or regulate, the means of its own legitimacy in the eyes of its people and the international community. Third, the state’s ability to control the tools, intelligence, and tactics of piracy as it impacts pirate’s success vis-à-vis the state, because of the direct connection to the capabilities of pirates. Moreover, they have been a primary focus of contemporary policy addressing piracy, and thus necessary of discussion. Overall, the weaker state control in these areas the more piracy flourishes, and the
further compromised the state’s ability to regain control. The relative success of the state in carrying out these projects is at the heart of piracy. All of these aspects of state control will be discussed within the context of Southeast Asia, with particular focus on the largest archipelagic state in the world, Indonesia, which consistently accounts for half or more piracy incidents in Southeast Asia, and more than one-quarter of incidents in the world. Indonesia is widely perceived as a weak link in maritime security of the region in part because of the impact of the Asian economic crisis of the late 1990s, and the resulting political turmoil.

**ORGANIZATION OF CHAPTERS**

Chapter 1 has presented a description of the goals of this book, the nature of the problem to be examined, the approach that will be used, some consideration of inherent epistemological issues of research, analysis and argument, and a working definition of piracy. Chapter 2 will look at definitions of piracy historically in Southeast Asia, discussing the applicability of the term “piracy” to the context of Southeast Asia. These definitions will then be put in specific contexts of several case studies of historical piracy, highlighting causative factors underlying the development of piracy in the region. This will lay the groundwork for drawing and analysing continuities between causative factors past and present, which will suggest ways of approaching piracy contemporarily. Furthermore, Chapter 2 will discuss the interaction between the historical conceptions of piracy in Southeast Asia with European economic and political expansion in the region, highlighting issues faced by the European powers in suppressing local piracy, which will also provide material for further comparison with the contemporary piracy problematique.

Chapter 3 moves to the contemporary period. Each section deals with causative factors of piracy stemming from issues of state control that contribute to an environment making piracy more thinkable and practicable. The first section will focus on constructing what is motivating piracy, creating a large potential labour pool of piracy that is beyond state control. This discussion will emphasize economic and social marginalization as well as cultural continuities with the socio-cultural matrix of the past. The second section focuses on the state’s inability to control the means of its own legitimacy, how piracy has emerged from gaps in this control, and what has caused these gaps to appear. The third section discusses more technical and “practical”
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reasons why piracy has re-emerged beyond state control, looking at the available tools, intelligence, and tactics of pirates and their ability to create a suite of technology complimentary to the weaknesses of their targets and the state. Chapter 4 will draw on previous discussion presenting several remedial approaches, emphasizing international cooperation, policing, structural development, and information gathering, as a way forward in addressing the roots/causative factors of contemporary maritime piracy in Southeast Asia. The final section will provide brief conclusions, and address the feasibility of these policy directions and what the implications of this are.

Notes

3. In the early 1990s piracy began to increase not only in maritime Southeast Asia but all over the world, in parts of the Americas (Brazil, Ecuador, Dominican Republic, Columbia), Africa (Nigeria, Somalia, Angola, Guinea), and the Bay of Bengal (India, Bangladesh, Sri Lanka). Although a worldwide phenomenon, each year for the last twelve years Southeast Asia has accounted for more incidents than any other region in the world ("Piracy and Armed Robbery Against Ships Annual Report", 1 January - 31 December 2003, Piracy Reporting Centre [Kuala Lumpur: ICC International Maritime Bureau, 2003], p. 5; "Piracy and Armed Robbery Against Ships Annual Report", 1 January - 31 December 2004, Piracy Reporting Centre [Kuala Lumpur: ICC International Maritime Bureau, 2004], p. 5).

Prior to the International Maritime Bureau (IMB) forming the Piracy Reporting Centre in Kuala Lumpur, which began collecting piracy statistics in 1992, there were hardly any reported incidents of piracy. However, an all time high of 469 incidents were recorded for 2000, and the second highest of 445 incidents were recorded in 2003 ("Piracy Annual Report", 2003, p. 5). Between 1992 and 1999 the average number of incidents reported worldwide was 183, and between 2000 and 2004 the average number of incidents reported worldwide has jumped to 389. Since 1992 Southeast Asia has accounted for approximately 52 per cent of the world total, and Indonesia itself has accounted for 51 per cent of the total incidents in Southeast Asia and 27 per cent of the world total (these averages and percentages were calculated by the author based on statistics provided in the aforementioned Annual Reports). See also Appendix B for
further statistical breakdown of Southeast Asian and Indonesian incidents of piracy calculated from IMB statistics.

4. The waters of Southeast Asia are taken to include the following regions all listed as individual regions for which the IMB collects data: the littoral states of Southeast Asia, China/Hong Kong/Macau region, Hainan/Luzon/Hong Kong Triangle, the Singapore Strait, and the South China Sea, thus excluding the contiguous regions of the East China Sea, Northeast Asia, and the Bay of Bengal region. These areas will form the regional scope of “Southeast Asia” for the rest of this text.


14. In particular see the works of James Warren on Sulu, the Iranun and the Balangangi, the thoughtful article by N.F.M. a Campo on the discourse of piracy, the works of history by Barbara and Leonard Andaya, Dian Murray’s work on piracy in southern China, Rubin’s work on the law of piracy, and Janice Thomson’s look at piracy in European state formation, among others cited in this text.


17. Criminal in this sense defines actions punishable under local, or municipal, or civil law, as opposed to necessitating recourse to international law or law governing war.

18. Meaning private motives, as opposed to political motives.

19. This phrase literally means "enemy of humankind", or "enemy to all humankind".


22. Monica Brito Vieira, “Mare Liberum vs. Mare Clausum”, *Journal of the History of Ideas* 64, no. 3 (July 2003): 371.


26. This was made possible by a pivotal moment in history when the English Navy in 1805 under the command of Vice Admiral Horatio Lord Nelson [at cost to his own life] defeated the French navy outside the Spanish port of Cadiz, off Cape Trafalgar. See Kenneth J. Hagan, *This People’s Navy* (New York: The Free Press, 1991), p. 63.


28. Unless otherwise specified, UNLCS from here on will be used to refer to the 1982 UNCLOS III.

30. See also Appendix A for more information on UNCLOS, including clarification of territorial designations such as "territorial waters".
40. Ibid.
42. Ibid., p. 272.
47. See Chapter 3 under the section heading Patronage of Piracy, subheading Organized Crime on p. 75, for further discussion of this high-end organized piracy.
48. See, for example, Abhyankar, "Piracy and Ship Robbery", pp. 30–31, for a discussion of the attack on the MV Marta involving the theft of $2 million
of tin plate, and see also discussion of the *Alondra Rainbow*, *Petro Ranger*,
and *Tenyu* later in this text (Chapter 3).

49. Liss, “Maritime Piracy”, p. 61; Eric Hobsbawm, *Bandits* [New York: Pantheon
Books, 1981].

50. Maritime security is rather self-explanatory as security concerns related to
the maritime realm. However, the other terms may not be as familiar. GAP
is a term designating those security threats stemming from non-state actors
and non-governmental processes and organizations that exist in the “grey
areas” of states where state control is not fully realized (Peter Chalk, *Non-
Military Security and Global Order* [New York: St. Martin’s Press, LLC,
2000], pp. 2–3). Transnational crime is simply criminal activity that crosses
international borders and is therefore largely beyond the control of any one
specific nation. A “non-traditional security threat”, as it was described in
neo-realist security literature during the Cold War, was a security threat
that was not an immediate risk of causing full-scale war between nations
and therefore warranted less attention. Transnational crime and GAP [in
which piracy could go under either term] would fit under that rubric.

51. See almost any historical work cited in this book for examples where
disciplinary limits have necessarily cut off applying historical accounts to
contemporary phenomena; it is simply outside the scope and aim of these
works.

52. Michael Aung-Thwin, “Spirals in Early Southeast Asian and Burmese
History”, *Journal of Interdisciplinary History* XXI, no. 4 (Spring 1991): 592.

53. See, in particular, James Warren, “A Tale of Two Centuries”, ARI Working
Asia: A Historical Comparison”, *MAST* 1, no. 1 (2002): 67–83, online
February 2004).


55. Ibid., pp. 8, 41–42, 54.

56. Muthiah Alagappa, “Introduction”, in *Political Legitimacy in Southeast Asia*,
p. 2; Micheal Leifer, *Dilemmas of Statehood in Southeast Asia* [Vancouver:
University of British Columbia Press, 1972], p. 105; Leslie Green, *The