WHERE THERE'S SUGAR,
THE ANTS COME:
PIRACY IN THE STRAIT OF MALACCA

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"The increase in international trade over the past decade means more opportunities for pirates to attack merchant ships. Where there's sugar, the ants come."
- Hamid Mustapha, Director of the Royal Malaysian Police, 2001

The Strait of Malacca is the world's second busiest commercial shipping lane and the lifeline of the economy of many countries that depend on the safe and timely shipment of oil and industrial goods to support economic growth. However, maritime piracy continues to be a paramount threat in the Strait. This paper analyzes the effectiveness of current international laws against piracy, the characteristics and motivations of pirates, and the measures in which involved states can take to combat piracy and ensure greater safety of maritime commerce.

The Strait of Malacca is a waterway corridor that is 800 km long and varies in width from 3 to 200 km. This waterway is located between the west coasts of Thailand and Peninsular Malaysia (West Malaysia) on the northeast and the east coast of the Indonesian island of Sumatra on the southwest. At different times in its history, the Malacca Strait has been controlled by the Arabs, Dutch, Portuguese, and British, and has

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been used to link Africa and India to China, Japan, and Southeast Asia. Today, the Malacca Strait is the world's second busiest commercial shipping lane, surpassed only by the Dover Strait which runs between Britain and France.[a] Every day, approximately 240 ships carrying oil and industrial goods pass through this corridor; this amounts to one ship every six minutes.[b] By using the Strait instead of ferrying around the larger islands of Indonesia, a ship can save up to 1,600 km, or roughly three days of sailing time.[c]

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The relative narrowness of the channel, the climatic conditions that occasionally hide small pirate crafts from radar screens, and the relatively slow speed at which the ships must proceed through the Strait are all factors that make the Malacca Strait uniquely vulnerable to pirate attacks.[d] With the tightest point measuring only 3 km wide and 25 m deep, ships must limit their speed to proceed through the Strait. This has been an advantage for pirates, who approach the vessel via inflatable, high-speed crafts. Moreover, the haze that occurs in the southern part of the Malacca Strait during monsoon seasons can hinder visibility, making the ships more vulnerable to attacks.[e] The Strait also passes through Indonesian waters, which are largely unprotected by coast guards, and contains tiny islands and coves that provide refuge for pirates making their escape.[f]

Piracy has been classified as a universal crime, a *hostis humani generis* (a foe to all humankind) under international law. However, piracy continues in the Malacca Strait, and many countries are still scrambling to determine how to address the problem. As we delve deeper into the issue at hand, many dilemmas emerge, including questions over jurisdiction, law, and effectiveness of enforcement. The goal of this paper is to analyze the current laws against piracy and their effectiveness, the characteristics and motivations of pirates in the Malacca Strait, and the measures which involved states can take to combat piracy and ensure greater safety of maritime commerce.

MODERN LAWS AGAINST PIRACY

Historically, piracy has had deep roots in the Malacca Strait. At the beginning of the 15th century, the Strait was surrounded by a number of small fishing villages often used by pirates to market their loot.[g] As trade expanded in the Strait, piracy could only be mitigated by making alliances with the Orang Laut, the natives of the region whose primary profession was stealing from ships. During the 16th century, political struggles between the Malaccan Sultanate and the colonial powers created conditions for piracy to increase. Although piracy has been present throughout the history of the Malacca Strait, critics believe that the term piracy

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was "exported to and applied in Asia by British political and intellectual figures of the seventeenth and eighteenth centuries."[h]

To this day, one of the most contentious issues is how to define piracy. The first attempt to create a modern definition was made in Article 3 of the Harvard Draft of the 1932 International Convention on Piracy, which states that piracy is any of the following acts, committed in a place not within the territory or jurisdiction of any state:

(1) Any act of violence or depredation committed with intent to rob, rape, wound, enslave, imprison, or kill a person or with intent to steal or destroy property, for private ends without bona fide purpose of asserting a claim or right, provided that the act is connected with an attack on or from the sea or in or from the air. If the act is connected with an attack, which starts from on board ship, either the ship or another ship that is involved must be a pirate ship or a ship without national character,

(2) Any act of voluntary participation in the operation of a ship with knowledge of facts which make it a pirate ship,

(3) Any act of instigation or of intentional facilitation of an act described in (1) or (2) of this Article.

There are many restrictions with the 1932 Draft Convention, one of which includes acts committed "not within the territory or jurisdiction of any state." A problem arises because most pirate attacks occur in territorial waters and not the high seas; this limitation thereby renders piracy in territorial waters legally unpunishable under international law. The situation is further complicated when the attack takes place in the jurisdiction of one state, but the pirate leaves the territory of that state and must be apprehended in the boundaries of a second state, which has inadequate laws against piracy and extradition treaties.[i] Additionally, Articles (1) and (3) denote that piracy is undertaken "for private ends without bona fide purpose." The Article fails to address circumstances in which pirates attack ships for public or political agendas, and not for monetary gains. The lack of distinction between economic and political intent of the attack can be attributed to the prevailing belief at that time: states were concerned with piracy insofar as it interfered with commercial shipping and transportation. Nevertheless, the 1932 Draft Convention became a model for the 1958 Convention on the High Seas.

The next attempt to define piracy under international law came with the 1958 Convention on the High Seas[j], Article 15, which redefined piracy as:

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

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

(b) against a ship, aircraft, persons or property in a place outside the jurisdiction of any state,

(2) 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,

(3) Any act of inciting or of intentionally facilitating an act described in (1) or (2) of this article.

Under the 1958 Convention, acts of piracy which constitute international crimes were again restricted to the high seas; therefore, any acts of piracy committed within the jurisdiction of a state could not be tried as piracy under international law. Furthermore, the 1958 Convention restricted the definition of piracy to acts committed by one ship against another ship. Under this stipulation, the definition of piracy did not include internal mutiny or the seizure of a vessel by the crew or passengers.[k] Although the internal seizure of ships may not have been an issue at that time, the 1958 Convention, if applied to the maritime

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conditions of today, would be severely limited by this omission. According to the Clarkson Research studies,[l] in 1995, 75 percent of the world's 1.2 million seamen came from developing countries, some of which include Pakistan, Indonesia, and Malaysia.[m] These countries are currently struggling to fight terrorist activities within their borders. Therefore, the threat of terrorists joining ships as seamen, and then internally hijacking the vessel, is a realistic possibility.

Notwithstanding the aforementioned limitations, an identical definition to the 1958 Convention was included in Article 101 of the 1982 United Nations Convention on the Law of the Sea (also called the LOS Convention).[n] This Convention augmented the fight against piracy by mandating that all states must cooperate "to the fullest possible extent" in repressing piratical acts on the high seas or places outside the jurisdiction of any state.[o] Most importantly, however, the LOS Convention also made changes to maritime boundaries that complicate efforts to control piracy in the Malacca Strait.

The LOS Convention recognized the right of coastal states to declare a 12-mile territorial zone, a 24-mile contiguous zone, and a 200-mile Exclusive Economic Zone (EEZ) extending from their territorial shores. As a result of the convention's redrawing of maritime boundaries, the Malacca Strait was no longer considered an international strait or a territory of the high seas due to its narrowness; however, the Strait could still be used for international navigation, as long as the sovereignty and the sovereign rights of the coastal states were not violated by the ships.[p] On one hand, the Convention transferred full jurisdic-

tion of this corridor to three coastal states– Indonesia, Malaysia, and Singapore– and gave these states the right to make regulations relating to maritime transit passage and to take any actions necessary to ensure safe international navigation. On the other hand, it created a problem by shifting 85 to 93 percent of all acts that were previously considered piracy into the jurisdiction of the coastal states.[q] Consequently, attacks in the Malacca Strait that occurred while the vessels were heading toward international waters or the high seas would only be punishable by one of the three states that had jurisdiction at the time the offense was committed.[r, s]

Another addition to the law governing maritime safety came in 1988, after the 1985 terrorist hijacking of the *Achille Lauro*, a cruise ship carrying over 400 passengers and crew. The ship was hijacked by four heavily armed Palestinians who demanded the release of 50 Palestinian prisoners.[t] The *Achille Lauro* incident is said to have indirectly led the United Nations International Maritime Organization (IMO[u]) to sponsor a conference in 1988 which brought about the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation[v] (also called the SUA Convention, the Rome Convention, or the IMO Navigation Convention). The SUA Convention defined piracy as an offense whereby a person unlawfully and intentionally:

(1) seizes or exercises control over a ship by force or threat thereof or any other form of intimidation,

(2) performs an act of violence against a person on board a ship or its cargo which is likely to endanger the safe navigation of that ship,

(3) destroys a ship or causes damage to a ship or its cargo which is likely to endanger the safe navigation of that ship,

(4) places or causes to be placed on a ship, by any means whatsoever, a device or substance which is likely to destroy that ship, or cause damage to that ship or its cargo which endangers or is likely to endanger the safe navigation of that ship,

(5) destroys a ship or seriously damages maritime navigational facilities or seriously interferes with their operation, if any such act is likely to endanger the safe navigation of a ship,

(6) communicates information which he knows to be false, thereby endangering the safe navigation of a ship, or

(7) injures or kills any person, in connection with the commission or the attempted commission of any of the offenses set forth in (1) through (6).

Although the SUA Convention was developed to combat terrorism, it has also been promoted as an effective anti-piracy law, since it extends the definition to include both economically and politically motivated acts. The SUA Convention "filled many of the jurisdictional gaps highlighted when the acts endanger the safety of the international navigation and occur on board national or foreign flag ships while underway in the territorial sea, international straits, or international waters."[w] The SUA Convention obligates the signatory nation either to extradite accused pirates found within its jurisdiction, or to prosecute the offenders under its own laws. Additionally, the Convention required states to establish jurisdiction over the accused, regardless of the offender's citizenship, whether the act occurred on a ship flagged by the state or within the state's territorial waters.

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The SUA Convention undoubtedly expanded the jurisdictional limitations of the previous convention by obliging the contracting governments to extradite or prosecute alleged offenders.[x] However, the effectiveness of the SUA Convention against piracy is limited. First, the Convention is merely reactive, focusing on the extradition and prosecution of offenders rather than finding proactive measures to prevent piracy itself.[y] Secondly, most critics claim that the lack of support from the United States may undermine the Convention's utility against piracy.[z] The United States, which has the world's strongest naval forces and the most effective means to combat piracy globally, has not signed the Convention because it contains a clause that refers disputes to the International Court of Justice.[aa, ab]

Since September 11, 2001, the term piracy has become conflated with terrorism, or "political piracy." Political piracy is defined as "any

illegal act directed against ships, their passengers, cargo or crew, or against sea ports with the intent of directly or indirectly influencing a government or group of individuals."[ac] However, due to the limitations of this paper, political piracy will be only briefly covered.

PIRACY IN THE MALACCA STRAIT

Piracy in the Malacca Strait is "a complex socio-political-economic activity whose legitimacy was often justified by trade rivalries and even warfare."[ad] Trade has always been a vital aspect of Southeast Asia, and protecting one's trade, or destroying the trade of one's rivals, was both a political and an economic strategy. By the late 19th century, however, the European colonial powers were able to eradicate large-scale maritime piracy in the Malacca Strait.[ae] Nevertheless, piracy was never completely eliminated and has made a comeback in recent years.

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The International Maritime Bureau[af] (IMB) began compiling statistics on piracy in 1991 and found that attacks in the Malacca Strait have risen due to "increasing poverty, rebel activity, and lawlessness in Indonesia."[ag] According to the IMB, the Malacca Strait experienced 38 actual and attempted attacks in 2003, the second highest record since 1991, and 37 attacks in 2004.[ah][ai] In 2005, pirate attacks in the Malacca Strait declined by 29 percent because the Asian tsunami destroyed ships that were perhaps used by pirates. Although no piracy incidents occurred in the first two months after the tsunami, attacks have resumed. The waters in the northern part of the Strait near Aceh are especially dangerous due to the ongoing political unrest waged by Acehenese separatist groups against the Indonesian government. The Aceh province is believed to serve as a base for criminal syndicates and Islamic militants.[aj]

Although politically motivated attacks remain a great threat, most of the attacks in the Malacca Strait are motivated by economic poverty and greed. Reduced fish stock due to coral reef damages and increased competition from large, commercial trawlers have made it difficult for

local fishermen and sailors to make a living. As a result, these desperate, out-of-work individuals turn to low investment, low return crimes. [ak] Pirates in this type of situation are opportunistic; they sneak onboard ships and steal whatever they can take, including cash, electronic equipment, and jewelry, and immediately leave.[al] Generally, there is little or no violence involved, although pirates may carry arms to intimidate the crew into compliance. This hit and run theft is the most common type of attack in the Malacca Strait.

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On the other end of the spectrum is the permanent seizure of the ships. This form of piracy requires an extensive degree of organization. Pirates must have capital investment to purchase arms and speedboats or rafts, coordinate a large group to attack the ship, obtain insider information on the contents of the cargo, have a location where the ship can be disposed of or disguised after a successful robbery, and find a market to unload the loot.[am] These sophisticated attacks often derive support from a third party, including government officials or transnational crime groups.[an] Corrupt government officials and organized crime syndicates operating from Singapore, Hong Kong, Indonesia, Thailand, Malaysia, Taiwan, mainland China and the Philippines have been known to hire local fishermen and sailors and to supply the information and arms necessary to successfully carry out these attacks.[ao] According to a Norwegian cargo insurer, "the average villager can't afford the types of guns and boats these [pirates] have."[ap]

Furthermore, permanent seizures of ships may necessitate the disposal of the hijacked ship's crew. Some pirates will send the crewmembers adrift in a raft; others will hold the crewmembers hostage and demand a ransom. Although the kidnapping of crewmembers declined from 359 incidents in 2003, to 148 in 2004, the IMB has reported that "pirates were more violent than ever in 2004." A total of 30 crewmembers were murdered, compared with 21 in 2003. For example, on January 5, 2004, Indonesian pirates killed four seamen on the Indian-flagged 640 GT oil product tanker, *Cherry 201*, after the vessel's owner was slow in paying the 70 million rupiah (US$8,000) ransom.

Compounding these threats to cargo and crew, littoral states and the international community are also worried about the potential environmental disasters that may result from the hijacking of oil or chemical tankers.[aq] The October 2002 terrorist attack on the *Limburg*, a French supertanker carrying 400,000 barrels of crude oil, is a reminder of this vulnerability. In this incident, a small boat packed with explosives blew up alongside the *Limburg* off the coast of Yemen. Soon after, the ship caught fire and began leaking oil. One crewmember was killed and 90,000 barrels of oil spilled into the sea.[ar] If a similar situation happened in the Malacca Strait, it would not only severely disrupt trade in the corridor, but would also be a catastrophic environmental disaster to the local communities along the Strait.

The difficulty in apprehending pirates is complicated by national sovereignty, which prohibits one nation from entering another nation's boundaries, even in hot pursuit of pirate ships. If the coastal states do not have action plans to transmit communication to neighboring authorities who can apprehend pirates that cross into their territorial borders, the pirate can easily escape. Furthermore, once a ship has been attacked and stolen, recovery is difficult. While it seems ridiculous that pirates can conceal the whereabouts of something as large as a ship, the fact is that this is quite easily done. After the ship has been hijacked, the pirates will start by painting over the name. Ships are often bought and sold so regularly that name changes are common and easily done. Although every ship must carry registration papers, to guarantee the legitimacy of the ship, several of the more lax "flag" states such as Panama, Myanmar, and Sri Lanka offer temporary registration of ownership with few questions asked.

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Cargo ships must limit their speed to proceed through the narrow Malacca Strait, making them vulnerable to pirates approaching in inflatable, high-speed crafts.
Photo by Brian Tobin

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STAKEHOLDERS AND THEIR CONTRIBUTION TO COMBATING PIRACY

"Secure waterways are vital to the peace and prosperity of everyone, and of all governments, in the East Asia-Pacific region. The oceans and the waterways between them provide trade, communication, travel, and access to energy resources on which the growing economies of Asia depend." This statement was quoted from a speech made by Thomas Doughton, Political Affairs Counselor of the Embassy of the United States in Kuala Lumpur on the maritime conditions of the Malacca Strait. It is estimated that by 2005, some 71,000 ships, including over 2,500 tankers, will navigate through the Malacca Strait.[au] Because the Malacca Strait is vital to both the regional and global economy, elimi-

nating piracy is, to a certain extent, the responsibility of all stakeholders in the shipping chain, including ship owners and crew members, littoral states, user states, and the international community. This section focuses on the contribution each stakeholder has made to deal with piracy.

SHIP OWNERS AND CREWMEMBERS

Ship owners can take precautions to reduce their vessels' vulnerability to piracy and armed robbery—whether on the high seas, at anchor, off ports, or when underway through a coastal state's territorial waters— by installing fire hoses, surveillance cameras, and security alert systems.[av] Although smaller shipping companies may find this prohibitively expensive, piracy-deterrent technologies are beneficial for oil tankers or larger ships because of their valuable cargo and its potential loss to hijacking. Several notable efforts have been made in recent years to bolster technological deterrents. In June 2000, the IMB introduced an anti-piracy tracking system called ShipLoc, a technology that reports on the position of a vessel via satellite network and allows the ship to be located from anywhere in the world.[aw] Furthermore, as of July 2004, all ships weighing over 500 tons are required by the IMO to install a Ship Security Alert System (SSAS). In the event of an attack, the crew can activate an alarm button, which then sends a distress signal to the ship owner and relevant authorities.[ax] ShipLoc and the SSAS facilitate communication and allow law enforcement agents to react quickly in an event of piracy or armed robbery against ships.[ay]

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If an attack has occurred, the ship owner can assist law enforcement authorities and increase the probability of apprehending the attackers by immediately reporting the incident. However, unless violence has occurred during the attack, ship owners are reluctant to lodge a complaint out of concern for investigational delays, which can incur operational costs of about US$25,000 per day. Similarly, ship owners may fear that

once the incident has been made public, they will have to pay higher insurance premiums, and their crew members will demand increased hazard pay to compensate for the risk to their security. Furthermore, ship owners do not want to tarnish their company's reputation or cause diplomatic offense to the states with which they must regularly trade.[az] These factors prevent ship owners from reporting the attacks, thereby hindering any follow-up actions that local authorities could undertake to capture or prosecute the offenders. The concern for delay, cost, and personal reputation are so great that an estimated 50 percent of attacks go unreported.[ba]

Some ship owners have begun looking at hiring mercenaries, or trained soldiers, to accompany ships through piracy-prone areas. Two companies employing mercenaries, Marine Risk Management and Satellite Protection Services, have recently offered the shipping companies mercenaries who can be dispatched by air to deal with pirates. However, employing mercenaries poses tracking and safety problems. While deploying mercenaries to handle attacks in the narrow Malacca Strait is feasible, locating a vessel in the vast Indian Ocean or South China Sea will prove more difficult. Furthermore, because mercenaries are armed and trained to fight, authorities fear that this will increase the potential risk for violence between the involved parties during an attack.

Although crewmembers are not advised to carry arms, as this could again further exacerbate the level of violence during an attack, they can take other measures to reduce the ship's vulnerability to pirate attack. For example, the IMB suggests that crewmembers avoid anchoring the ship along the Indonesian coast of the Strait, where continual political unrest in the Aceh province makes the area particularly dangerous. Also, when going through the Strait, the crewmembers can turn on all lights and fire hoses, maintain vigilance, and proceed at full speed when possible.

STATES WITH JURISDICTION

In order to understand the role that the three states with jurisdiction in the Malacca Strait can play in eradicating piracy, the historical evolution and underlying causes of piracy in each state must first be examined. Indonesia, Malaysia, and Singapore are each considered in this context by turn.

Indonesia—Indonesia, an archipelago country of 17,000 islands—3,000 of which are inhabited by many people of different ethnicities, religions, and dialects—is the world's largest maritime state. In some parts of Indonesia, piracy is considered a standard way of life, and an occupation handed down over the centuries. [bb] Within Indonesia's islands are thousands of unofficial anchorages, which serve as transit points for smuggled goods, ranging from luxury cars from Singapore to migrant workers bound for Malaysia. [bc]

According to the IMB, Indonesia's deteriorating economic and political situation is the root cause of increased attacks in the region. [bd] Although Indonesia's law states that piracy and armed robberies in Indonesian waters or coastal areas are serious crimes under its Criminal Law (punishable by up to 15 years imprisonment, or life imprisonment or the death penalty if the crime itself resulted in death), enforcement of such laws is limited. Since the 1997 Asian financial crisis, Indonesia's ability to secure its waters has been severely hampered by a continual lack of military funding. From 1998 to 1999, the government had to spend US$65 billion bailing out its banks and is currently struggling to meet interest payments. [be] Even before the crisis, Indonesia spent less than five percent of its GDP on its military, the lowest in Southeast Asia. [bf] The idea of a user pay system has been discussed as a way to find funding for states that do not have money to increase naval monitoring. This proposal may be useful, especially for Indonesia, which is too economically strained to devote funding to these types of operations.

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Moreover, political unrest that broke out after the fall of President Suharto's rule in 1998 has restricted Indonesia's security force, including many of its navy's 115 ships, from being able to patrol the Malaccan waters. To effectively maintain security throughout its 17,000 islands, Indonesia would require an estimated 400 to 500 warships. [bg] As a result of Indonesia's limited capability to police its territorial waters, pirate attacks have occurred as frequently as once every four days in 2004. Although the Indonesian government claims that local authorities are stretched to their limits, corrupt officials may also account for Indone-

sia's nonchalance, as "ship owners have complained that distress signals to Indonesian authorities go unanswered."[bh]

Indonesia has been reluctant to involve other parties, mainly the United States, in monitoring the safety of the Malacca Strait, stating that to do so would infringe on the sovereign rights of coastal states. According to Indonesia's Foreign Minister Hassan Wirayuda, "It is within the boundaries of our own sovereign rights and jurisdiction to deal with the issue…[the] security of the Straits of Malacca is the responsibility of the coastal countries, not that of any third country…we hope the US will do the appropriate thing, namely respect the international provisions." Although Indonesia does not welcome outside intervention in the policing of the Malacca Strait, it has been open to proposals by user states and other stakeholders to assist its law enforcement in maintaining and strengthening the capacity to coordinate efforts with regional and interested parties, and to increase training programs for maritime security officers.[bi] In June 2004, Indonesia finally relaxed some of its claim of sovereignty and expressed an interest to collaborate with Malaysia and Singapore in joint efforts to guard against piracy and terrorist attacks. The following month, the three littoral states launched coordinated patrols starting with seven ships from Indonesia, and five ships each from Singapore and Malaysia.[bj] The ships would provide round-the-clock naval patrols in each country's respective territorial waters. Furthermore, the coastal states established a hotline to facilitate communication between three naval centers located in Indonesia, Malaysia, and Singapore. As a result, pirate attacks in Indonesian waters declined from 121 in 2003 to 93 in 2004. However, attacks in Indonesian waters still account for over 25% of the world's piracy incidents.[bk] Although maritime security and law experts believe that the 2004 trilateral agreement to coordinate patrols have had some impact on piracy, but it will not entirely solve the problem.[bl] Experts believe that a crackdown on piracy and terrorist activities within Indonesia will have a stronger impact.[bm]

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Malaysia—Malaysia is the world's 17th largest trading nation, with many of its main ports, commercial cities, and densely populated areas located along the Malacca Strait. Although Malaysia believes in "pool[ing] resources, knowledge, technology, and expertise" to safeguarding the Strait, it is also hesitant to involve outside parties in the patrolling of the Malaccan corridor.[bn] Like Indonesia, Malaysia believes that "sovereignty, sovereign rights and jurisdiction should never be considered as hampering cooperative initiatives to ensure the security of the maritime domain."[bo]

Nevertheless, Malaysia has been more open than Indonesia to collaboration with other states in combating piracy. For example, in November 2001, it participated in joint exercises with Japan, and in September 2004, Malaysia began talks with Singapore about placing trained guards on board ships to help deter piracy and armed robbery against ships. In June 2005, the Malaysia Maritime Enforcement Agency (MMEA), a paramilitary force modeled after the Coast Guard in the United States, began patrolling Malaysian waters with 72 vessels and over 4,000 personnel. Moreover, Malaysia is in the process of acceding to the SUA Convention and has taken steps to amend its Penal Code to address maritime robbery committed in its jurisdiction.[bp] Malaysia has also given authority to seven agencies to enforce various pieces of maritime legislations; these agencies include the Royal Malaysian Police, the Fishery Department, the Royal Customs and Excise, the Marine Department, the Royal Malaysian Navy, and the Department of Environment, and the Department of Immigration. Through these various initiatives—combining both unilateral and bilateral approaches—reported attacks in the Malaysian waters are significantly lower than on the Indonesian side. Statistics from the Malaysian Marine Police indicate that in 2004, there were nine armed robberies against ships in the Malaysian territorial waters of the Malacca Strait, compared with 93 incidents in 2004 in Indonesian waters.[bq, br]

Finally, Malaysia currently serves as the site for IMB's Regional Piracy Reporting Center, which provides annual and semi-annual reports on piracy and armed robbery against ships. Working closely with the local law enforcement agencies of each individual country, the Center offers support to assist owners and crew that have been attacked, report piracy and armed robbery at sea to local authorities, locate vessels that

have been seized by pirates, recover stolen cargo, investigate cases to help prosecute offenders, and collect information on piracy around the world.

Singapore—Located on the tip of the Malay peninsula, Singapore is the world's busiest port in terms of shipping tonnage, the world's second busiest transshipment port, the world's top bunkering port, a key ship building and repair center, and has the seventh largest merchant fleet in the world.[bs] Singapore has long realized the importance of a safe and efficient port, as its economic well-being is dependent on trade. Maritime trade accounts for approximately 6 percent of Singapore's GDP, amounting to approximately US$5 billion. The government refers to trade as the country's lifeblood; therefore, the closure of one of its most important trading channels—the Malacca Strait—could be disastrous for this country's trade-dependent economy.

Singapore is a hub for western multinational companies surrounded by Muslim dominated Indonesia and Malaysia. Out of the three littoral states, it is the most advanced in implementing anti-piracy policies. In May 2004, Singapore became the first of the Malaccan coastal states to accede to the SUA Convention. Additionally, Singapore has applied state-of-the-art technologies to enhance the safety of navigation in its territorial waters and the Strait, and has set up several maritime security bases in its ports.[bt] Generally, pirates avoid Singapore's coastal waters, opting instead to seek the refuge on the uninhabited and unmonitored islands of Indonesia.[bu] The strict enforcement and vigilance of Singapore authorities has greatly suppressed piracy—in 2004, Singapore reported only eight attacks.[bv]

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Singapore has long championed multilateral patrols, and welcomed the idea of American and Japanese naval patrol assistance in combating piracy. According to Singapore's Defense Minister, Teo Chee Hean, "The full effects of maritime terrorism extend far beyond the littorals. The littoral states are obviously not the only stakeholders in the Malacca

Strait. Other users have a strong economic, if not also strategic, inter-est in ensuring that the Malacca is kept open and safe." Nevertheless, Singapore's efforts to involve multilateral patrols have been hampered by Indonesia and Malaysia's reluctance to cooperate. In July 2004, how-ever, Singapore made significant progress in involving its neighbors in a joint regional patrol to monitor and ensure the safety within the Strait. Additionally, on November 11, 2004, Singapore agreed to serve as a base for an "information-sharing center" in which ten ASEAN members and six other Asian countries can report attacks by pirates and armed sea robbers in the region. Furthermore, in March 2005, Mr. Teo called on the 24 member groupings at the ASEAN Regional Forum meeting to move beyond dialogue on maritime security and work towards con-ducting joint exercises.[bw] These multilateral initiatives add to the list of Singapore's continued commitments to ensure maritime safety in the Malacca Strait.

STATES WITHOUT JURISDICTION[bx]

United States— The United States also has an interest in ensuring the safety of the Malacca Strait. The United States is the world's larg-est trading nation. Although losses due to piracy are difficult to esti-mate, America's reliance on trade makes piracy a concern that merits participation. Since September 11, 2001, the United States has viewed extremist groups in Indonesia, Malaysia, Thailand, and the Philippines as potential threats to maritime commerce.[by] U.S. security experts fear

> *U.S. security experts fear that terrorists will hijack a supertanker and drive it into the ports along the Malacca Strait, disrupting the flow of oil to East Asia and blocking U.S. naval mobility and flexibility.*

that terrorists will hijack a supertanker and drive it into the ports along the Malacca Strait, disrupting the flow of oil to East Asia and blocking U.S. naval mobility and flex-ibility.[bz] Furthermore, the United States has little confidence in the capacity and will of Southeast Asia to prevent such disaster.[ca] The United States has been a strong pro-ponent in pushing littoral states to monitor the safety of the Malacca Strait. Addition-ally, the United States has offered to help monitor the route with its naval ships. However, this interest is not al-ways well-received; it is viewed by Indonesia and Malaysia as a way for the United States to exert imperial control in the region.

In an effort to encourage littoral states to do their part in combating piracy, the United States has proposed a capacity-building program under the Regional Maritime Security Initiative (RMSI). The RMSI concept involves four "elements" to build an effective, multilateral approach to maritime security. These elements include: (1) increasing situational awareness through enhancement of technological equipment and training of law enforcement officers of involved states, (2) initiating communication and cooperation between counterpart agencies and neighboring states, (3) developing and strengthening the legal frameworks to combat piracy through bilateral and multilateral agreements, and (4) improving the decision-making structure to allow effective responses to maritime threats. The United States has been able to enlist the support of Singapore and Japan in this endeavor, but Indonesia and Malaysia remain wary of U.S. intentions.

Japan—On October 22, 1999, ten to fifteen Indonesian armed pirates stormed the *Alondra Rainbow*, a Japan-bound freighter, only 20 minutes after it had left the port of Kuala Tanjong in Indonesia. Using speedboats, the pirates hijacked the ship's US$20 million cargo of aluminum ingots, and set its 17-member crew (including two Japanese captains and fifteen Filipino sailors) adrift on a raft with little food and water.[cb] When the ship was finally captured by the Indian navy in the Arabian Sea, it had been repainted and 40% of the cargo had been offloaded. Ryoichi Nakajima, director of the Tokyo shipping company that chartered the Alondra Rainbow, stated ''Piracy in Southeast Asia is becoming a serious threat to the shipping business. Shippers, traders and owners of the goods are all facing a possible increase in transport and insurance costs and, of course, greater risk to the security of crew members."[cc]

The high profile *Alondra Rainbow* case is not an isolated incident for Japan. Over the past 11 years, Japan has had more than 140 of its ships hijacked.[cd] Earlier in September 1998, the *Tenyu*, another Japanese freighter bound for the Republic of Korea was hijacked from Kuala Tanjong. The ship was later discovered in China, but the crew and its 3,000 tons of aluminum ingots remain missing. Then in February 2000, the *Global Mars*, a Japanese oil tanker, was attacked off the coast of Malaysia. Its cargo was later recovered, again, in southern China. Ac-

cording to the Ministry of Foreign Affairs in Japan, incidents involving Japanese-related ships numbered 136 from 1995-2001.[ce] Because Japan is a mercantile nation and an island, disruption in the Strait represents a threat to transportation routes and the economic stability of Japan. It is estimated that 80% of the oil that reaches Japan comes from the Persian Gulf via the Malacca Strait.[cf]

Japan is one of the biggest supporters of both regional and multilateral efforts to combat piracy. It has sponsored anti-piracy drills and joint exercises with littoral states, and has cooperated with the United States under the RMSI. In November 2004, Japan led a multilateral initiative to establish an information-sharing center in Singapore; this initiative involved 16 Asian countries in the effort. Furthermore, Japan has taken unilateral steps to devote 10 naval ships to monitoring the high seas around the Malacca Strait. In July 2005, Japan announced its plans to present three new, high-speed patrol boats worth $10.5 million each to the Indonesian government as part of Japan's overseas development assistance. The boats, which will be delivered by 2007, would improve patrols in the Malacca Strait.[cg]

People's Republic of China— Over the last six years, China's increased crude oil shipments have contributed to the tremendous rise in Straits traffic.[ch] China's tremendous economic growth and increased energy consumption have made it dependent on the Malacca Strait, through which, like Japan, it receives most of its oil from the Persian Gulf. Disruption in the Malacca Strait can therefore have serious financial and security effects on China.

China has exhibited a mix of indifference and concern when it comes to capturing and punishing the pirates. In 1998, China allowed the 16 suspected pirates, who hijacked the Japanese freighter *Tenyu* off the coast of Indonesia, to go free without a trial. Officials in China have often refused to prosecute offenders or to return stolen ships and cargo found in Chinese ports.[ci] As a result, pirates regularly steer their loot to China, where vessels can be repainted and renamed, and cargo

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can be easily offloaded and sold on the black market—much of this being accomplished without interference from Chinese law enforcement authorities. With a number of small ports and corrupt customs officials, mainland China remains the world's biggest market for smuggled goods.

Several reasons can explain China's indifference including the initial lack of dependency on the Malacca Strait, corruption, and limited resources to patrol Chinese waters and ports. Nevertheless, China's indifference toward combating piracy is seeing a reversing trend, notably with the high profile *Chang Sheng* case. On November 16, 1998, pirates hijacked the *Chang Sheng*, a Hong Kong-owned vessel transporting coal cinders from Malaysia to Shanghai, and brutally murdered the ship's 23 crew members. The pirates then dumped the bodies overboard into the South China Sea and local authorities became involved after six of the corpses were unexpectedly brought up by fishing nets. Investigation into the case found that this hijacking was a coordinated effort backed by an Indonesian-Chinese businessman, who was a close friend of former President Suharto. In December 1999, China prosecuted 32 of the pirates involved—13 of whom were executed. This case was the first public trial of maritime hijackers in China. It has been praised by shipping companies, which saw China's stricter approach to piracy as a positive step toward promoting greater maritime security. As China's dependency on oil from the Middle East grows, the world should see more participation from Chinese authorities in combating piracy in the Malacca Strait.

The contentious debate over jurisdiction and the reluctance of some littoral states to involve other parties in patrolling the Malacca Strait has hampered multilateral approaches to combating piracy.

INTERNATIONAL INVOLVEMENT

The contentious debate over jurisdiction and the reluctance of some littoral states to involve other parties in patrolling the Malacca Strait has hampered multilateral approaches to combating piracy. So far, Singapore has been the only littoral state that has continually pushed for multilateral cooperation. Traditionally, Indonesia and Malaysia have both been reluctant and sometimes unwilling to accept any joint initiatives.

Recent developments suggest that these unilateral views are changing. For example, all three coastal states have been committed to creating an information-sharing center based in Singapore. This coordinated agreement, reached on November 11, 2004, would allow the 16 countries to substantively exchange intelligence, cooperate in the handling of cases, and deport the offenders found guilty of piracy or armed robbery against ships. Furthermore, multilateral efforts by the Five-Power Defense Arrangement, which includes Malaysia and Singapore, as well as three countries with no jurisdiction in the Malacca Strait—Australia, Britain, and New Zealand—have also been made to enhance maritime security in the region. In August 2004, the Five-Power Defense Arrangement held its first anti-terrorism exercise in the South China Sea.[cj] They have also pledged to increase training of law enforcement authorities and coast guards in the Malacca Strait. These two significant advancements could set precedence for future multilateral efforts to combat piracy. Nevertheless, multilateral cooperation must take place within the boundaries of international law, which inevitably emphasizes state sovereignty—a possible sticking point for cooperative efforts.

Organizations such as the IMO and the IMB have been active in encouraging states to adopt both regional and multilateral approaches. For example, in July 2005, the IMO sponsored a conference bringing together the littoral states, user states, and other stakeholders to discuss maritime threats. This conference identified key issues relating to safety, security, and the environment, and called for enhanced cooperation among littoral states and for ASEAN countries to "move beyond dialogue on maritime security and work towards conducting joint exercises."[ck] For its part, the IMB has "protected the integrity of international trade" by serving as an information source for maritime threats for over 20 years.[cl] The IMB operates a Piracy Reporting Center in Kuala Lumpur, Malaysia and provides round-the-clock information to on piracy threats throughout the world.

CONCLUSION

Maritime commerce accounts for well over half of global trade and is a vital component of the national growth, economic well-being, and security of many states. As such, piracy in the Malacca Strait is a criti-

cal concern for littoral and user states, ship owners, and crewmembers; combating such a threat will require enhanced stakeholder cooperation of stakeholders at all levels. While international law has helped to establish a framework to define and distinguish piracy and armed robbery against ships, and, to some extent, it has protected stakeholders and clearly allocated responsibilities to the relevant states, international law has not fully resolved some of the problems associated with jurisdiction and sovereignty.

Of the three littoral states with jurisdiction in the Malacca Strait, Indonesia and Malaysia have been the least receptive to outside intervention to patrol the corridor, particularly with regards to naval assistance from the United States. Although a number of cooperative efforts have been made in the past five years, progress is still slow. As pirates become more sophisticated—they bear arms, kidnap crew for ransom, and pay no attention to state boundaries when making their escape—it is hoped that littoral states can compromise some of their sovereignty, or at the very least be open to third party assistance in order to improve the process of combating piracy and armed robbery. Nevertheless, regional and multilateral approaches remain the best strategy, as they require states to improve the coordination of information exchange and capacity building, strengthen anti-piracy legal frameworks, and develop an integrated approach to involve security agencies, enforcement agencies, port authorities, and industries.[cm] In the future, piracy may pose such a large threat to global stability that universal jurisdiction over the offenders may be necessary. In the meantime, the biggest challenge today is to sustain the interest among littoral states and other stakeholders to continue to pursue collaborative efforts to safeguard maritime security.

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[b] "Dangerous Waters: Piracy in Asia." *The Economist.* Volume 360, Issue 8231. 21 July 2001: 32.

[c] Dali, 2001: 1

[d] Mitropolous, EE. "Enhancing Navigational Safety in the Malacca and Singapore Straits." Singapore *Journal of International and Comparative Law.* 1999: 311. (3 Sing. J. Int'l & Comp. L. 305)

[e] Ibid, 306

[f] Wiseman, Paul. "Pirates Loot the Fruits of 21st Century Trade 'There is No Law' in Certain Waters of Southeast Asia." *USA Today.* 2 Feb 2001.

[g] Chenoweth, Gene M. "Melaka, 'Piracy' and the Modern World System." *Journal of Law and Religion.* 1998: 111 (13 J.L. & Religion 107).

[h] Ibid, 120

[i] Buhler, Phillip A. "New Struggle with an Old Menace: Toward a Revised Definition of Maritime Piracy." *Currents: International Trade Law Journal.* Winter 1999: 65. (8-WTR Currents: Int'l Trade L.J. 61)

[j] The 1958 Geneva Convention on the High Seas opened for signature on 29 April 1958 and was entered into force on 30 September 1962. It was later superceded by the 1982 United Nations Convention on the Law of the Sea. For the full content of the convention, refer to <http://www.un.org/law/ilc/texts/hseas.htm>.

[k] Smith, George P. "From Cutlass to Cat-O-Nine Tails: The Case for International Jurisdiction of Mutiny on the High Seas." *Michigan Journal of International Law.* Winter 1989: 298. (10 Mich. J. Int'l L. 277)

[l] The Clarkson Research, a subsidiary of H. Clarkson & Co., Ltd., the world's largest ship brokering firm. Based out of London, Clarkson offers chartering service, research, and consultancy in the shipping industry. Refer to <http://www.clarksons.co.uk/> for additional information.

[m] Fokas, Terence. "The Barbary Coast Revisited: The Resurgence of International Maritime Piracy." *University of San Francisco Maritime Law Journal.* Summer 1997: 460. (9 U.S.F. Mar. L. J. 427)

[n] United Nations Convention on the Law of the Seas opened for signature on Dec. 10, 1982 and entered into force on Nov. 16, 1994. It is also known as the LOS Convention.

[o] Buhler, 67

[p] Garmon, Tina. "International Law of the Sea: Reconciling the Law of Piracy and Terrorism in the Wake of Septem-

ber 11th" *The Maritime Lawyer*. Winter 2002: 264. (27 Mar. Law. 257)

q   Menefee, Samuel Pyeatt. "Anti-Piracy Law in the Year of the Ocean: Problems and Opportunity." *ILSA Journal of International and Comparative Law*. Spring 1999: 315. (5 ILSA J. Int'l & Comp. L. 309)

r Buhler, 62

s It should be noted that the attacks committed on the high seas is classified "piracy," whereas attacks committed in territorial waters is "sea robbery" or "armed robbery against ship." Although this distinction was not clearly expressed in the 1932 Draft Convention, the 1958 Convention, or the LOS Convention, the IMO finally adopted Resolution A.922 (22), the Code of Practice for the Investigation of the Crimes of Piracy and Armed Robbery Against Ships in 2002. According to paragraph 2.2, armed robbery against ships is "any unlawful act of violence or detention or any act of depredation, or threat thereof, other than an act of 'piracy,' directed against a ship or against persons or property on board such ship, within a State's jurisdiction over such offenses."

t In October 1985, four heavily armed Palestinians hijacked an Italian cruise ship *Achille Lauro*, a cruise ship carrying over 400 passengers and crew, off the coast of Egypt. The hijackers demanded the release of 50 Palestinian prisoners held by Israel. When the demands were ignored, the hijackers killed Leon Klinghoffer, a sixty-nine year old disabled American tourist, and threw his body and wheelchair overboard. After two days of negotiations, the hijackers surrendered in exchange for free passage. The terrorist boarded an airplane to make their escape, but U.S. Navy fighters intercepted the aircraft and forced it to land in Italy. The terrorist were arrested, tried and convicted (Source: Booth, Forrest and Larry Altenbrun. "Maritime and Port Security, Piracy, and Stowaways: Renewed Concerns over Old Problems." *University of San Francisco Marine Law Journal*. 2003: 4. (15 U.S.F. Mar. L. J. 1))

u The International Maritime Organization (IMO) was established by the United Nations in 1948 as a "specialized agency with responsibility for safety and security at sea and the prevention of marine pollution from ships." Since its establishment, IMO has adopted some 40 Conventions and Protocols and numerous Codes and recommendations relating to safety, pollution prevention, security measures, liability and compensation issue, and facilitation of international maritime traffic. For further information, refer to <www.imo.org>

v Convention for the Suppression of Unlawful Acts against the Safety of maritime Navigation was entered into force on 10 March 1988. It is also known as the SUA Convention, the Rome Convention, and the IMO Navigation Convention.

w Fokas, 440.

x Convention for the Suppression of Unlawful Acts Against the Safety of

Maritime Navigation, 1988 (Source: Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation,1988. 5 Dec 2004. http://www.imo.org/home.asp)

[y] Fokas, 441.

[z] Ibid, 442.

[aa] According to the IMO Navigation Convention, supra note 11, art. 16: Any dispute between two or more States Parties concerning the interpretation or application of this convention which cannot be settled through negotiation within a reasonable time shall, at the request of one of them be submitted…to the International Court of Justice by request in conformity with the Statute of the Court.

[ab] Fokas, 442.

[ac] Menefee, Samual Pyeatt. "Terrorism at Sea: The Historical Development of an International Legal Response." *Violence at Sea.* 1986.

[ad] Young, Adam J. and Mark J. Valencia. "Conflation of Piracy and Terrorism in Southeast Asia: Rectitude and Utility." *Contemporary Southeast Asia.* Volume 25, Number 2. August 2003: 270.

[ae] Ibid, 271.

[af] The International Maritime Bureau (IMB), founded in 1981, is the first anti-crime bureau of the International Commerce Chamber of Commerce. The tasks of IMB is to prevent fraud in international trade and maritime support, reduce the risk of piracy, assist law enforcement in protecting crew, tracks cargoes and shipment, and verifies their arrival at schedule ports. In 1992, in response to the alarming growth in piracy, IMB established the Piracy Reporting Center (PRC) in Kuala Lumpur, Malaysia. (Source: International Maritime Bureau Overview. 5 Dec 2004 http://www.icc-ccs.org/imb/overview.php)

[ag] "Transnational Threats Update." Transnational Threats Initiative of the Center for Strategic and International Studies. Volume 2, Number 6. March 2004: 3.

[ah] "Navy Security Raised in Malacca Straits" *Asia Today.* August 2004.

[ai] Piracy Reporting Center.

[aj] "Transnational Threat Update", 3

[ak] Young and Valencia, 272

[al] Farnham, Alan. "Pirates! Get Set to Have Your Timbers Shivered: Brigands Sack Some 120 Merchant Ships a Year." *Fortune*

[am] Young and Valencia, 272

an Ellis, Eric. "Piracy on the High Seas is on the Rise in Southeast Asia." *Fortune.* 29 Sep 2003.

[ao] McCawley, Tom. "*Sea of Trouble*" Far Eastern Economic Review. 27 May 2004.

[ap] Ellis.

[aq] Young and Valencia, 275.

[ar] Digre, Steiner. "Make Tanker Lanes into No-go Areas for Other Crafts?"

Article on Intertanko website. 5 Dec 2004. < http://www.intertanko.com/ports/ ?printable=1>

[as] According to the Clarkson Research Studies, Ltd., in 1995, 75% of the world's approximately 1.2 million seamen came from developing countries, including 115,000 Filipinos, 80,000 Indonesians, 41,000 Koreans, 20,000 Indians, 20,000 Burmese, and 19,000 Pakistanis.

[at] "Policing the Sea is a Job for Everyone." *The Strait Times.* June 3, 2003.

[au] Doughton, Thomas. "The Straits of Malacca and Challenges Ahead: The U.S. Perspective." *Speech at Conference in Kuala Lumpur.* 11 Oct 2004.

[av] IMO Circular 623/Rev.3

[aw] ShipLoc is based on the Argos satellite system which continuously monitors in near-real time the exact location of vessels anywhere around the world. The system is contained in a small, discreet waterproof unit which includes an Argos transmitter, a GPS receiver, a battery pack in case of main power failure, and a flat antenna. The unit is the size of a shoebox and can be easily concealed in the ship. According to the IMB, ShipLoc costs less than US$300 per month to install and run, and is far less expensive than any other anti-piracy tracking system currently on the market. <www. shiploc.com>

[ax] <www.shiploc.com>

[ay] SOLAS regulation for a SSAS <http://www.iccwbo.org/ccs/news_archives/2000/new_anti.asp>

[az] Dubner, Barry Hart. "Human Rights and Environmental Disaster—Two Problems that Defy the 'Norms' of the International Law of Sea Piracy." *Syracuse Journal of International Law and Commerce.* Spring 1997: 22. (23 Syracuse J. Int'l L. & Com. 1)

[ba] Zou, Keyuan. "Enforcing the law of Piracy in the South China Sea." *Journal of Maritime Law and Commerce.* Jan. 2000: 117. (31 J. Mar. L. & Com. 107)

[bb] Buhler, 61.

[bc] McCawley.

[bd] "Dangerous Water: Piracy in Asia."

[be] McCawley.

[bf] Ibid.

[bg] Bassler, Roseann. "International Disputes over Control of the Oceans." *Georgetown International Environmental Law Review.* Summer 1995: 864. (7 Geo. Int'l Envtl. L. Rev 855)

[bh] McCawley.

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bn Salleh, Wan Napsiah. "Strait of Malacca and the Challenges Ahead: A Malaysian Perspective." *Speech made at a Conference in Kuala Lumpur*. 11 Oct 2004.

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bq Gatsiounis, Ioannis. "Pirates Mock Malacca Strait Security." Asia Times. 9 April 2005.< http://www.atimes.com/atimes/Southeast_Asia/GD09Ae02.html>

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