

ISSUE FOCUS

Finding out the ‘Achilles’ Heels’: Piracy Suppression under International Law and Chinese Law

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Piracy poses a great danger to international security and peace. It is necessary for the international community and individual States to take actions to suppress piracy. Despite international cooperation and existing international antipiracy laws, the international community lacks an effective legal regime to suppress piracy. China has fundamental interests in fighting against piracy and has actively cooperated in accordance with the relevant UNSC resolutions. However, China’s domestic antipiracy laws are defective in their substantive and procedural aspects. Further efforts should be made at both the national and international levels in order to effectively suppress global piracy.

Keywords

Piracy Suppression, UNCLOS, International Antipiracy Law, Chinese Criminal Law

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I. Introduction

Piracy has existed as long as maritime commerce, having begun during the Greek and Roman Empires.¹ China and Korea used to be raided by Japanese pirates as early as the 13th century. The height of piracy lasted throughout the 17th and 18th centuries.² Although piracy seemed to diminish from the 19th through most of the 20th century, it has made a strong resurgence in recent decades.³ The level of violence, significant loss of life and property, and danger to international navigation and to the marine environment have made piracy a serious threat to the international peace and security.⁴ According to the International Maritime Organization (“IMO”) and the International Maritime Bureau (“IMB”), piracy poses an increasing level of danger to the international community, particularly in the Gulf of Aden, the Horn of Africa and Southeast Asia.⁵

China and other East Asian countries are not immune from piracy. Acts of piracy against ships have a long history in this region, particularly in Southeast Asia.⁶ The Strait of Malacca is one of the world’s most dangerous maritime ‘choke points’ and hotspot for piracy.⁷ According to one commentator, there are various reasons why piracy is rampant in Southeast Asia: (1) extreme poverty; (2) separatism and extremism of ethnic groups; (3) unstable political circumstances; and (4) weak capacity to counter piracy.⁸ It has also been suggested that, given the geopolitical importance of Southeast Asia, the major regional sea powers including China, as well as the U.S., all have strategic motivation to establish a presence in this region and may use the threats of

¹ Michael Davey, *A Pirate Look at the Twenty-First Century: The Legal Status of Somali Pirates in an Age of Sovereign Seas and Human Rights*, 85 NOTRE DAME L. REV. 1197, 1200-05 (2010); Lucas Bento, *Towards an International Antipiracy Law Sui Generis: How the Dual Nature of Maritime Piracy Enables Piracy to Flourish*, 29 BERKELEY J. INT’L L. 401-406 (2011).

² Jose L. Jesus, *Protection of Foreign Ships against Piracy and Terrorism at Sea: Legal Aspects*, 18 INT’L J. MAR. & COASTAL L. 363-364 (2003).

³ *Id.* at 364-365.

⁴ Davey, *supra* note 1, at 1205-07; John Mo, *Options to Combat Maritime Piracy in Southeast Asia*, 33 OCEAN DEV. & INT’L L. 343 (2002).

⁵ For detailed statistics on piracy attacks, see IMO, *Reports on Piracy and Armed Robbery*, available at <http://www.imo.org/OurWork/Security/PiracyArmedRobbery/Pages/PirateReports.aspx>; IMB, *Piracy News and Figures*, available at <http://www.icc-ccs.org/piracy-reporting-centre/piracynewsfigures> (all last visited on Dec. 25, 2011).

⁶ Sam Bateman, *Assessing the Threat of Maritime Terrorism: Issues for the Asia-Pacific Region*, 2 SECURITY CHALLENGES 80 (2006).

⁷ Joyce Dela Pena, *Maritime Crime in the Strait of Malacca: Balancing Regional and Extra-Regional Concerns*, 10 STAN. J. INT’L RELATIONS 1-2 (2009).

⁸ Guo Xinning, *Anti-Terrorism, Maritime Security, and ASEAN-China Cooperation: A Chinese Perspective*, available at www.iseas.edu.sg/tr152005.pdf (last visited on Dec. 20, 2011), at 8.