Piracy in the Straits of Malacca is a large and growing concern for the world. Not only does it cause economic havoc in a critical region, but this piracy may also have connections to terrorism and has the potential to cause an ecological disaster. However, attempts by outside states to establish security regimes have repeatedly run into sovereignty concerns from the coastal states in the region: Malaysia, Indonesia, Singapore, and Thailand. Instead of persisting in this failed strategy of externally imposed solutions, interested parties should focus on aiding the creation of an internal security regime through aid and logistical support. Building the capacity of the local navies to patrol the region is the most acceptable and effective solution towards ending piracy in the long run.
Much of the world’s economy depends on the security of shipping that passes through a narrow body of water in Southeast Asia known as the Strait of Malacca. Connecting the Pacific and Indian Oceans and situated between the coastlines of Thailand, Malaysia and Singapore on one side and the Indonesian island of Sumatra on the other, the Strait of Malacca is 550 miles long, but only 1.7 miles wide at its narrowest point. The Strait is one of the most important shipping lanes in the world, accounting for a third of the world’s trade and half of its oil shipments – including 80 percent of the oil and gas imports of Japan, Taiwan, South Korea and China. The Strait is also one of the world’s most dangerous maritime “choke points” and a hotspot for transnational crime. Incidents of piracy and the threat of terrorism within this critical zone have consequently attracted the attention of maritime nations that use the oceans for power projection and free trade. The United States, China, and Japan have each taken an interest in ensuring the safe and smooth passage of shipping through the region. However, despite the intentions of these extra-regional actors, efforts to strengthen maritime security in Southeast Asia have come up against ambivalence or outright rejection. The littoral states of Singapore, Malaysia and Indonesia have refused to surrender their control over this critical region.

This essay will illustrate the factors that inhibit cooperative security initiatives between littoral states and extra-regional actors by using several instances of attempted top-down regime building by maritime nations as case studies. Differing state interests initially resulted in uneven threat perceptions of the Strait of Malacca between maritime nations and littoral states. However, foreign pressure regarding a possible terrorism-piracy nexus has since compelled littoral states to address security concerns.

Nevertheless, in spite of this development, direct foreign leadership – particularly from the United States – in the Strait has met and will likely continue to meet with fierce resistance. An overstated US presence in the region raises sovereignty concerns, threatens the regional balance of powers, and elicits accusations of gunboat diplomacy and American hegemony.

Defining Piracy

Piracy and sea robbery have existed for centuries in the Strait of Malacca, where complicated geography and highly trafficked routes create opportunities for lucrative attacks. Legally speaking, most of the attacks that occur within the Strait do not qualify as ‘piracy’ under international law. According to the 1982 United Nations Convention on the Law of the Sea (UNCLOS), piracy consists of any illegal acts of violence or detention committed against a ship or aircraft “on the high seas or in any other place outside the jurisdiction of any state.” Because piracy has universal jurisdiction according to international law, any state can prosecute any person who fits this definition according to its own anti-piracy laws. However, since article 3 of UNCLOS awards states sovereignty over ‘territorial seas’, which extend twelve nautical miles off a state’s coasts, the Malaccan Strait falls within the jurisdiction of the coastal states of Indonesia, Malaysia, and Singapore. According to UNCLOS, piratical attacks within these waters constitute armed robbery, and thus it remains the responsibility of littoral states to police the area.

The 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA Convention) put forth a definition of piracy that stripped it of territorial limitations, though the SUA Convention did not extend universal jurisdiction to such attacks. It gives signatory governments the power to prosecute people caught in their own territorial waters of acts of piracy committed in another country’s jurisdiction, but there is still no right-of-entry into the territorial waters of other nations. More significantly, while the UNCLOS is customary international law applying to all nations, the SUA Convention is only applicable to signatory states.

As international law stipulates, because the Strait of Malacca falls within the territorial boundaries of the regional coastal states, the task of guarding and policing the Strait belongs to Singapore, Malaysia, and Indonesia. Foreign nations enjoy the privilege of ‘transit passage’ through the Strait, but they must refrain from any threat or use of force against the sovereignty of the coastal states or the integrity of their territory. In other words, without the express permission of the coastal states, foreign powers cannot use their own forces to combat the maritime threats within the region.

Joyce Dela Pena is a junior majoring in American Studies with a concentration in social change and the law. She wrote this paper for a tutorial on international criminal law at Oxford University. This summer she will be interning at Common Cause in New York City while working on her honors thesis, a historical examination of the convict-lease system in the post-bellum American South.
Threats to the Straits of Malacca

The 1997 Asian financial crisis and the overthrow of the Suharto regime in Indonesia caused rampant unemployment, political instability, tight fiscal policy, and as a result exacerbated poverty throughout Southeast Asia. This increased poverty motivated people in coastal regions to use piracy as a way to supplement their incomes. Poverty ensuing from over-fishing and pollution has similarly caused desperate fishermen to turn to piracy. Of the 2,375 pirate attacks reported worldwide between 1991 and 2002, 66 percent occurred in Southeast Asia. Since 1999, rates of piracy and sea robbery have increased at an alarming rate. These incidents include ‘hit-and-run’ attacks, robbery of the crew, hijacking vessels, holding boats, captains, crew and cargo for ransom, and kidnapping. Small-scale criminals – mainly impoverished Indonesian nationals – carry out the majority of these attacks, though the International Maritime Bureau believes that a handful of criminal syndicates based in Indonesia and Malaysia are responsible for the larger scale hijackings. Further, pirate groups may be in collusion with local authorities and have connections with warlords or political movements linked to terrorism.

Piracy endangers the lives and welfare of citizens of a variety of flag states, and has a direct economic impact on the global economy in the form of fraud, stolen cargoes, delayed trips, and increased insurance premiums. Financial losses from maritime crime were estimated at $30-50 billion in 2003, though accurately ascertaining the extent of losses remains difficult. Furthermore, given that pirates detain entire crews from their duties for an extended amount of times, a pirate attack has the potential to cause a major environmental disaster. A cargo or oil spill over major fishing grounds and beaches could have devastating effects for years after the incident.

More recently, the threat of maritime terrorism to the Malacca Strait has drawn international attention – most notably that of the United States – to security issues in the Strait. Political instability and growing socioeconomic disparities have provided an impetus for terrorist activities in Southeast Asia. Three known Islamic separatist groups operate in the region: the Gerakan Aceh Merdeka and Jama’ah Islamiyah in Indonesia and Malaysia and the Abu Sayyaf Group in the Philippines, while Al-Qaeda has a well-known record of terrorism at sea. While no relationship between piracy and modern terrorism has yet been demonstrated and many argue that the fundamental goals of pirates and terrorists are at odds – a politically inspired attack would disrupt trade for profit-seeking pirates – the mere threat of such a connection is enough to inspire policy changes. Any terrorist attack would have an enormous economic, psychological and political impact, causing insurance rates to soar, disrupting financial and energy markets, and driving away potential investors in neighboring countries.

Coastal States and Maritime Nations: Clashing Interests at Work

The use of the oceans and straits of the world generally revolve around three sets of interests: warfare and the projection of military power across the globe, commercial interests and maritime trade, and economic exploitation of the sea. Maritime nations, states from outside the Malacca Strait but which are nonetheless interested in the region, are largely concerned with the first two, while coastal states, which possess the actual territory around the Strait, are for the most part interested in the economic exploitation of ocean resources, and thus in extending and protecting their maritime jurisdiction and sovereignty. In light of these overarching interests, this paper will now discuss the exact motivations of the three littoral states and the dominant maritime players in the Malacca Strait region.

Singapore is heavily dependent on trade to fuel its export-driven economy. As a hub for transshipment trade and oil refining, Singapore would be most severely affected by a disruption in the free flow of shipping. Further, Singapore’s city center, port, and critical
industries, which are located on its southern coast, are likely targets for a possible maritime attack. Given its economic position and vulnerability, it is unsurprising that Singapore is eager to enhance international and interagency cooperation to defend against maritime terrorism. Singapore has a modern and capable navy and police coast guard, and monitors the vessels that pass through the Singapore Strait via a vessel traffic information system. Of the three littoral states, Singapore is the most vocal advocate of international cooperation.24

Malaysia is similarly dependent on maritime trade, as 80 percent of its trade passes through the Strait and major Malaysian ports are located on the Strait itself. However, Malaysia is also concerned with protecting its resource-rich Exclusive Economic Zones (EEZ), which contribute to the fishing industry. While collisions, groundings, or oil spills that could result from piratical attacks are a concern, its sovereign control over the Strait and its resources are similarly important. Thus, while Malaysia contends that littoral states have the capacity to safeguard the Strait, it admits that a degree of “burden sharing” with extra-regional states is possible.25

Indonesia is the largest archipelagic country in the world with over 50,000 miles of coastline spread over 17 million square miles. Unlike its regional neighbors, Indonesia is not as dependent on trade and thus does not share their concerns regarding maritime security. Rather, the state remains focused on domestic issues: economic development, political reform, territorial integrity and militant Islam. A relatively poor nation, it is only now strengthening its democracy as it recovers from both the financial crisis of 1998 and the devastating effects of the 2004 tsunami.26 Furthermore, for the Indonesian navy, preventing piracy is less important than patrolling its extensive maritime borders and dealing with smuggling, illegal

The port of Singapore, one of the busiest in the world, is a tempting target for pirates.
fishing, and environmental degradation.27 As a coastal state, it remains focused on the economic wealth of its territorial waters, and because of the recent loss to Malaysia of two small islands in a potentially oil-rich zone in 2002,28 Indonesia is particularly sensitive to threats to its sovereignty.

Aside from these three littoral states, Southeast Asia is also a region of overlapping spheres of influence between rival extra-regional powers. China’s rapid economic development has resulted in drastic increases in its seaborne commerce and oil imports. As 80 percent of its energy imports pass through the Strait, the Strait’s security is pivotal to the sustained development of China’s economy.29 Japan’s interest in Southeast Asia is similarly economic, as it is dependent on imported energy supplies and raw materials. Japan’s concerns about piracy became more serious after the 1999 disappearance of the 4,200 ton MV Tenyu, a Panamanian–registered Japanese vessel carrying a cargo worth $41.9 million. That loss and similar incidents have added to Japan’s concern about the vulnerability of shipping, and it acknowledges the growing maritime threat to its interests.30 In contrast to the Japanese and Chinese focus on commerce, the US maritime security initiatives in the Malacca Strait have attempted to forge a regime that addresses the threats of terrorism and arms proliferation. In the wake of the September 11 al Qaeda attacks, terrorism has taken center stage in American foreign policy. The presence of al Qaeda allies in Southeast Asia, when coupled with the use of maritime terrorism elsewhere and the vulnerability of the Malacca Strait as a global economy “chokepoint,” demands considerable US attention. Indeed, the Bush administration and American media labeled the region as the “second front” in the “Global War on Terrorism.”31

There is a clear disjunction, then, between the interests of maritime nations and the coastal states. In Indonesia particularly, the threat of maritime terrorism is a low priority, whereas that topic is the primary reason for US interest in the region. Despite general disinterest in security initiatives on the part of littoral states, attempts by extra-regional actors to take leadership roles in securing the Strait have come up against fierce resistance. Developing a successful security regime clearly requires more engagement on the part of the coastal states.

**Top-down regime building**

An international regime implies “regulated patterns of practice on which expectations converge [that] govern state behavior in specific areas of international relations.”32 The most comprehensive maritime regime today is the United Nations Convention on the Law of the Sea (UNCLOS), which specifies the rights and obligations of international-strait states in their territorial seas versus the right to transit passage of foreign states. A maritime security regime, meanwhile, differs from the UNCLOS in that it enables policing beyond jurisdictional constraints of the territorial sea. This is an appealing idea, but efforts aimed at shaping the maritime security environment indicate the existence of struggles between state actors, as each desires a regime that is favorable to their interests. As the following case studies will demonstrate, contrary to the desires of the foreign maritime states, the current trend in maritime security leans toward regionalism at the exclusion of foreign intervention.

The Regional Maritime Security Initiative (RMSI) was a conceptual framework proposed by Admiral Thomas Fargo of the US Pacific Command (USPACOM) in 2004 for neutral, multilateral security cooperation. The United States intended for RMSI to be a voluntary partnership of regional states that shared information and provided early warning to counter transnational threats, though, ideally, the United States would take a leadership role in concept development and implementation.33 RMSI never moved beyond proposal stages, as the media incorrectly reported that Fargo had testified to Congress that American Special Forces and Marines would patrol the Malacca Strait in high-speed vessels,34 an error that persists even in academic papers.35 The resulting media frenzy and the forceful condemnation of the proposal by Malaysia and Indonesia permanently tainted RMSI. In response to the perceived US plan, Malaysian Deputy Prime Minister Najim Tun Razak adamantly stated, “Control of the Strait is the sovereign prerogative of Malaysia and Indonesia, and US military involvement is not welcome.”36

The region has responded similarly to another US-led initiative, the Proliferation Security Initiative (PSI), which is aimed at preventing traffic in weapons of mass destruction (WMDs). Similar to RMSI, PSI takes a soft approach: it is presented as an “activity” rather than an “organization” and PSI “participants” are not required to take part in any specific activities that the initiative proposes. Initiatives are recommendatory and not legally binding, and though PSI participants have declared that they are committed to preventing
shipments of WMDs, which may include searching suspected water vessels, they are not required to do so. Further, they need only “seriously consider” providing consent for their vessels to be searched when suspected of carrying WMDs. Clearly, PSI promotes multilateral cooperation and facilitates operational cooperation without a cumbersome treaty apparatus. However, even in spite of this improvement over other initiatives, PSI has still run into difficulties.

Despite its ‘soft’ approach, only Japan and Singapore have formally signed on to the PSI. Two concerns form the basis of this reticence. A statement made by Malaysian Prime Minister Abdullah Badawi to the UN in 2004 illustrates the first: according to Badawi, while Malaysia is committed to nonproliferation, there is a need for multilateral negotiations for “universal, comprehensive and non-discriminatory agreements.” In other words, states fear the US-driven nature of the initiative and are wary that American leadership would be unilateral and non-consultative; PSI appears more like cooperative unilateralism under an American hegemony than negotiated multilateralism. Second, Asian states have cited legal concerns with the initiative. China and Indonesia have both refused to join PSI for fear that the US may conduct interdictions in ways that violate international law. In 2006, Indonesian Minister of Defense Juwono Sudarsono wrote that the PSI “contravenes provisions of [UNCLOS]” as it endorsed interdiction of vessels passing through Indonesia's territorial waters. Despite the fact that PSI is intended to operate within international law and frameworks and has been designed to be legal and neutral, concerns over legality and sovereignty persist.

Even regime-building attempts by extra-regional Asian actors have met with resistance. In 1999, Japan proposed the formation of a regional coast guard as part of its effort to increase regional cooperation and enhance security in Southeast Asia. Though the patrols would be comprised of forces from Japan, South Korea, China, Malaysia, Indonesia and Singapore, China immediately opposed the creation of such an organization, viewing it as a move by Japan to extend its security role in East Asia and to contain Chinese maritime interests.

The failure of these attempts at regime building to address the extra-regional states’ security concerns illustrates the limits of maritime nations’ involvement in the territorial waters of the Strait of Malacca. Ambitious endeavors like the Japanese effort to create a unified fleet are unlikely to succeed because of major-power rivalries. As maritime nations use the sea for warfare and the projection of military power, it comes as no surprise that China would regard the military presence of the United States, Japan, and India in Southeast Asia warily. Indeed, the additional coordinated naval presence of India and the US in the Strait has been perceived as a broader attempt to check China's growing power. Joint US-India naval exercises help advance India’s claim that its security interests stretch up to and include the Strait.

Helicopters often enhance military operations on the high seas, but are a very visible and therefore controversial presence.

The largest obstacle to maritime state involvement, however, is the reluctance of littoral states to surrender any control over their territory. The poor reception of the RMSI and the PSI in Southeast Asia highlights the sovereignty concerns of coastal states and their connection to anti-American sentiment from aggressive US policy elsewhere. Littoral states vehemently reject the notion of other states patrolling their territorial waters. Enduring postcolonial nationalism, a desire to protect their economic control of the region, and antagonism towards the United States contribute to this reluctance. While the United States has never outlined a unilateral military initiative in this region, its demonstrated disregard for the sovereignty of other nations has won it a poor reputation within this region. The Bush Doctrine of preemptive self-defense is the latest manifestation of an evolving concept of sovereignty. Whereas Westphalian sovereignty recognizes the legal right of a country to exist without external interference into its domestic affairs, ‘domestic sovereignty’ pivots on the ability of the authorities in power to exercise control in their sovereign territories. Weak and failing states can be subject to outside interference. In the case of the
Malacca Strait, Indonesia and Malaysia fear that the threat of maritime terrorism may prove a sufficient impetus for foreign intervention, and regard US leadership in the area as an effort to prepare for such a contingency. Furthermore, there is the fear that a strong US presence may only bolster the ideological appeal of ‘extremist elements’ and encourage terrorist attacks.46

Thus far, the United States’s interest in the Malacca Strait has compelled littoral states to take some steps to address the vulnerability of the region. There is already non-coalition operational cooperation among littoral states to safeguard the security of the Strait of Malacca: the Malacca Straits Patrols initiated coordinated sea patrols between Indonesia, Malaysia and Singapore; Project Supric allows information sharing between Singapore and Indonesian command and control centers; the “Eyes in the Sky” initiative enhances surveillance by combined maritime air patrols; and the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia promotes and enhances cooperation, mainly by establishing an information sharing center in Singapore.47

Future American attempts at cooperation initiatives must be neutral, limited and tailored to accommodate regional sensitivities. The United States cannot erect its own maritime security regime within the Malacca Strait, but it can take steps to strengthen security in the region. Littoral states appreciate the assistance of outside states so long as such assistance is neutral, limited, and nonmilitary. Thus, the United States can share and build understanding through multilateral forums, improve the capacity building of the coastal countries through burden sharing, support intraregional initiatives, and promote and increase interoperability through exercises. Bilateral and multilateral exercises such as anti-mine, anti-piracy and anti-hijacking exercises build the operational expertise of local navies, improving their ability to secure the Strait. The annual Cooperation Afloat Readiness and Training exercises and the Southeast Asian Cooperation Against Terrorism exercises between the United States and the navies of the littoral states are particularly helpful.48

The US can also offer technical assistance to build capacity, particularly in Indonesia. Skill-sets developed through US training enhance maritime awareness and facilitate countries’ ability to track and deter transnational crime. Current American programs consist of $6.7 to $8 million allocated to the training of the Indonesian Military Police through the International Criminal Investigative Training Assistance Program, and more general training opportunities through the US International Military Education and Training program and the Regional Defense Counter-Terrorism program. The US awarded $6 million in Foreign Military Financing to the Indonesian Navy as part of a five year, $30 million plan,49 and private American companies have received contracts to upgrade the Indonesian Navy’s communications in the Malaccan Strait.50

In addition, the United States must focus on promoting mutual understanding and goodwill within Southeast Asia. The reception of neutral and multilateral proposals like the RMSI and the PSI evidence the extent to which policies of preemptive self-defense and a disregard for national sovereignty have tarnished America’s reputation abroad, thereby impeding its diplomatic efforts. Given this, the US must tread softly, and its diplomacy should center on forging understanding and goodwill. Humanitarian civic assistance – particularly the tsunami humanitarian relief mission – should continue. While humanitarian aid does not directly strengthen regional maritime security, it goes further towards addressing the root causes of piracy and terrorism, namely the poverty that initially forces fishermen to abandon their trade and assume illegal activities like piracy.51 The United States must abandon a framework of aggressive, preemptive self-defense and regime building, and it should instead
focus on building the capacity of the littoral states to patrol their own waters. Littoral states are clearly building their own regional maritime security regime within the Strait of Malacca and the US must restrain the use of its power so as not to encroach on the issues of sovereignty related to direct intervention.

ENDNOTES

3 Victor Huang, “Building maritime security in Southeast Asia: outsiders not welcome?” Naval War College Review Winter 2008
4 Percival, 4.
7 Karim, 34.
9 Michael Bahar, Attaining Optimal Deterrence at Sea: A Legal and Strategic Theory of Naval Anti-Piracy Operations, 11.
10 UNCLOS, art. 3
11 For the purposes of this paper, however, the terms ‘piracy’ and ‘armed robbery’ will be used interchangeably to refer to acts committed either within territorial waters or on the high seas, unless otherwise specified.
13 UNCLOS, arts. 38, 39, 40.
15 Percival, 6.
16 Karim 34.
17 Raymond, 3-7.
19 Percival, 13.
20 Valencia, 6.
21 Percival, 7-10.
22 Percival, 14-15.
23 Gerard and Ong-Webb, 137.
24 Huang, 2.
27 Huang, 3.
30 Karim, 37.
31 Percival, 20.
32 Huang 3.
33 “Regional Maritime Security Initiative” available at www.globalsecurity.org/military/ops/rmsi.htm
34 Huang, 4.
37 Huang, 4-5.
38 Huang, 4.
39 qtd. in Huang, 4.
40 Percival, 18.
41 Huang, 4.
42 Huang, 5.
43 Valencia, 12.
44 ibid.
45 Ong-Webb, 154.
46 Valencia, 14.
47 Huang, 6.
48 ibid.
49 Percival, 42.
50 Percival, 38.
51 Huang, 7.