

## CONTEMPORARY PIRACY

ERIC ELLEN\*

### INTRODUCTION

It is appropriate to establish from the outset that some of the activities referred to in this article would not stand up to critical examination against the more precise definitions of piracy. Much discourse during recent years has concentrated more on what the activity should be called rather than on the consequences—human or material—of the acts being considered. This could be thought to be an inversion of priorities, but there should be a greater concentration on consequences and less on definitions. If this means that, as a term, “piracy” comes to mean all those malpractices afloat not otherwise specifically defined, then so be it.

In concentrating on the consequences of such malpractices afloat, this Article examines recent attacks on the high seas that have occurred: 1) in the Philip Strait between Indonesia and Singapore; 2) off the coast of West Africa; 3) in Southeast Asian waters; 4) against the Vietnamese boat people; and 5) attacks with a military or political feature. Finally, this Article discusses the involvement of the International Maritime Bureau to act upon such malpractices afloat.

### I. THE PHILIP STRAIT

In the contemporary scene, we have continuing attacks on vessels in the Philip Strait between Indonesia and Singapore. These attacks are not on the high seas, as all the waters in the area are the territorial waters of one or the other of the two countries. The attacks take the form of intruders coming alongside the target vessel, usually during the night, boarding it, and then taking possession of whatever cash and negotiable valuables which come easily to hand.

The notable features of this type of attack are the degree of skill which is used to board the vessel, coupled with the fact that violence is not normally used unless resistance is offered. It is this comparative “non-violent” approach that, oddly enough, makes the

---

\* LL.B. (Hons), QPM, CBIM, Executive Director, ICC Business Security Services.

problem of piracy difficult to combat.

In statistical terms, the possibility of a vessel being boarded when passing through the Philip Strait is remote. As the consequence of such an attack is limited to loss of money or money's worth, then basic risk management will come into operation and the cost of prevention must not exceed the cost of the problem. The net result of this is that the shipping companies will promote ordinary, secure housekeeping procedures. This, coupled with a policy of non-violent response, will reduce the problem to nothing more than nuisance level.

There are, in the Philip Strait, security organizations offering all types of guarding and escort systems which, although possibly effective, would be completely uneconomical. These escort systems are uneconomical because their cost remains higher than their effectiveness in preventing such attacks.

The question of the principle of the attacks should be addressed by the two sovereign states concerned. However, the political sensitivities which could be upset by the incursions of forces from one country into the territorial waters of the other cause the problem to be given a low degree of priority by the authorities in the area.

## II. OFF THE COAST OF WEST AFRICA

In contrast to the Philip Strait, the problem of "piracy" off the coast of West Africa is of a different type showing several unique characteristics. First, a high degree of violence has been demonstrated by the criminals boarding a vessel and is therefore always a factor to be considered. Second, the target items aboard the vessel are not only money and negotiable goods, but also items of cargo and ships' equipment. Third, the total value per attack tends to be higher than in the Philip Strait. Fourth, there is a demonstrated lack of competence on the part of law enforcement. And finally, some of the target vessels are at anchor.

The only similarity between the Far Eastern and the West African pirates is that they both come alongside in small craft and mount high-sided vessels with remarkable agility. From that point on, however, the similarity no longer exists as the West African attackers often offer gratuitous violence and will steal everything that is not well-secured. The result can be, particularly if ships' equipment is stolen, that the safety of the vessel and its occupants can be imperilled.

Prevention of this type of attack is a problem for a combination

of several reasons. Despite improvements in available equipment, there is no great response from the forces of law and order ashore. This response may vary marginally from country to country but, in general, there is no great enthusiasm on the part of law enforcement agencies to come into confrontation with large groups of armed men with a proven predisposition towards violence.

By the same token, those pundits who would suggest a positive physical response by the crews of the vessels under attack must ask themselves if the advice they give is really in the best long-term interests of the targets of the attack. It cannot be argued that any effort to repulse an attack, if successful, will save a life at that time. Be assured that the vessel will be marked and, when it eventually comes into port or returns on a later voyage, old scores will be settled and what appeared to be a victory will soon be shown to be nothing but a hollow gain of the moment.

With both of these types of attacks described above, the response on the vessel should be passive in that, if possible, all crew should retreat into a hardened area of the vessel to "ride out the criminal storm." At the very worst, the consequences can be considerable financial loss but, when set against the alternative of death or injury which may result from the confrontation, there can really be no argument.

### III. ATTACKS IN SOUTHEAST ASIAN WATERS

There has been a marked increase in the number of piracy attacks in Southeast Asia in 1990. The following example is derived from an article published by the ICC.<sup>1</sup>

During a voyage from Bangkok to Busan in August, 1990, a general cargo vessel was boarded by armed pirates. The pirates knew her exact location and it became clear that they had made detailed preparations to relieve the vessel of her cargo of tin plate.

When the pirates boarded just after 1:00 a.m., they pointed guns at the chief officer's head, handcuffed him, and took him down to his cabin. A total of four men boarded the vessel. All were armed, and the crew of seven were told that they would stay alive if they followed instructions.

The course was altered and the speed increased. The next day,

---

1. ICC, *Pirates carry out sophisticated and well planned vessel attack*, in COMMERCIAL CRIME INTERNATIONAL (1990) (magazine) (available from ICC International Maritime Bureau, London, England).

the funnel was repainted and the pirates brought a stencil with them to change the name of the vessel. They also brought another country's national flag which was hoisted at the stern. However, no attempt was made to change the vessel's port of registry.

After the vessel sailed a southerly course for the next two days, the vessel dropped anchor and the pirates made contact with accomplices ashore. During the night, the pirates began discharging the cargo of tin plate into a barge. Forklifts were used and the whole operation took about two and one-half days. During this time, the crew were kept below and the portholes were covered so they could see nothing of the operation.

After two more days at anchor, the vessel headed north and then northwest. Two days later the pirates anchored the vessel and left using a lifeboat. After the pirates had gone, the crew discovered that the radio equipment and charts were destroyed or missing.

Although shots were fired during the attack, none of the crew were hit. Some, however, were beaten in the head with a Chinese weapon that was left behind.

This attack is very similar to another which took place in the region in 1986 and may have involved some of the same people. It was very well planned, as shown by the use of forklifts during the discharge and the fact that the pirates brought a ready cut stencil and another national flag with them.

So far, thirteen reports of piracy have been reported in the region in 1990. This compares with only three for 1989. The Singapore National Shipping Association has called for the authorities in the area to step up their surveillance of shipping channels and endeavor to keep them safe for international trade.

This case illustrates what is becoming a regular feature of voyages in Southeast Asian waters. Captains must stay alert and take all possible precautions to safeguard their vessels from such attacks by well organized and ruthless pirates when passing through the affected area.<sup>2</sup>

#### IV. ATTACKS AGAINST VIETNAMESE BOAT PEOPLE

There are other acts which, although coming under the heading of piracy, cannot be dealt with in such a matter of fact way as the attacks in the Philip Strait, off the coast of West Africa and in

---

2. *Id.* See also *Pirates Setting Sail for New Plunder*, L.A. Times, Nov. 27, 1990, at H1.

Southeast Asia waters. Amongst the foremost of these are the attacks against the Vietnamese boat people. Although this may be seen by some only as a political problem, in human terms it is tragedy afloat.

The attackers in these cases are, more often than not, fishermen turned bandit because they find that the spoils of their attacks on the refugees exceed what they can make by legitimate fishing. This fact, coupled with perhaps some resentment at the fact that the refugees are leaving, results in attacks of unbelievable ferocity.

Perverse though the logic may seem to some, it may well be that the British Government's policy of non-voluntary repatriation may well save the lives of those who now do not even try to make a crossing in which some would undoubtedly have lost their lives. In this area, control is difficult because of the same principle as holds ashore. On land, the peasant of this moment is the partisan fighter or bandit of the next and, in parallel on the sea, the fisherman of this moment is the pirate of the next, only to revert to this type immediately after an attack. In this type of ongoing battle, where the opposition do not always wear their colors, it is difficult to mount effective restraint.

## V. MILITARY AND POLITICAL ATTACKS

The next type of maritime attacks to be considered are those with a military or political feature. Notable amongst these was the attack on the *Achille Lauro* followed some time later by the totally different type of attack on the City of Poros.

By contrast with the attacks for purely monetary gain, the response both on the part of the potential target and by the forces of law and order has been to the highest degree. It is arguable whether the response has been effective in ensuring that there has been no repetition or whether the attacks were such as to be "one-off" incidents. In either event, the world has been spared a scenario which was unacceptable by any standards.

Other attacks can be classified as military or political attacks. Within the last few months, there have been two or three attacks on merchant vessels in the Red Sea, and in one case a vessel was seized by one of the warring factions in a nearby state. These consequences are to be expected in an area where war and violence have become commonplace. However, it is pleasing to note that the incidents referred to appear to be the exception rather than the rule.

One of the most alarming types of acts which can be embraced under the general term "piracy" has been the spate of thefts of vessels in the area of the Philippines. By the very nature of the act, precise details are not available. But some estimates suggest that upwards of thirty vessels have been stolen in the past two years. The objective of these crimes is to provide vessels for the phenomenon known as the "Phantom Ships of the Far East" in which a ship can assume a bogus registration for a few months. During this time, the ship can be used to steal a legitimate cargo and sell it to one of the all-too-willing buyers to be found in the area. It is suggested that there are groups willing and able to steal any ship in the area—to order—for just \$300,000.

## VI. THE ROLE OF THE INTERNATIONAL MARITIME BUREAU

The ICC-International Maritime Bureau<sup>3</sup> is often asked about piracy both by the media and the industry in the hope that there is some particular exclusive story or some panacea for the problem, but neither exists. The types of piracy attacks described above, headline-attracting though they may be, are only the maritime equivalent of the muggings and burglaries that form a part of the overall tapestry of life for those ashore. And as surely as the land-based forces of law and order fail to find a lasting cure for what is commonplace on land, so those same forces will have difficulty with the parallel problems of the sea.

The International Maritime Bureau is required by its mandate from the International Chamber of Commerce to act as a watchdog of the seas in the commercial sense, and it continues to monitor not only individual instances but also general trends. In doing this, it is found that although piracy in any form is certainly not to be commended, it is a phenomenon that the seafarer, with the personal resilience peculiar to his breed, will take in his stride.

---

3. The ICC International Maritime Bureau was created on January 1, 1981 by the Council of the International Chamber of Commerce as an independent body to deal with the prevention and containment of fraudulent and other suspect practices in Maritime Transport. The Inter-Governmental International Maritime Organization (IMO), the U.N. Maritime Agency, welcomed this "positive and constructive initiative" and urged all interested organizations and governments to cooperate fully with the International Maritime Bureau in taking effective measures and exchanging information. Now reaching its tenth anniversary, the bureau has been accepted world-wide as an organization of ability and integrity. The Bureau contribution to literature on the subject has been the publication of three books, *VIOLENCE AT SEA*, *PIRACY AT SEA* and *PORTS AT RISK*, all published by the ICC Publishing Company Limited.