



SSA Technical Report: Importance of Distinguishing Piracy from Armed
Robbery

June 2015

Preamble

Recent press statements by a number of prominent maritime organisations, both local and international, on the piracy situation in SE Asia waters and the South China Sea have painted a picture of unchecked high seas lawlessness and extreme danger to all who sail these waters. At its peak, the adverse publicity on piracy was so negative that some quarters in the maritime industry advocated the declaration of these waters as a high War Risk area similar to the situations off the coast of Somalia and in the Gulf of Guinea. Is this the true picture?

The Facts: Current Situation

To properly and fully understand that situation, SSA undertook a detailed analysis using available published public data in an attempt to assess and judge for itself the validity and/or justification of these claims and opinions.

The quarterly reports (1 Jan to 31 March 2015) of two prominent international organisations monitoring world piracy - the International Maritime Bureau of the International Chamber of Commerce (ICC IMB) and the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP) were used and a comparative analysis was made to reconcile the data published by these two independent organisations. The slides presented at the Asian Shipowners' Forum, held on 19 May 2015 at Jeju, Korea, are attached for SSA's Members' reference.

Definition: Article 101 UNCLOS & IMO Resolution A.1025 (26)

To allow a comparative analysis, the international accepted definitions for ***PIRACY as stated in Article 101 UNCLOS*** and ***ARMED ROBBERY as defined in IMO Resolution A.1025 (26)*** were used. The comparative definitions are shown in Slide 2, and of paramount importance are the remarks highlighted in red and contained in Lines 7, 10 and 12. Article 101 of UNCLOS specifically states that PIRACY is committed "on the high seas" and "in a place outside the jurisdiction of any state" whereas ARMED ROBBERY is committed "within a State's internal waters, archipelagic waters and territorial seas". For the purposes of determining the jurisdiction of the state, the analysis adopts the internationally recognised 12-mile boundary from the coast of the littoral states as territorial waters and jurisdiction or, in the case of an overlap of territorial waters, the mutually agreed maritime boundary recognised by the littoral states.

To allow a comparative analysis, the methodology adopted involved plotting the exact geographical locations of all recorded incidents in S E Asia and South China Seas on the relevant charts using data from ICC IMB Piracy and Armed Robbery Against Ship Report for the Period (1 January to 31 March 2015). Using the internationally accepted 12 mile limit from the nearest coast as the limit for territorial waters, each case was determined whether it occurred in international waters/high seas or territorial waters of one of the littoral states (as classified according to the UNCLOS and IMO definitions). As confirmation, the compiled data was verified against the equivalent ReCAAP Piracy and Armed Robbery Against Ship in Asia Quarterly Report (1 January to 31 March 2015). Readers will note the slight difference between the two sets of data which can be attributed to the different categorisation methods adopted by each organization.

Comparative Data

ReCAAP			ICC IMB		
	Piracy	Armed Robbery		Piracy	Armed Robbery
Actual Incidents	3	32	Actual Incidents	4	24
Attempted	1	2	Attempted	2	
Total	4	34	Total	6	24



On the basis of the comparative data presented in **Slide 4**, it can be seen that both sets of data reaffirmed that there were only 3 to 4 incidents of PIRACY as compared to 24 to 32 cases of ARMED ROBBERY.

Distinguishing Piracy from Armed Robbery

Whilst to the seafarers whose ship is boarded by unknown armed intruders in the middle of the night and is threatened with loss of property, hijacking, ransom, injury and in an extreme case, the loss of life, an attack is a highly traumatic experience which does not distinguish between PIRACY and ARMED ROBBERY. It is the severity/scale or significance of attack, with Cat 1 considered the most severe and Petty Theft as the least severe. See categorisation adopted by ReCAAP is shown in **Slide 5** below.

Level of Significance

Most severe. Involve large numbers and heavily armed perpetrators pose serious threat to crew and involves high economic loss.	Cat 1
Moderately severe. Involve large numbers of perpetrators with firearms and pose some threat to crew and involve loss of cash or personal belongings of crew.	Cat 2
Low severity involving perpetrators using hand weapons and results in minor economic loss.	Cat 3
Minimum severity where perpetrators are not armed and crew is not harmed and may incur no economic loss.	Petty Theft



Piracy/Armed Robbery/Severity Matrix

To provide a more comprehensive guide and quick reference, the comparative is merged in a Piracy/Armed Robbery/Severity Matrix as shown below (**Slide 6**). The matrix clearly illustrates that there is very little correlation between the severities of an attack in relation to how one classify the attack, i.e. Piracy or Armed Robbery

Differentiation by UNCLOS & IMO		Article 101 of UNCLOS defines Piracy as consisting of the following acts: a) Any illegal acts of violence or detention, or any act of depredation committed for private ends by the crews or the passengers of a private ship or a private aircraft and directed i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State; iii) any voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft; c) any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b)		IMO Resolution A.1025 (26) defines Armed Robbery as consisting of the following acts: 1. Any illegal acts of violence or detention, or any act of depredation, or threat thereof, other than an act of piracy committed for private ends and directed against a ship or against persons or property on board such a ship, within a State's internal waters, archipelagic waters and territorial sea 2. any act of inciting or of intentionally facilitating an act described above.	
		Piracy	Armed Robbery		
Significance					
Most severe. Involve large numbers and heavily armed perpetrators pose serious threat to crew and involves high economic loss.	Cat 1	2	3		
Moderately severe. Involve large numbers of perpetrators with firearms and pose some threat to crew and involve loss of cash or personal belongings of crew.	Cat 2		6		
Low severity involving perpetrators using hand weapons and results in minor economic loss.	Cat 3		4		
Minimum severity where perpetrators are not armed and crew is not harmed and may incur no economic loss.	Petty Theft	1	19		
	Attempted	1	2		
	Total	4	34		



The significant point to note is that an ARMED ROBBERY attack can be much more severe than a PIRACY attack depending on the aggression, discipline and organisation of the perpetrators. A case in point would be a group of heavily armed Somalia militia committing ARMED ROBBERY within the 12 mile territorial boundary off the Somalia coast versus a group of Indonesia thieves boarding a vessel underway and committing petty theft outside the territorial waters of the littoral states which therefore constitutes PIRACY.

Legal Implications

The term "PIRACY" allows each individual countries' coast guard/navies to exercise some form of protection over international shipping as in the case of the combined international anti-piracy patrols organised by the international community for the Gulf of Aden.

Unfortunately, "ARMED ROBBERY" on the other hand is the same act encountered within territorial waters or "in one's back yard" which is under the jurisdiction of the littoral states and patrolled by the coast guards/navies of the respective littoral states. The right of sovereignty over one's territorial waters prohibits the incursion of the armed forces of any other nations to avoid the possibility that such actions are considered acts of aggression. The conflicting claims by neighbouring nations over disputed island/island groups such as

the Spratly, Paracel and Andaman islands in recent incidents have further highlighted this important point.

Conclusion

From the above analysis, it is clear that from the legal perspective, it is important that the correct classification is used for determining whether an incident is PIRACY or ARMED ROBBERY. Extracts of the quarterly reports of both ReCAAP and ICC IMB are shown on Slide 7 below. The contrasting styles and manner the similar data are presented has resulted in specific quarters, on one hand, accusing certain organisations of under-reporting or suppressing the seriousness of the situation whilst on the other extreme of over-playing or sensationalising the facts.

FAQs

1. What is piracy? What is armed robbery?

Piracy mainly occurs in high seas whereas armed robbery takes place within territorial jurisdiction.

The diagram below show the definition of Piracy, which is taken from Article 101 UNCLOS and Armed Robbery, taken from IMO Resolution A. 1025 (26).

Importance of Defining Piracy & Armed Robbery

S/n	Piracy (Article 101 UNCLOS)	Armed Robbery (IMO Resolution A.1025 (26))	Remarks
1	Piracy consists of the following acts:	Armed robbery against ships means any of the following acts:	No substantive difference
2	a) Any illegal acts of violence or detention, or any act of depredation,	.1 Any illegal acts of violence or detention, or any act of depredation,	Verbatim
3		or threat thereof, other than an act of piracy	No substantive difference but distinguishes piracy and armed robbery
4	committed for private ends	committed for private ends	Verbatim
5	by the crews or the passengers of a private ship or a private aircraft		No substantive difference
6	and directed	and directed	Verbatim
7	(i) on the high seas,		Piracy occurs on the high seas
8	against another ship or aircraft, or against persons or property on board such ship or aircraft	against a ship or against persons or property on board such a ship,	Verbatim except piracy includes aircraft
9	(i) against a ship, aircraft, persons or property		Verbatim except piracy includes aircraft
10	in a place outside the jurisdiction of any State;		Piracy occurs outside the jurisdiction of the state
11	a) any voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;		Piracy implies explicit knowledge of the facts
12		within a State's internal waters, archipelagic waters and territorial sea	Armed robbery occurs within state and territorial jurisdiction
13	a) any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b)	.2 any act of inciting or of intentionally facilitating an act described above.	Verbatim

Note: For the purposes of determining the jurisdiction of the state, the analysis adopts the internationally recognised 12-mile boundary from the coast of the littoral states as territorial waters and jurisdiction or, in the case of an overlap of territorial waters, the mutually agreed maritime boundary recognised by the littoral states.



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2. Is “fuel siphoning” considered piracy or armed robbery?

Fuel siphoning is the illegal transfer of fuel oil from one ship to another. From a legal standpoint, whether it is a piracy or armed robbery depends on whether the theft takes place on high seas or within territorial waters.

In view of the increasing number of incidents with respect to fuel siphoning, ReCAAP has published special reports to address the concerns. The link of the report can be found below.

<http://www.recaap.org/AlertsReports/IncidentReports.aspx?EntryId=289>

3. How different is SE Asia Piracy vs Gulf of Aden?

No seafarer wants to face Piracy or an illegal boarding incident that risk lives. Discussions with Interpol and with regional govt enforcement agencies indicated that these are targeted incidences. Compared to the Piracy that occurs in the Gulf of Aden where all ships are targeted and are at potential risks, SE Asia Piracy seems to be targeted at Product Oil Tankers. This seems to indicate that the perpetrators are only going for specific cargo and not for the ship or crew.

The table below shows the differences between South East Asia and Gulf of Aden with regards to the severity and threat level

Region	SOUTH EAST ASIA	GULF OF ADEN
Type of vessel	Targeted at specific vessels	All ships passing through are at risk
Weapons used	Knives, parangs, pistols	Heavily armed, carrying military weapons (rifles, RPGs)
Level of threat	<ul style="list-style-type: none"> Crew is released unharmed. Theft of goods or cargo 	<ul style="list-style-type: none"> Crew are held indefinitely (threatened and held hostage) for ransom – control of ship, and crew Vessel taken for ransom

4. Which areas in the S E Asia are more prone to pirate or armed robbery attacks?

From the table below, in terms of actual attacks, 4 of 28 actual attacks (14%) are classified as PIRACY. The remaining 24 of the 28 actual attacks (85%) are ARMED ROBBERY. Of the 24 cases of ARMED ROBBERY, it is worth noting the locations of these incursions as highlighted below:

- 11 of the 24 cases (46%) were committed when the vessels were at in port waters either at anchor or alongside a berth
- Of the remaining 13 cases, 12 were committed in Indonesian territorial waters whilst the vessels were on passage in Selat Durian in the vicinity of the eastbound TSS (Traffic Separation Scheme) between Pulau Karimum Kechil and Phillip Channel.

Type & Location Status	PIRACY	ARMED ROBBERY		Total
		In Port or Anchorage	Others	
Actual Attacks	4	11	13	28
Attempted Attacks	2			2
Total	6	11	13	30

Source: ICC-IMB Piracy and Armed Robbery Against Ships (1 January – 31 March) Report

5. Has the piracy or armed robbery situation in S E Asia worsen?

In terms of number of incidents, there is a general agreement that the number of incidents has increased overall however the vast majority of these incidents appear to be of little or limited significance and there has been no report of crew being injured.

Severity	January – March 2015		January – March 2014		Change		Total
	Piracy	Armed Robbery	Piracy	Armed Robbery	Piracy	Armed Robbery	
Cat 1	2	3	-	-	+2	+3	+5
Cat 2		8	-	10		-2	-2
Cat 3		6	-	10		-4	-4
Petty Theft	1	20	3	8	-2	+12	+10
Attempted	1	2	1	-		+2	+2
Total	4	39	4	28		+11	+11

Source: The table above shows the data provided by ReCAAP

6. How many seafarers were hurt/ killed in SE Asia in 2015?

Although there were reports quoting that there have been several casualties killed, SSA understands from enforcement agencies that so far there has been only been one fatal incident and it is uncertain if it is connected with piracy or armed robbery - investigations are ongoing.

7. How many ships/ seafarers are in Pirates captivity in SE Asia in 2015?

To date, no ships or seafarers have been held for ransom in 2015.

8. What are the types of vessels targeted by pirates or armed robbers?

The types of vessels being targeted are mostly small tankers or tugs and barges.

In terms of fuel siphoning, the trend of incidents shows it is mostly product / oil tankers with size range from about 1000 – 5000 GT.

9. What is the likelihood of your vessel being attacked in Straits of Malacca and Straits of Singapore?

Every year, depending on the source, an approximate of 50,000 - 90,000 vessels transit the Straits of Malacca and Straits of Singapore. In addition, there are more vessels sailing around the South East Asia and South China Sea.

In contrast, in 2014, ReCAAP reported 44 incidents in Straits of Malacca and Straits of Singapore – there is a 0.012% - 0.07% chance that any given vessel will be attacked.

Keeping in line with the recommendations in ReCAAP’s special report, ship owners are encouraged to conduct regular background check of crew, and if need to, aware of the crew’s activities onboard the ship and ashore.

10. What time of the day do pirates/ armed robbers tend to attack?

An analysis of the timings of the attacks is shown in the table below. It is worth noting that 11 of the 28 actual attacks (39%) occurred from the period 0001 to 0600 hours whilst 7 of the 28 actual attacks (25%) occurred during the period 1801 to 2359 hours. Together, 18 of the 28 actual attacks or 64% of all actual attacks occurred during hours of darkness.

Location & Timing Matrix

Type & Location Timing		PIRACY	ARMED ROBBERY		Total
			In Port or Anchorage	Others	
Actual Attacks	0001 to 0600			11	11
	0601 to 1200		6		6
	1201 to 1800	1	2	1	4
	1801 to 2359	3	3	1	7
Attempted Attacks	0001 to 0600				
	0601 to 1200	2			2
	1201 to 1800				
	1801 to 2359				
Total		6	11	13	30

Source: ICC-IMB Piracy and Armed Robbery Against Ships (1 January – 31 March) Report

11. Are there guidelines or shipboard procedures that vessels should adopt and/or follow when entering areas prone to piracy or armed robbery?

Yes.

The industry has worked with ReCAAP to provide "Guidelines for Tug Boats and Barges Against Piracy and Sea Robbery" which can be found on the link below.

[http://www.recaap.org/Portals/0/docs/Guidelines%20for%20Tug%20Boats%20and%20Barges%20Against%20Piracy%20and%20Sea%20Robbery%20\(12%20Jan%2012\).pdf](http://www.recaap.org/Portals/0/docs/Guidelines%20for%20Tug%20Boats%20and%20Barges%20Against%20Piracy%20and%20Sea%20Robbery%20(12%20Jan%2012).pdf)

The industry has also developed a set of "Best Management Practices for Protection against Somalia Based Piracy (BMP4)". While the BMP4 is targeted for vessels transiting the Gulf of Aden/Somalia region, it can also be adapted for use in South East Asia.

BMP4 can be downloaded from the following link:

http://www.mschoa.org/docs/public-documents/bmp4-low-res_sept_5_2011.pdf?sfvrsn=0

12. In the event of a piracy or armed robbery attack, what actions should be adopted by the vessel and/ or crew?

We understand that members have instructed their Masters to comply fully and to take all necessary steps to secure the safety and well-being of their seafarers.

13. Why is SSA making this Technical Report?

Recently, there has been an increase in press coverage with regards to the piracy incidents in the Straits of Malacca and South China Sea. SSA hopes that with this Technical Report, readers would be more discerning when reading articles, editorials, comments and published reports on the piracy and armed robbery situation.