

# Maritime Piracy: Defining the Problem

*Dana Dillon*

*The current definition of piracy is completely inadequate as a tool for policymakers. The leading statistics and reporting systems are misleading. Most acts cited are not classic boarding and hijacking of merchant vessels on the high seas. A reformulation of the definition of piracy will help focus efforts at combating the scourge.*

Current definitions of piracy are inadequate as a tool for policymakers and need to change. According to Malaysia's Deputy Prime Minister, Datuk Seri Mohd Najib Tun Razak, "At present the International Chamber of Commerce's International Maritime Bureau (IMB) groups all forms of piracy under one category of piracy. Malaysia, Indonesia and Singapore feel that acts of piracy should be separated according to the crime committed."<sup>1</sup> To meet his challenge to provide a useful definition for maritime crimes, the U.N. International Maritime Organization (IMO) and the IMB should revise existing definitions of piracy to include four categories of maritime crimes: corruption, sea robbery, piracy, and maritime terrorism.

According to the IMB, incidents of maritime piracy have more than quadrupled in the last ten years, increasing from 90 reported attacks in 1994 to 445 attacks in 2003. But these numbers are misleading due to loose definitions of the problem. Most acts cited in the annual IMB reports on maritime piracy are not the classic boarding and hijacking of a merchant vessel on the high seas. Instead, nearly two-thirds of the attacks in 2003 occurred while the ships were stationary in port and are better classified as sea robbery. Current definitions also overlook corruption among port authorities and classify maritime terrorism together with reports of dockworkers stealing cans of paint.

Each category of maritime crimes requires different resources, methods of approach and agencies, and the lack of distinction in defining the problem complicates targeting resources and disperses efforts to unrelated and inconsequential issues. For example, extortion by government officials can be best resolved by tackling government corruption, while police should more properly handle sea robbery. Piracy, on the other hand, requires maritime assets that are available only to national coast guards or navies. Finally, because of its inherent political nature and potential for devastating consequences, maritime terrorism must be separately identified to allow

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multi-national strategies and intelligence gathering. A separation of these categories will enable policymakers to make better use of funds and chart progress in a reasonable manner.

### Existing Definitions

There are two common definitions of piracy. The first, used by the IMO, derives from the U.N. Convention on the Law of the Sea (UNCLOS). It says that:

“Piracy consists of any of the following acts:

- (a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew 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;
- (b) 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;
- (c) any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b).”<sup>2</sup>

The UNCLOS definition restricts acts of piracy to the “high seas” and “outside the jurisdiction of any state.” Only 122 reported pirate attacks, or 27 percent of actual and attempted attacks against vessels, took place on the high seas in 2003. The rest of the attacks occurred in ports and territorial waters well inside the jurisdiction of a state.

The IMB offers another definition of piracy:

An act of boarding or attempting to board any ship with the apparent intent to commit theft or any other crime and with the apparent intent or capability to use force in the furtherance of that act.<sup>3</sup>

The IMB’s definition is broad and includes any attack or attempted attack on a ship, whether it is anchored, berthed or at sea. The IMO has attempted to close the definition gap by using both the UNCLOS and IMB definitions.<sup>4</sup> Yet even using these two definitions does not account for extortion by port officials or differentiate maritime terrorism.

There is a substantial difference between the tactics and kinds of organizations that commit sea robbery and the tactics and weapons used by pirates that board ships while the vessel is underway. Additionally, corrupt port officials and terrorists represent criminal activities with their own objectives and tactics. The problem is more than semantics. The definition of the crime affects, and in some cases determines, the agency or government that is responsible for dealing with it.

The people that commit crimes against ships are a heterogeneous bunch that defies easy classification. Many of the so-called pirates that rob ships at anchor or berthed are simply opportunistic dockworkers or fishermen that steal unsecured or unguarded ship stores, such as fire extin-

guishers or mooring lines. In some cases, the sea robbers operate in gangs or mafia-like organizations. In some ports, particularly in Bangladesh, police and port authorities present the appearance of colluding with criminal gangs and pirates. Real pirates, those that attack ships while underway, appear to be better organized, equipped and trained, and they have specific economic motives for acts of piracy. The maritime terrorists, on the other hand, may also have economic motives for robbing ships, but their ultimate goals are political.

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By way of explaining terms, the three components of maritime industry most affected by maritime crime are the shippers (manufacturers that own the cargo), carriers (companies that own the vessels), and insurers of the ships and cargoes.

### **New Categories**

In order to quantify the threat to the maritime industry and to maritime security, the relevant authorities should create four new categories of sea-based crimes that world leaders can use to create policies that will resolve the actual problem.

Crimes against ships should be placed into four categories:

1. Corruption—Acts of extortion or collusion against marine vessels by government officials and/or port authorities.
2. Sea robbery—Attacks that take place in port while the ship is berthed or anchored.
3. Piracy—Actions against ships underway and outside the protection of port authorities in territorial waters, straits and the high seas.
4. Maritime terrorism—Crimes against ships by terrorist organizations.

### **Corruption**

On Oct. 8, 2004, Malaysia's Najib said, "Stopping (a vessel) for the sake of extortion does not constitute international terrorism."<sup>5</sup> Najib is correct, but his comments do not clarify the problems caused by this kind of corruption. Although figures are unavailable, anecdotal evidence suggests that extortion by corrupt port authorities is the most expensive crime perpetrated against merchant vessels. In March 2004, another senior Malaysian official, whose responsibilities included maritime issues, said that maritime piracy, as defined by the IMO and IMB, was only a nuisance. The official said that the most costly maritime crime was corruption by port authorities, particularly in Indonesia.<sup>6</sup>

Corruption affecting merchant vessels occurs most frequently in countries where per capita incomes are low and corruption among government officials is high, such as Bangladesh, the Philippines and Indonesia.

The two major forms of corruption are extortion and collusion with criminal elements. Although extortion in ports takes many forms, at essence, it is a simple procedure. Port officials merely accuse vessels of an environmental or safety violation and then hold the ship in port until it pays the fine or a bribe. Appealing a fine can take days or weeks to resolve. While

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anchored in port, a ship can incur port costs of up to \$10,000 per day. Additionally, the vessel's cargo is delayed with the ship. The consequence is that the shippers and carriers, whose profit margins are razor thin, prefer to pay the fine or bribe. These additional costs are passed on at each step of the supply or logistics chain, finally reaching the consumer.

The IMB, in its report entitled "Port State Control—2003," recognized that delays in port are a problem, but the report buries the issue in dense bureaucratic language and euphemisms. For example, the title of one section is "Reporting procedures on port State control detentions and analysis and evaluation of reports."<sup>7</sup> In classic U.N. language, the report does not identify countries or ports that unduly delay vessels, but instead simply says, in paragraph 12, ". . . the matter should be further discussed. . . ."<sup>8</sup>

Another way that port authorities participate in crimes against merchant vessels is through collusion with criminal gangs. This problem is particularly bad in Chittagong, Bangladesh. The IMB's 2003 annual report contains at least eight different instances where a ship reported criminal activity to port authorities and got no response.<sup>9</sup> For example, on Jan. 7, 2003, the tanker *Jaladoot* was boarded and robbed by four pirates while berthed in Chittagong. The ship's master reported, "The Coast Guard was informed, but did not respond. The pirates could be seen in the vicinity for over 30 minutes." Furthermore, in three of those reports, police and port authorities appear to have been in active collusion with the perpetrators. For example, the crew of the chemical tanker *Bunga Siantan* witnessed "uniformed personnel" chasing pirates who had boarded the ship and then saw the police release them after they were captured.<sup>10</sup> The crew of a fishing trawler reported that local villagers had captured pirates who had boarded their ship, but the police did not take them into custody. Instead, they freed the pirates over the protests of the victims.<sup>11</sup>

The IMO is working to establish worldwide standards to "improve the uniformity of inspection and reporting practices for port control and promote exchange of information."<sup>12</sup> The IMO and IMB should go a step further by publishing reports identifying ports that regularly cause undue delay or those where port authorities may be conspiring with criminal groups and by publishing instances of extortion or collusion, just as they report piracy and sea robbery. Both IMO and IMB should issue warnings to carriers, shippers and insurers identifying ports that frequently delay vessels.

Finally, the IMO and IMB should petition the governments of these ports to clean up corruption in their ports.

### Sea Robbery

Today, 65 percent of all reported attacks on merchant vessels are committed while the ship is berthed or anchored in port. Attacks usually target the contents of the ship's stores and safe and the crew's personal valuables. Typical reports on piracy that occurs in port read more like police blotters than high seas battle scenes. For example, on Jan. 29, 2003, while berthed at Wharf D in Panjang, Indonesia, "pirates" boarded the bulk carrier *Alberto Topic*:

While berthed, about eight pirates mixed in with stevedores and boarded. They broke padlocks of storerooms and tried to steal engine spares. Alert crew raised alarm and pirates jumped overboard. One pirate received serious injuries whilst jumping overboard and he was hospitalized.<sup>13</sup>

Similarly, on Mar. 1, 2003, "pirates" boarded the bulk carrier *Love Me Tender* while berthed in Sabah, Malaysia. They went on board during cargo operations, stealing the ship's stores and "property from the forepeak store."<sup>14</sup> This is mundane criminality, requiring improved local policing more than concerted international efforts.

Although these robberies are unfortunate, few raids on stationary vessels in ports involve violence. The tools and equipment used in sea robbery are no more sophisticated than crowbars and sledgehammers. Crimes committed in ports against stationary ships should be categorized as sea robbery and should not be weighted with the more histrionic term of piracy. Adding these petty crimes to reports on piracy both exaggerates the problem and blurs efforts to make policy. Local law enforcement agencies and port authorities should instead differentiate piracy and sea robbery and implement port security policies that address the security weaknesses identified by the IMB's reports on sea robbery.

### Piracy

Whether a ship is on the high seas or in territorial waters, boarding and attacking a ship while underway requires more organization and equipment than robbing a stationary ship in port. To insure a good return on the additional investment in equipment, the pirates need better intelligence to assure that their target has something worth stealing.

Boarding a moving ship is far more difficult than boarding a stationary one in port. In 2003, pirates boarding stationary ships (anchored or berthed) were successful 90 percent of the time, but they were only successful in 58 percent of their attempts to board a steaming vessel.<sup>15</sup> Pirates often use guns when attacking ships underway because the vessel must be slowed or stopped before boarding is possible.

As a result of the increased firepower, there are more deaths and injuries in attacks against ships underway. In 2003, there were only one inci-

dent of gunplay, two crewmembers killed and two missing from the 242 sea robberies that took place in ports. On the 210 ships attacked while underway, however, there were 13 hijackings, 12 reports of gunshots, 193 hostages taken, 19 crewmembers killed and another 38 disappeared. The incident reports are also far more hair-raising. For example, on Apr. 8, 2003, the general cargo ship *Trimaggada* was attacked while transiting the Malacca Strait, perhaps the world's most notorious maritime thoroughfare:

While underway, several pirates in three fishing boats fired on the ship from both sides, and forced the master to stop engine. The Master sent a distress message. Pirates boarded the ship and gathered all crew on deck. They took hostage the master, chief officer and chief engineer and took them off the ship. The third officer reported to the Indonesian Navy. A Navy boat arrived and escorted the ship to Belawan anchorage. Hostages were subsequently released upon payment of ransom.<sup>16</sup>

Pirates frequently appear to have intelligence about the ships they are hijacking. For example, on Aug. 28, 2003, the bulk carrier *Regina V* was boarded while steaming off Bintan Island, Indonesia. A report of the event described how "six masked pirates armed with guns and knives boarded the ship from a speedboat" and that the pirates seemed to know how much cash was on board because the pirates "wrote down the figure on paper." After assaulting some of the crew, "the pirates left at 0015 [local time] with crew personal effects and ship's equipment."<sup>17</sup>

Better equipment, arms and intelligence imply a more complex level of organization than that exhibited by sea robbers. Combating these sophisticated trans-national criminal organizations will require international cooperation. The UNCLOS definition of piracy, however, limits piracy to attacks on the "high seas," leaving out almost half of all acts of piracy against ships underway. In 2003, there were 210 reported attacks attempted or committed against ships while underway, 88 (or 42 percent) of which occurred in some country's territorial waters. According to UNCLOS, Article 111, "*Right of hot pursuit*," a foreign navy or coast guard or maritime police vessel is prohibited from pursuing a suspected pirate vessel into another country's territorial waters. The pirates, on the other hand, recognize no such ban on their movement and will use any country's territorial waters to elude pursuers.

To remedy the definition gap, UNCLOS should be amended to expand the definition of international piracy to include attacks on all ships underway, whether on the high seas or in territorial waters. Additionally, Article 111 should be amended to permit hot pursuit of suspected pirate vessels by foreign naval air and sea vessels into territorial waters with notification to and approval from the relevant authorities.

Another solution would be for countries plagued by pirate attacks, such as Indonesia and the Philippines, to negotiate treaties with their neighbors and allies to coordinate air and sea patrols and to permit hot pursuit of suspected pirate vessels into their territorial waters by foreign air and sea vessels that comply with the requirements set forth in the treaty.

### Maritime Terrorism

Terrorists use their maritime assets to accomplish three objectives: attacks against sea transportation for the purpose of creating fear; smuggling arms and other contraband; and raising funds through piracy. Although these types of activities are not yet substantially disrupting sea-lanes, terrorists are demonstrating a growing sophistication and competence in naval attacks, which should be a cause for worry among policymakers around the world.

Two examples of early maritime terrorism were the attacks against the U.S. Warship *Cole* and the French oil tanker *Limburg*, both off Aden, Yemen. On Oct. 12, 2000, while it was anchored in the port of Aden, terrorists attacked the *Cole* using a suicide bomb on a supply raft, killing 17 U.S. sailors. On Oct. 6, 2002, terrorists in a small dinghy loaded with explosives attacked the French oil tanker *Limburg*, killing one crewman and spilling 90,000 barrels of oil.

These two tragic and widely publicized attacks did little to alert the world to the fact that terrorists are targeting ships. Neither did they cause the IMO or IMB to modify their definitions or policies on pirates in order to address the new threat to the world's sea-lanes. In fact, the IMB does not report deaths caused by terrorists as piracy. In its annual report on piracy for 2001 the IMB noted "that of the 72 casualties in 2000, 57 deaths were due to attacks by terrorists rather than pirates, namely 17 sailors died on the *Cole* and 40 deaths were due to a bomb explosion aboard a ferry in the Philippines. Thus the deaths due to piracy in 2000 amounted to 15."<sup>18</sup> Using this logic the IMB can claim that terrorists are not involved in piracy since anytime a terrorist attack occurs, the IMB simply classifies it as something other than maritime piracy. This might be useful if the IMB had a separate category for terrorists, but at present, the IMB does not offer a definition of maritime terrorism and therefore gives no explanation for how it makes the distinction. The IMB's annual reports for 2003 suggest a possible up-tick in these kinds of attacks. Al Qaeda's maritime attacks in 2000 and 2002 were relatively simple missions from a naval perspective. The IMB's 2003 reports demonstrate that terrorist groups are increasingly using sophisticated tactics, vessels and weapons to carry out their missions. For example, on Oct. 26, 2003, an Indonesian terrorist/insurgent group known as the Free Aceh Movement (GAM) intercepted a fishing trawler, PKFA 8588, in the Malacca Straits.

While underway, several armed uniformed men suspected to be GAM rebels in a fishing boat hijacked the fishing trawler and sailed it towards Indonesian waters, where Indonesian Marine Police confronted them. A shootout ensued in which two of the suspected GAM members on board the trawler were shot dead and another was injured. Several others in the boat escaped. The crew of the trawler and the suspected GAM members were taken for investigation.<sup>19</sup>

Sri Lankan terrorists, the Liberation Tigers of Tamil Eelam (LTTE), even operate their own navy, the Sea Tigers, to commit acts of terrorism

and piracy and to smuggle weapons. Two examples of suspected LTTE incidents demonstrate their suicidal brutality and potential to harm the world's shipping. On Mar. 10, 2003, a Sri Lankan navy patrol boat north east of Mullaitivu, Sri Lanka, approached an unidentified general cargo vessel, intercepting the ship and ordering it to stop. "When the ship ignored the warning, the patrol boat opened fire. In a deliberate attempt, [the] crew detonated explosives and sank the ship."<sup>20</sup> On Mar. 20, 2003 the Ufauan-U 225 fishing trawler was steaming 16 miles off Chundikulam, Sri Lanka. It was attacked with rocket-propelled grenades. Nine crewmembers were rescued, and 18 disappeared.<sup>21</sup>

The terrorist propensity to use tactics that destroy both the attacker and victim, the increasing use of "navies" by terrorist groups, and the vulnerability of ports and straits to terrorist attack prompted Singapore's Home Affairs Minister Wong Kan Seng to say that "if it's piracy we treat it just like terrorism because it is difficult to identify the culprits concerned unless you board the ship."

Wong's statement is a good example of the fear and frustration of policymakers in South and Southeast Asia that are plagued by both pirates and terrorists. A distinction between maritime terrorist attacks and pirate attacks is important to policymakers because most piracy and sea robbery is economically motivated and unrelated to the political process, while terrorist and insurgent objectives are to alter the political process. The terrorists are using the money raised through piracy and other trans-national crimes to finance their operations against the governments.

The distinction between maritime terrorists and pirates is also important for operational reasons. For example, in 2003, pirates or terrorists hijacked 19 ships. If pirates take a ship to steal its cargo or ransom the crew, then there is no further national security problem. If maritime terrorists hijack a ship, then there could be significant follow-on security problems, like terrorists packing the ship with explosives and using it to destroy a port or to block important waterways.

In South and Southeast Asia, insurgents and terrorists represent a substantial security problem, and understanding the scope of the pirate-

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versus-terrorist problem will help policymakers prioritize security funding. This is especially true in Southeast Asia where resources for funding security forces are limited and most foreign security assistance to Southeast Asia is for the purposes of fighting terrorists.

### Conclusion

Under the current reporting system used by the IMB and IMO, maritime terrorist attacks are not differentiated from other maritime attacks. Instead,

they are lumped together with common criminal activities. Furthermore, extortion or collusion by port authorities is not reported in any form. Beyond the physical danger to seamen and the loss of property, the rising costs associated with piracy imposed on shippers, carriers and insurers threaten U.S. diplomatic efforts to fight terrorism and reduce trade barriers. As the United States lobbies to reduce trade barriers in Asia, these increased costs from unchecked criminal attacks against merchant vessels serve as a non-tariff barrier to trade. In addition, the added insurance costs and safety risks for trading in particularly dangerous ports result in an indirect economic boycott, restraining companies from conducting business with many U.S. friends or allies that are least able to afford direct efforts to combat the piracy.

The IMB and IMO can redress this problem and more adequately support the various agencies that combat crime at sea by promulgating a better definition of maritime piracy and categorizing the criminals that prey on the shipping industry. The four categories should be:

1. **Corruption.** To reduce the opportunity for extortion or collusion among port officials the IMO should speed its efforts to improve the uniformity of inspection and reporting in ports. Further, it should publish periodic reports that identify ports that regularly delay vessels or those where vessels report instances of official corruption or organized criminal gangs.
2. **Sea Robbery:** The IMO and IMB should disaggregate reports of sea robbery from piracy. Sea robbery takes place in port against stationary ships at berth or anchor and does not usually involve violence. Expanded police work and patrolling counters robberies in ports.
3. **Piracy:** The definition of piracy should be expanded to include all attacks against vessels while underway both in territorial waters and on the high seas.
4. **Maritime Terrorism:** The IMB and IMO should put attacks by terrorist groups into a separate category. A maritime terrorism category would be more useful to the maritime industry and government policymakers for formulating anti-terrorist policies than the current system of combining hundreds of reports of petty theft and common piracy with terrorist attacks.

The growing frequency of maritime crime is responsible for economic and financial damage to the international shipping industry as well as to world trade. The IMB and IMO annual reports clearly demonstrate that crimes against ships are not alike in implementation, objective or type of perpetrators, but the current system reports all crimes against ships as piracy, and thus misleads policymakers. The IMB and IMO should publish an annual report on crimes against shipping that classifies maritime crimes in categories that policymakers can use to assign appropriate agencies responsibility and funding.

**Notes**

<sup>1</sup> “New Definition sought for acts of piracy, isolated from terrorism,” *Utusan Online*, Kuala Lumpur, Oct. 8, 2004, front page, < [http://www.utusan.com.my/utusan/content.asp?pub=Utusan\\_Express&sec=Front\\_Page](http://www.utusan.com.my/utusan/content.asp?pub=Utusan_Express&sec=Front_Page)>.

<sup>2</sup> U.N. Convention on the Law of the Sea, Article 101, 1982.

<sup>3</sup> “Piracy and Armed Robbery Against Ships,” Annual Report, International Chamber of Commerce, International Maritime Bureau, Jan. 1–Dec. 31, 2003, 3.

<sup>4</sup> U.N. International Maritime Organization, MSC.4/Circ. II 53, June 1, 2004, 1.

<sup>5</sup> “New Definition sought for acts of piracy, isolated from terrorism,” *Utusan Online*, Kuala Lumpur, Oct. 8, 2004, front page, < [http://www.utusan.com.my/utusan/content.asp?pub=Utusan\\_Express&sec=Front\\_Page](http://www.utusan.com.my/utusan/content.asp?pub=Utusan_Express&sec=Front_Page)>.

<sup>6</sup> Interview conducted on Mar. 2, 2004, in Kuala Lumpur, Malaysia.

<sup>7</sup> “Port State Control: An update on IMO’s Work in 2003,” U.N. International Maritime Organization, 3.

<sup>8</sup> *Ibid.*

<sup>9</sup> “Piracy and Armed Robbery Against Ships,” Annual Report, ICC, IMB, 46–57.

<sup>10</sup> *Ibid.*, 54.

<sup>11</sup> *Ibid.*, 55.

<sup>12</sup> “Port State Control: An update on IMO’s Work in 2003,” U.N. International Maritime Organization, 3.

<sup>13</sup> “Piracy and Armed Robbery Against Ships,” Annual Report, ICC, IMB, 28.

<sup>14</sup> *Ibid.*, 29.

<sup>15</sup> “Reports on Acts of Piracy and Armed Robbery against Ships,” U.N. International Maritime Organization, MSC.4/Circ.50, Apr. 27, 2004; Annex 2, “Regional Analysis of Reports on Piracy and Armed Robbery Against Ships which were Reported to have been Allegedly Committed or Attempted during 2003,” 1–2.

<sup>16</sup> “Piracy and Armed Robbery Against Ships,” Annual Report, ICC, IMB, 31.

<sup>17</sup> *Ibid.*, 38.

<sup>18</sup> *Ibid.*, 3.

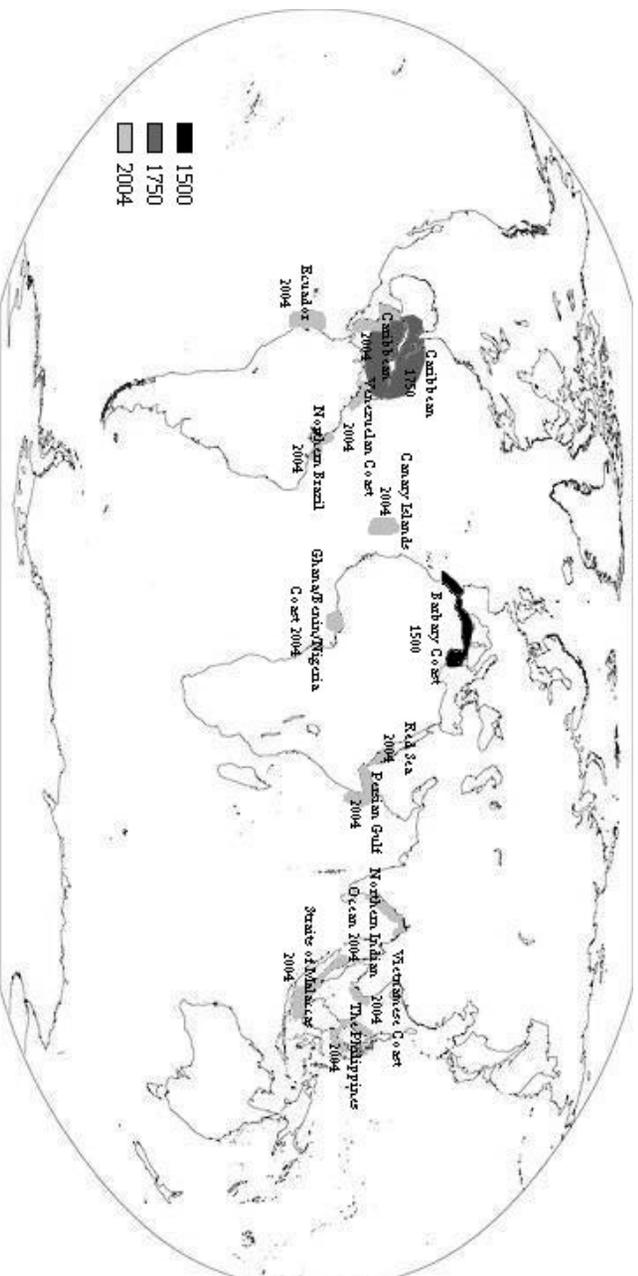
<sup>19</sup> *Ibid.*, 41.

<sup>20</sup> *Ibid.*, 48.

<sup>21</sup> *Ibid.*

# Global Bottlenecks

Areas of Maritime Piracy Prevalence—1500, 1750 and 2004



Sources: *International Maritime Organization, International Maritime Bureau*  
*Prepared by Sophie Reuning*