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Latrōcinium Maritimus – The Social Construction of Piracy.

Russell D. Brennan B.A (Hons)

This thesis is submitted in fulfillment of the requirements of the degree of
Doctor of Philosophy.

School of Arts, Media and Culture
Faculty of Arts
Griffith University
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2005.

Statement of Authorship

This dissertation has not been submitted to any other academic faculty within Griffith University or to any other institution of higher education in Australia for the purpose of gaining a Research Higher Degree qualification. All work included in this dissertation is the work of Russell D. Brennan B.A (Hons). Considerable effort has been made to make correct references to other work included.

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Russell D. Brennan. BA. (Hons).

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Statement Concerning Research Ethics

The dissertation falls into Section 6 of Doc 176/00 (008'56 revised) - Griffith University 'Guide for Research Involving Human Subjects'- the most recent version at the time of writing, issued by Griffith University Human Research Ethics Committee.

Although parts of the research involved human subjects, it remained exempt from ethics review by the Human Research Ethics Committee, or by its Sub-Committees because –

- (a) The information obtained from interviews was recorded in such a manner that participants cannot be identified, directly or through identifiers linked to subjects.
- (b) The information obtained from interviews was recorded in such a manner that it would not place participants at risk of criminal or civil liability or damage their financial standing, employability or reputation.

The research did not deal with sensitive aspects of the participant's own behaviour such as sexual preference, illegal conduct, use of alcohol, drug use or health status.

The other research conducted involved the study of publicly available, overt data. All interviewees are not identified either directly or through identifiers linked to subject matter, i. e all identifying details have been removed.

The interviewees have been referred to in the text as 'Informant 1' or 'Informant 2'. The number reflects the order in which each interviewee, who remains anonymous, was interviewed by the author during field research.

Abstract

Maritime piracy is analysed using social constructionist theories. Societal reactions toward behaviour historically labelled piracy have been influenced by coastal state social constructions of ocean-space. Contemporary state-societal reactions resulted in internationalised piracy law and reporting processes by the International Maritime Organization (IMO), the International Maritime Bureau (IMB), and media, which show which types of particular maritime theft fall under the rubric of ‘piracy’. The reporting of this social problem by institutions shows them acting as moral entrepreneurs. Certain nations’ securitised reactions to piracy and private military companies’ commodification of anti-piracy solutions are explored. The International Transport Workers’ Federation’s reaction to piracy forms part of its moral crusade against flags of convenience (FOCs). It criticises these flags, which reportedly lack political will and insufficient infrastructure to counter piracy. Terrorist groups have also reportedly utilised FOCs. While piracy is mostly a problem for capital, however, FOCs remain purportedly, a problem for labour. Some radical unionists have used the term piracy to describe exploitative labour practices, (the theft of maritime labour) on FOC vessels. Charismatic environmental organisations have also used the term ‘piracy’, expanding the definition to refer to illegal fishing and whaling and highlighting a range of their activities using anti-piracy rhetoric. The dissertation examines why the environmental expansion of the definition of piracy has won greater acceptance than the Labourite construction of piracy in relation to FOCs. It concludes that there is a new postmodern stage of the global piracy prohibition regime.

TABLE OF CONTENTS –

ABBREVIATIONS AND GLOSSARY	8
LIST OF INFORMANTS	21
INTRODUCTION	22
CHAPTER 1	
LITERATURE AND THEORY	33
CHAPTER 2	
PROHIBITION AND PIRATES	57
CHAPTER 3	
THE INTERNATIONAL MARITIME BUREAU, THE INTERNATIONAL MARITIME ORGANIZATION AND THE REPORTING OF PIRACY	87
CHAPTER 4	
THE MEDIA AND PIRATES: CAVEAT LECTOR	118
CHAPTER 5	
THE SOCIAL CONSTRUCTION AND COMMODIFICATION OF SOLUTIONS	145
CHAPTER 6	
STRUCTURAL PIRACY: FLAGS OF CONVENIENCE IN THE CAPITALIST WORLD SYSTEM: CAVEAT NAUTA	186
CHAPTER 7	
ENVIRONMENTAL PIRACY	216
CONCLUSION	258
Appendices	262
Bibliography	285

ABBREVIATIONS AND GLOSSARY

ABC	Australian Broadcasting Corporation. A media agency funded by the Australian government. It has provided coverage of several piracy incidents.
Agencies of Social Control	A broad term used by social constructionists to describe agencies that have a role in the governance of domestic and international society. These can include the political executive, senior members of government departments such as the judiciary and the police. The term can also be used to refer to socioeconomic and media elites.
AMSA	Australian Maritime Safety Authority. This agency is responsible for regulating Australia's merchant fleet and their international maritime obligations. They are also concerned with issues concerning safety at sea and marine pollution.
ASEAN	Association of Southeast Asian Nations. This is a regional organisation consisting of Southeast Asian member states. A number of political, economic and strategic issues, such as piracy and regional anti-piracy responses, have been discussed during meetings such as the ASEAN Regional Forum (ARF).
BBC	British Broadcasting Corporation. A British Government-funded national media agency that transmits via television, radio and Internet. It has covered stories about piracy.
Beneficial Owner	Term used in merchant shipping to refer to the actual owner of a ship. Ownership can be masked by use of the FOC system.
BIMCO	Baltic and International Maritime Council. This commercially oriented interest group formed in 1905, provides services to its members who are mostly shipowners, shipbrokers and P&I Clubs. It can intervene on their behalf with flag and coastal states and the IMO.
Blyth, K.	Captain Kenneth Blyth was master of the mt <i>Petro Ranger</i> , owned by the Malaysian company Petroships Ltd., when it was intercepted and captured by pirates in the South China Sea during 1998.
Campbell, I.	Senator The Hon. Ian Campbell. Senator for Western Australia. Australian Minister for the Environment & Heritage from 18 th July 2004 to the 30 th January 2007.

<i>Caveat Lector</i>	Let the reader beware.
<i>Caveat Nauta</i>	Let the seafarer beware.
CCAMLR	Commission for the Conservation of Antarctic Marine Living Resources. The Commission's member states seek to enforce rules concerning sustainable fishing in the Antarctic Ocean in order to preserve what are reportedly, diminishing fish stocks. See also RFMO.
Classification Society	Organisations such as Lloyd's Register of Shipping that establish technical regulations for shipbuilding and maintenance. Their standards are industry-wide but vary. They issue 'classification' certificates to ships that demonstrate compliance. Standards have to be met by ships for their owners to obtain insurance and often freight contracts. Classification societies have an ambiguous position between flag states and merchant shipping.
CMI	Comité Maritime International. An association of national law associations that is a proponent of unified international maritime law, practices and customs. Its representatives often lobby particular flag and coastal states to implement suggested changes in maritime and commercial law.
Coastal States	States with a coastline establish laws designed to control shipping in various ways in their ports, territorial waters and Exclusive Economic Zones.
Deadweight (dwt) tonnage	Total weight that ship can carry when fully loaded or at full displacement. Ship equipment accounts for approximately 5% of total deadweight. Therefore, a 50,000-dwt-bulk carrier would carry approximately 47,500 dwt of freight.
DGSE	Direction Générale de la Sécurité Extérieure. This is the French Government's General Directorate for External Security. This agency was responsible for the sinking of Greenpeace's mv <i>Rainbow Warrior</i> in Auckland Harbour in 1985.
Displacement Tonnage	Actual weight of ship and all contents. This measurement, however, is usually applied to warships but is sometimes used in merchant shipping.
EEZ	Exclusive Economic Zone is a sea area outside but next to a coast state's territorial sea. The EEZ usually does not exceed more than 200 nm from the outer limit of a state's territory. Usually the coastal state can exercise the right to exploit non-living and living marine resources in this area.

EMO	Environmental Movement Organisation. A social movement organisation that emerged from the environmental movement, which began to gain momentum in the 1970s.
EU	The European Union.
Flag States	States that allow registration of merchant ships on a national shipping register. They establish the legal conditions under which registered ships will operate. The ‘nationality’ of a ship, therefore, and the law it is subject to is mostly determined by the state in which it is formally registered. This is formalised by Article 91 of UNCLOS. (See also Coastal State).
FLASCI	Flag State Conformance Index is used to rate the performance of flag state administrations using a number of variables, including their ability to exercise sovereign authority to control operational standards aboard registered ships.
FOC	Flags of Convenience. Critics often use this term. FOCs offer ship owners (beneficial owners) lenient labour, fiscal and other conditions under which they can operate ships. FOC states are usually in the periphery and operate a shipping register or ‘flag’ to earn hard currency. Other characteristics can include lack of political will and administrative capability to ensure ship owners adhere to other flag state rules and international conventions the flag states have signed.
Fordism	A mode of regulation central to the productive organisation of industrial capitalism. Scientific and engineering principles are used to mass-produce and mass-market standardised products, with labour being relatively high-waged and protected. Fordism in the global political economy was the strongest between 1945 and 1973, the most modernist period, which saw emphasis on state planning, demand-side stimulus, low prices, high wages, credit and a welfare state. It had social and political consequences domestically and internationally.
GAM	Gerakan Aceh Merdeka. This is a separatist guerrilla movement that has fought against the Indonesian government in an attempt to gain political independence. Its members have reportedly taken part in pirate attacks on merchant ships off the coast of Aceh province, which is the most Northern region of Sumatra.

GDP	Gross Domestic Product.
GPPR	Global Piracy Prohibition Regime. Upheld by the recognition of states with significant maritime interests and explained in Articles 101 – 106 in UNCLOS and elsewhere.
Greenpeace	An environmental, non-violent action group that was founded in the 1970s to combat ecological degradation (including that occurring at sea), which it identified.
GRT	Gross Registered Tonnage. Measurement of a ship's internal volume. The enclosed capacity of the ship. 1 ton= 100cf of volume. 2.83 m ² = 1 ton.
Heterotopic Ocean Space	A socially and spatially constructed ocean territory with multiple and overlapping functional definitions, which emphasise alternative communities that sometimes oppose prevailing structures of power, which people can interpret differently.
IWCO	Independent World Commission on the Oceans. This UN organisation was established in 1995 to evaluate the multifaceted uses of the world ocean, its governance and the depletion of its living resources. Unlike other independent commissions, which focus on a specific area with a relatively narrow focus, the IWCO has sought to analyse human-ocean interaction from multidisciplinary, integrated perspectives.
IOC	Intergovernmental Oceanographic Commission (UNESCO). The IOC, founded in 1960, provides an administrative mechanism for UN member states to cooperate in oceanographic research. The creation of this organisation was a high modernist response to the recognition that no one state could systematically undertake all oceanographic scientific investigations.
ICC	The International Chamber of Commerce. This international organisation is a proponent of free global trade and an advocate of internationalised businesses within the capitalist world system. The organisation consults with member states via its national committees.
ICONS	The International Commission on Shipping. This Commission was established to undertake an investigation into labour and other operational standards aboard merchant ships of all flags. The commission called for submissions from all actors within shipping and then produced the report <u>Ship, Slaves and Competition</u> , which provided insight into problems concerning working conditions at sea.

ILO	International Labour Organization. This UN organisation that deals with the array of political, economic and social issues related to employment and labour issues.
ILWU	International Longshore and Warehouse Union. A United States labour union for US dock workers.
IMB	The International Maritime Bureau (subsidiary of the International Chamber of Commerce). The IMB is concerned with many issues in merchant shipping, including maritime fraud and acts of piracy.
IMCO	Inter-governmental Maritime Consultative Organisation. Former name given to the IMO.
IMO	The International Maritime Organization. This UN agency is concerned with establishing cooperation between flag and coastal state governments. It also facilitates the drafting of international maritime conventions (such as UNCLOS) that concern an array of maritime issues. The IMO consists of a number of committee and sub-committees. It is funded by member states.
IWC	The International Whaling Commission was established from the International Convention for the Regulation of Whaling (1946) to provide international whaling regulation. It promoted cooperation between whaling and non-whaling nations and scientific data use to identify the status of whale stocks. IWC states imposed a moratorium on commercial whaling. Disagreement has arisen between some non-whaling states and Iceland, Japan and Norway that have sought to gain approval to resume whaling. There is controversy over Japan's 'scientific research' whaling in the Southern Ocean.
IRI	International Registries Incorporated. This company formerly operated the Liberian flag registry on the behalf of the Liberian government. It now administers the shipping registry of the Republic of the Marshall Islands.
ISF	International Shipping Federation. This is an internationalised employers' organisation that is concerned with maritime employment issues. It often represents shipping companies at various forums where maritime industrial relations issues are being discussed.
ITF	The International Transport Workers' Federation. A peak body of transportation unions (including maritime unions) worldwide, headquartered in London. They have maintained a campaign against seafarer exploitation and the flags of convenience system.

IUU	Illegal, Unreported and Unregulated Fishing.
JCG	Japanese Coast Guard. The Japanese Ministry of Land, Infrastructure and Transport oversees this agency. The JCG is responsible for maritime policing in Japanese territorial waters.
JDA	Japan Defence Agency.
JMSDF	Japanese Maritime Self Defence Force. This is the maritime arm of the JDA. The JMSDF is responsible for all naval defence manoeuvres, which have included some anti-piracy operations.
KCG	Korea Coast Guard. This is the coast guard of the Republic of Korea. It is in charge of all maritime policing affairs, including anti-piracy operations, within South Korean waters. It has interacted with other regional authorities such as the JCG and Malaysia's MMEA.
Koizumi, J.	Junichiro Koizumi. Former Prime Minister of Japan. Prior to being replaced by the new Japanese prime minister Shinzo Abe, he promoted bilateral and multilateral anti-piracy initiatives among ASEAN nations.
Labelling Theory	A socially constructionist, relativist theory. Agencies of social control establish rules that once violated, create deviance. The violators are then labelled, either negatively or positively, and defined in certain ways. This generates social stigma. Rules change over time and between jurisdictions so labelling processes remain in a state of flux.
Linguistic Expansion	Term used in sociolinguistics to refer to the change in the meaning of a word through its use in differing, evolving empirical contexts.
LSC	Liberian Shipowners' Council.
LSR	Liberian Shipping Registry. Former Liberian flag state administration, run by IRI (along with the Marshall Islands flag) prior to the creation of Liberian International Ship and Corporate Registry (LISCR) by the former Liberian president Charles Taylor.
LTTE	Liberation Tigers of Tamil Eelam. This group has been fighting the Sri Lankan government since the 1970s. It has reportedly used its own merchant ships (registered under FOCs) to transport weaponry.

<i>Mare Clausum</i>	A sea space that is ‘enclosed’ or legally territorialised by a coastal state authority.
<i>Mare Liberum</i>	The sea space that is considered the open high seas – external to and beyond coastal state territorial waters.
<i>Mare Nostrum</i>	Romans used this term when referring to seas that were essential to the functioning of the Roman Empire. Roman authorities regarded areas of the Mediterranean Sea as being under their guardianship.
MCA	UK Maritime and Coastguard Agency.
McDonald, I.	Senator The Hon. Ian McDonald. Senator for Queensland. Australian Minister for Fisheries, Forestry and Conservation from 14 th November 2002 to the 27 th January 2006.
MMEA	Malaysian Maritime Enforcement Agency. This government agency overseas various coast guard duties performed in Malaysian territorial waters. The RMMP (see below), Malaysian fisheries, immigration, and customs departments will soon be under the command of this agency.
Modernist period	The demarcation by date of this period is subject to debate. However, it is broadly accepted that it existed from being from the late 19 th Century to the mid 1970s.
Modernism	The broad intellectual movement that helped replace traditional society. Modernist theories are strongly associated with the art and architectural movements. They also refer, however, to the societal and political economic changes that focused on functionality, rationality and positivist truth. Modernist theory advocates emphasised scientific developments, control over the environment, technical innovation and mass production (see Fordism).
Moral Entrepreneur	One who identifies and reacts against a social problem while part of an agency of social control, or brings it to the attention of an authority for rectification. A moral entrepreneur’s involvement can result in a moral crusade.
Moral Crusade	The longer-term activities of moral entrepreneur that aim to correct a social problem in accordance with his or her own moral perceptions.
Moral Panic	A collective, social response to an issue that moral entrepreneurs label a social problem. The response has intensity out of proportion to the actual adverse impact of the issue. Moral panics are usually short term and may re-emerge over time.

MPDG	Maritime Patrol Directorate General of Taiwan under its Coast Guard Administration (CGA) oversees coast guard operations in Taiwanese waters. This includes an array of policing functions such as anti-piracy operations, and action against smuggling and poaching in Taiwanese waters by foreign fishing fleets.
MPRU	The Maritime Patrol and Response Unit of the Australian Customs Service undertakes long-range armed patrols within Australia's Southern Ocean EEZ aboard the mv <i>Ocean Viking</i> . The MPRU liaises with the Australian Fisheries Management Authority (AFMA) if necessary to apprehend ships found fishing illegally within Australia's EEZ.
Mt	Motor tanker.
MUA	Maritime Union of Australia.
Mv	Motor vessel.
Net Tonnage	Earning capacity of vessel. GRT minus crew quarters, machinery and fuel spaces.
NUMAST	National Union of Marine, Aviation and Shipping Transport Officers. The former name given to the UK union for merchant marine officers. NUMAST was solely British until 2006 when it merged with the Dutch union Federatie van Werknemers (FWZ) to form two associative federations – Nautilus UK and Nautilus NL.
OFC	Offshore Financial Centre. Critics often refer to OFCs as 'secrecy havens' or 'tax havens'.
P & I Clubs	Protection and Indemnity Clubs. These are insurance firms' associations that insure ships collectively to spread risk.
PCG	Philippines Coast Guard. This agency undertakes broad maritime law enforcement in the territorial waters of the Philippines.
Phantom Ships	Ships, mostly small bulk carriers that have been stolen and re-registered by criminal elements. They are usually re-registered in under-performing FOC jurisdictions by officials willing to accept documentation at face-value. Once re-registered, ships are given a new identification and 'nationality'. They are then used most often for further illegal practices, such as to facilitate additional cargo theft.

<i>Jure Gentium</i>	Legal term to refer to what is accepted under common law. The term piracy <i>jure gentium</i> refers to the accepted piracy definition under international common law. This principle was based on <i>pirata hostis humani generis est</i> (piracy was the universal enemy of mankind).
PN	Philippine Navy. This is part of the Armed Forces of the Philippines (AFP) and is responsible for enforcing Philippine maritime defence policy.
PMC	Private Military Company.
Postfordism	Postfordism emerged from social and economic organisational change the economic crises of the 1970s. Characterised by a) Declines in heavy industry, b) The emergence of information technology and flexible accumulation, c) Labour being largely decentralised, deunionised and feminised, and a more internationalised division of labour and d) Economic activity being deregulated and privatised.
Postmodernism	Broad body of theory that questioned the overarching theories of modernist, rational scientific development and promoted deconstructionist and pluralist theoretical interpretations. Strongly linked to postfordist flexible accumulation.
Postmodernity	The broad economic, societal and cultural structures that largely replaced those of the modernist period. It is characterised by a) Diversification of the territorial and spatial division of labour along postfordist lines, b) De-industrialisation of the core, including declines in core shipping registration, c) Mobilisation of labour from the periphery, including the recruitment of peripheral seafarers, d) Cultural fragmentation and pluralism, shown by increasing and varying interests in heterotopic ocean-space and differing interpretations of piracy and e) New social movements (such as environmentalism) which are loosely structured – with a fluid membership, often mobilised in an informal manner by a charismatic core leadership (see postfordism).
PRC	Piracy Reporting Centre (IMB Kuala Lumpur). Seafarers can contact the IMB's PRC in the event of a pirate attack. The PRC then can contact the appropriate maritime law enforcement agencies. The PRC also collects piracy data, which helps the IMB compile their periodic and annual reports detailing attacks worldwide.
PSC	Port State Control. A mechanism established by some coastal states and regional authorities such as the European Union to systematically inspect ships entering ports to ensure compliance with coastal state and international operational standards.

<i>Res Nullius</i>	This Latin term originates from Roman law. <i>Res nullius</i> items are considered ownerless and are usually freely owned. Migratory fish stocks, for example, could be considered <i>res nullius</i> . Competition for these depleting fish stocks is a source of conflict.
RFMO	Regional Fisheries Management Organisations. Organisations established to manage sea fisheries, which have input from member states. CCAMLR is an example of an RFMO.
Rhetorical Analogy	Moral entrepreneurs on a moral crusade often use rhetorical analogies to emphasise semantic, linguistic comparisons between terms to strengthen arguments. A rhetorical analogy can be classified as a logical analogy if it positively identifies the same underlying definitions of terms. E.g. piracy (narrowly defined) and IUU fishing both involve the behaviour of theft at sea.
RMMP	Royal Malaysian Maritime Police. Units of this force police Malaysia's territorial waters. They have reportedly acted against pirates on a large number of occasions.
RMN	Royal Malaysian Navy.
RMT	National Union of Rail, Maritime & Transport Workers. UK Trade Union.
RSN	Republic of Singapore Navy.
RTMP	Royal Thai Marine Police.
RTN	Royal Thai Navy. Both the RTMP and the RTN have conducted marine policing duties, including anti piracy operations in the Gulf of Thailand and the Andaman Sea.
Seafarer	This is a generic term used to describe a person, irrespective of rank or technical qualifications, employed aboard a merchant ship.
SOLAS	The International Convention on the Safety of Life at Sea. This convention emerged at a result of the IMO and flag states attempting to reduce the accident rate at sea. It has been updated numerous times. SOLAS 1994 incorporates the International Safety Management (ISM) Code. This requires shipping companies to establish a safety management system aboard ships.

SLOC	Sea Lanes of Communication. Sea channels through which intra and inter-regional and inter-continental shipping passes. They are vital to maritime trade and to many core-state strategic objectives.
Secondary Register	Some metropolitan flag states – for example Germany, Norway and Denmark operate a secondary register. They have more lenient fiscal requirements than core state national registers but are less lenient than FOCs.
Shippers	In terms of the sea carriage of goods, a shipping company (narrowly defined) is regarded as a ‘carrier’ while a ‘shipper’ refers to the actual sender of cargo. However, in a broader sense, the term has been used to refer to shipping companies. This term is distinct from ‘Beneficial Owner’ (defined above).
Social Constructionism	Theories that emphasise the importance of labelling processes in forming social life. Social Constructionism, therefore, focuses on the invented aspects and different interpretations of the social order. This includes societal reaction, in particular by agencies of social control, toward various social phenomena.
Social Movements	Associations of fluid groups, more informally organised than political parties, seeking to instigate or influence social change. They have varying links with institutions. Social movements are diverse and are typified by democratic, labour, environmental, women’s, pacifist and consumer movements.
SMO	Social Movement Organisation: Rationalised, formal organisation that emerge from social movements. It accumulates supporters and resources and mobilises to realise political objectives.
Social Problem	A set of circumstances that agencies of social control perceive to be contrary to the dominant moral standing and laws within society. Problems are defined as wrong, prevalent, and things that should be changed. Labelling of problems varies due to societal perceptions and responses. Therefore, social problems and laws change over time and between spaces.
SPCG	Singapore Police Coast Guard. This agency is responsible for policing Singapore’s maritime territory. Given, the size of this sea-space, it undertakes inshore marine policing work.
Spicer, T.	Lt. Colonel Timothy Spicer. Former British Army officer. He was head of a former private military company called Sandline International. Spicer reportedly remains a proponent of privatised anti-piracy militarism.

SSCS	Sea Shepherds' Conservation Society. A marine environmentalist group dedicated to radical action against illegal fishers and whalers.
SSD (ITF)	Special Seafarers' Department. This department of the ITF deals with seafarer employment and welfare issues.
<i>Sui Generis</i>	This legal term means 'of its own kind'. It is used to refer to a unique social problem such as a particular crime type that cannot be included in some broader conception. Piracy is often regarded as <i>sui generis</i> .
Symbolic Interactionism	The theory based on the premise that the significance of a particular social problem is not necessarily determined by the characteristics of the problem per se, but by societal reaction, in particular, reaction by agencies of social control.
TMC	Traditional Maritime Country. A coastal state, sometimes a former hegemonic power that has a long tradition of engaging in maritime activities and exercising significant mercantile marine and naval capabilities.
TNI AU	Tentara Negara Indonesia Angkatan Laut. The Indonesian Navy. The Indonesian Navy has fought against pirates reportedly from Indonesian coastal communities operating in the sea narrows of the Lombok, Makassar, Malacca, Philip and Sunda Straits. There is debate, however about their effectiveness against pirate gangs.
Ton Mile	The requirement for ship transport depends on distances shipped. For example, a ton of oil shipped from the Arabian Gulf to Rotterdam, generates three times the demand for shipping than a ton of oil shipped from Libya to Marseilles. Distance effect is the 'average haul', expressed in ton-miles. Ton Mile = cargo tonnage multiplied by distance shipped.
ULCC	Ultra Large Crude Carrier. A bulk liquid carrier ship of approximately 300-500,000 dwt.
UN	United Nations.
UNCLOS	The United Nations Convention on the Law of the Sea.
UNCTAD	The United Nations Conference on Trade and Development.
USCG	United States Coast Guard.
USN	United States Navy.

- Watson, P.** Captain Paul Watson is head of the Sea Shepherd's Conservation Society. He was a founder member of Greenpeace but formed the SSCS to undertake more radical environmentalist action at sea. Watson remains a proponent of direct, physical and sometimes dangerous exploits against whalers and illegal fishers and remains critical of what he sees as the inaction of nation state navies against 'pirate fishers' and whalers.
- VLCC** Very Large Crude Carrier. Liquid Tanker ships that are between 200-300,000 dwt.

LIST of INFORMANTS

- Informant One** This person, whom I interviewed in Kuala Lumpur, Malaysia, had some association with the International Maritime Bureau's Piracy Reporting Centre. This person was uniquely well placed within the international piracy-reporting process to confirm the validity of literature concerning reporting processes, dissemination of claims, company and flag state reactions.
- Informant Two** This individual was an analyst for a Southeast Asian state. His focus was mainly on maritime strategic affairs and multilateral responses in the Asian region. This person was interviewed in Kuala Lumpur.
- Informant Three** This person was a senior employee of an Asian shipping company whose ships had been subject to piracy in Southeast Asia. He was working in Kuala Lumpur.
- Informant Four** This person, interviewed in Singapore, played a significant part in providing merchant seafarers with pastoral care. He was very familiar with the problems associated with sea-going life as well as the political economy of international merchant shipping.
- Informant Five** This person was involved in the provision of pastoral care to merchant seafarers and their families.
- Informant Six** This individual has a military background as a former member of the British army. He is now flying helicopters for a private company.
- Informant Seven** At the time of my interview with him in Singapore, he was associated with maritime trade union activism in Southeast Asia.
- Informant Eight** Former British Merchant Seafarer.
- Informant Nine** Former British Merchant Seafarer.
- Informant Ten** An individual who has had some association with the International Transport Workers' Federation, London.
- Informant Eleven** This person has relevant association with the study of environmental activism.

INTRODUCTION

REPORTING PIRATES

'St. Augustine tells the story of a conversation between Alexander the Great and a pirate he captured. "How dare you molest the seas?" asks Alexander. "How dare you molest the whole world?" the pirate replies. "Because I do it with a little ship only, I am called a thief. You, doing it with a great navy, are called an emperor."' (Chomsky 2002, p.vii).

The central argument of this thesis is that social constructionism deepens the analysis of piracy. There are problems with the definition and reporting of piracy because they are socially constructed. I demonstrate the tendency for bureaucratic entities to strictly adhere to the definitions of piracy created through governmental and intergovernmental legal processes. Yet, more charismatic organisations have expanded this definition in their moral crusades against some social problems in the maritime world. Therefore, the definition of 'piracy' is in a state of flux as using it in broader contexts extends its meaning from its historical origins. This is also occurring because institutions are dealing with 'ocean-space' (Steinberg 2001), which ultimately, means different things to different people.

The quote from St. Augustine's story illustrates that the pirate asserted that Alexander's use of the label pirate with negative connotations misrepresents a situation by using language to differentiate between behaviours, which are empirically the same. The pirate highlights comparable behaviours but contrary 'emotional' interpretations whereby one positive label (emperor) generates adulation and the other negative label (pirate) generates abhorrence (Thouless 1964, pp.11, 16, 17).

Therefore, this dissertation adopts a new academic approach to the study of piracy, its definition and reporting. It is the first detailed application of social constructionism to the analysis of piracy and expands the parameters of social

constructionist theory and adds a new dimension to the academic study of piracy. This approach was adopted for several reasons and subsequent research objectives were identified. This included a need to produce a social theory-oriented analysis not of 'piracy' *per se* but of the way in which key institutions were reacting to and reporting piracy. I argue that it is necessary to analyse dominant definitions of piracy and of how raw piracy data were being collected and reported by agencies. I also support this by an analysis of data that are excluded from official piracy reports.

Social constructionism raises a number of previously unexplored questions about piracy being a discursively created concept. Although 'pirates' as a collective noun is used as a rhetorical device to loosely describe maritime gangs of peripheral coastal states, and 'piracy' is considered *sui generis*, 'piracy', according to à Campo (2003, p.2000), 'neither was nor is an unchanging phenomenon; rather it is a concept in development'.

This raises questions about the nature of the Global Piracy Prohibition Regime (GPPR) (Nadelmann 1990), which possesses structural limitations formed by a positivist approach and particular uses of language. I argue that the legal and organisational definitions of piracy used within the context of the GPPR, are based upon a legal definition that excludes reference to other deviant maritime activities, which are identified by some as piracy. Piracy reporting processes occur within certain political contexts, which result in other data referring to structural limitations being underemphasised in mainstream reports. Widely-disseminated piracy reports from the International Maritime Bureau (IMB), the International Maritime Organization (IMO) and media reports based on piracy reporting integral to the regime, frequently claim to be accurate but they are often incomplete and tend to underemphasise structural limitations, such as those imposed by narrow definitions of piracy, methods of data collection and presentation.

Evaluation of data from the IMB, the IMO, flag states and the media without consideration of socio-political, socio-cultural and socio-economic contexts in which reports are written misses an opportunity to gain greater understanding of piracy through theoretical, contextual considerations. This extends to the nature of social processes within international merchant shipping and deep sea fishing, as they have become increasingly *laissez faire*, Flag of Convenience-oriented industries. Butcher (1999) recognises the conceptual difficulty with analysing maritime crimes as a single issue unrelated to other social phenomenon.

Why focus on definitions of piracy? These issues concern international merchant shipping, which as Cafruny (1987) and Hope (1990) demonstrate, has a long, complex history. The mercantile marine played a central role in the emergence of merchant and industrial capitalism (Steinberg 2001, p.13). Its operations remain central to global capitalist trade-flows in this ‘post-industrial’ era, as Stopford (1997) and Modelski and Thompson (1988) indicate.¹

I extend the social constructionist perspective and argue that the definition of piracy is a problem for seafarers and a problem for capital. Labelling something as piracy (or refusing to do so) may support the interest of capital or labour. For example, illegal fishing, or piscatorial piracy (McCay 1984) often undertaken by FOC fishing fleets (Ferrell 2005), is a problem for capital and labour. In addition, unions increasingly label the flag of convenience (FOC) phenomenon as piracy. For these organisations, maintaining an artificial separation between piracy (having a bad connotation) and FOCs (having no or possibly a mild connotation) helps capital.

The private shipping lobby as an interest group has succeeded in alerting the world to piracy (narrowly defined). International shipping interests have identified piracy as being a real issue and have sought to understand the impact of this social problem on maritime operations (Kvashny 2003). International capital has been interested in quantifying the impact of piracy in terms of profit-loss (IMB 1991).

Labour institutions such as the ITF have sought to understand piracy in much larger terms in relation to its impact upon workers and extend the term piracy to include FOCs. Newer environmental social movements have enlarged the definition of piracy further to include theft of marine resources through such acts as illegal fishing.

Western media agencies have generally accepted the narrow definition of piracy and often reported it in a sensationalist, incomplete way. Data have been conveyed uncritically from reporting agencies to public audiences via newspapers and television. This information conveyance has created a social imagery of pirates that is stereotypical and predictable. Considering the sensationalist nature of some reporting, it can be argued that some agencies of social control have acted as moral entrepreneurs and have used certain data to attempt to generate 'moral panic' (Thompson 1998).

The social constructionist approach emphasises not only the constructed nature of crime definitions but allows for consideration of power relations in the formulation of definitions, implementation and reporting and of data that remain excluded from reports. Therefore, from a social constructionist perspective, I argue that definition and codification are inherently political. International norms of piracy prohibition are socially constructed then 'codified in international law as part of a global prohibition regime' (Nadelmann 1990, p.487). Behaviour once formally considered 'legal' by imperialist powers, such as privateering and issuing letters of Marque to buccaneers was redefined as illegal in the 19th Century. Those who contravene this legal norm were then labelled pirates by agencies of social control. As previously indicated, certain behaviours continue to be excluded from this the act of codification. The subsequent reporting of maritime piracy by the IMB, the IMO, and media agencies are political in character as they have underemphasised certain data to create an image of piracy from specific, socially created perspectives that reflect specific interests of dominant international elites who 'act as transnational moral entrepreneurs', keeping certain

data excluded from reports or describing it using other contexts (Nadelmann 1990, pp.480, 482).² Piracy reports usually serve the interest of institutions oriented toward the capitalist status quo. Many academic articles about piracy, mostly empiricist and positivist, offer little analysis consistent with social constructionist theory.

Reactions to piracy and the labelling of ‘pirates’ occur from within an industry that is experiencing increasing *laissez faire*, structural problems and a degree of demoralisation - partly because of the FOC system.³ Charismatic environmental groups have also used the term piracy to refer to illegal fishing and whaling, irrespective of legal inaccuracy. Considering the definition of piracy within these contexts allows piracy to be analysed in new broader terms. The historically changing definition of piracy is a significant element in the social construction of the oceans (Steinberg 2001, pp125-135). This also relates to etymological philological evolution of words in sociolinguistics.

Methodology –

This thesis uses several thematic perspectives consistent with certain aspects of the sociology of deviance and political economy. I have incorporated literature from these academic areas but also from international and strategic studies. The theoretical and empirical literature has been discussed in the literature review but it is also considered in the dissertation where necessary.

This dissertation examines the legal codification of the behaviour, which became accepted as piracy, and how institutions have reported this. I analyse data from the IMB as it promotes itself as being a maritime, 'anti-piracy' institution. It systematically collects data from ships, coastal law-enforcement authorities and releases processed data via periodic and annual reports. I also examine data from the IMO, a United Nations (UN) agency, which releases periodic and annual reports. I analyse some piracy reports released by flag states, which is problematic

methodologically, because some flag states operate 'national' flags, some operate Flags of Convenience (FOC). These have varying administrative capabilities - some with little apparent interest in piracy. Finally, news articles and news wires concerning piracy released by media agencies were evaluated. Though the 'media' are not a single institution, certain reporting styles and characteristics appeared to predominate.

The IMO perhaps the most important - is a supranational maritime agency controlled and operated by the United Nations (UN). My social constructionist analysis will show how the IMO has created and accepted a positivist legally institutionalised, narrow definition of piracy. I will review reports issued from the IMO to assess how it has reacted to and reported piracy.

The IMB is the most important venture selling piracy-related technical information. It receives private sector funding and exerts global influence within the industry. The dissertation will assess overt IMB annual and periodic piracy reports released between 1990 and June 2005. Covert reports are released by this agency but it provides very limited access to those. I undertook some personal interviews in Southeast Asia with relevant personnel associated with the IMB and international shipping. I show that the IMB has faced problems in accumulating data, as piracy is often not reported to law-enforcement agencies. The data the IMB gets are often not from primary sources and the agency frequently receives reports long after alleged incidents have taken place.

Consistent with the hypothetico-deductive method of research, data were collected from February 1999 to June 2005. The data collected comprised several types. Primary data were collected via personal interviews with people associated with maritime agencies in Canberra, Singapore and Malaysia and telephone interviews with some personnel associated with maritime agencies in several locations in Europe. These people are anonymous; they gave interviews on guarantees of anonymity. A range of agencies employed the people. To protect

their identity I cannot disclose who employed them or where they were interviewed. Taking into account Lee's (1993) research into sensitive topics and Hyman's (1975) research into interviewing, these interviews enabled me to gain primary insight into maritime operations and clarify any points that seemed ambiguous.

Formal structured interviews were undertaken whereby agreement was established between interviewer and interviewee concerning what questions would be addressed and how the interviewer could ultimately present the data without compromising the identity of the interviewee. I overtly wrote notes during all interviews enabling interviewees to remain fully aware that I had paraphrased their answers or copied them verbatim. Comprehensive note collection during interviews enabled me to review data later, which facilitated critical evaluation. This was opposed to relying on memory when constructing meaning from notes at a future date.

It was beneficial to have constructed specific questions prior to interviews while having created additional ones during interviews as more unanticipated issues emerged. It allowed me to gain primary data while maintaining a critical perspective and the necessary degree of detachment from the interviewee.

Additional notes were made in an observer capacity during fieldwork, when notes concerning the institutional context in which the interviews were being undertaken.⁴ There was unstructured, casual interaction with many people connected in various ways to maritime agencies and the international merchant shipping industries. Much information was accumulated through casual interaction but I only used data that the interviewees approved of.

Secondary data comprised of periodic and annual reports issued by the IMB, the IMO and some flag states. It consisted of academic reports issued by centres of strategic analysis in London, Canberra, Kuala Lumpur, Hong Kong and Singapore. A considerable volume of data that was published by international

media sources was collected. The predominant media agencies were Reuters and Associated Press, though a great deal was collected from Fairplay, Lloyd's List and Singapore Shipping Times.

All reports considered were released between 1990 and June 2005. Reports produced in this 15-year period are sufficient in number to form an adequate sample to undertake analysis. Irrespective of when they were produced, it was found that many reports excluded and underemphasised many facts, which justified further analysis of them. Therefore, analysis of released data is as important for what is underemphasised or excluded, as they are for details that reports allege to provide. Social constructionism provides the theoretical basis for seven chapters outlined here.

Chapter 1 (Literature and Theory) provides an overview of the maritime literature reviewed during research. I then outline the social constructionist and political economy perspectives used to interpret problems concerning the expanding definitions of piracy.

Chapter 2 (Prohibition and Pirates) analyses the institutional definitions of piracy, including those created under the United Nations Convention of the Law of the Sea (UNCLOS), the IMB and the IMO. This chapter shows that other institutions use wider definitions of the term piracy. The social constructionist argument that crime definitions are created for specific purposes provides scope to explore why and how these definitions of piracy have been created and contested.

Chapter 3 (The International Maritime Bureau, the International Maritime Organization and the Reporting of Piracy) analyses the way the IMB and the IMO collect, record and present piracy data. It demonstrates how the empirical details of behaviour that matches legal definitions are categorised, counted and presented in report form and how this method of data management is based on a positivist methodological tradition. The IMB, the IMO and governments work within the

context of regarding piracy as a threat to the capitalist *status quo* and the international *rei publicae* and this affects their definition and reporting of piracy.

Chapter 4 (The Media and Pirates: Caveat Lector) considers the reporting of piracy by mainstream international media agencies. I show that the media most often use the dominant, institutionalised definitions of piracy developed by the IMO and the IMB and often mirror these institutions' own interpretations of piracy data. The chapter argues that the coverage of incidences of piracy by international media outlets is socially constructed and predictable. It shows that 'crime' phenomena such as piracy, that appear contrary to bourgeois values and potentially threaten trade, are presented in a sensationalist style.

Chapter 5 (The Social Construction and Commodification of Solutions) considers a number of state-oriented reactions to piracy. The US, Japan, Malaysia, Indonesia and Singapore have all politicised their reactions to the problem. There have also been private sector 'solutions' to piracy. It shows that private-sector private military companies (PMCs) have tried to gain from the narrow conventional social construction of the piracy phenomenon and several private sector companies have tried to act on piracy reports by becoming active in 'anti-piracy' operations. They have generated a socially constructed notion of political and commercial legitimacy of their operations, which contrasts with the viewpoint that PMCs are merely mercenaries.

Chapter 6 (Structural Piracy: Flags of Convenience in the Capitalist World-System: Caveat Nauta) continues this thematic perspective of addressing other definitions of piracy. In this chapter I note the reported connections between open ship registration (the use of Flags of Convenience), phantom shipping and piracy. I then explore a controversial issue concerning a radical definition of the term piracy and responses to it. The major controversial issue is a radical consideration of the actions of some FOC states, which are considered by some to operate a form of structuralised piracy.

Chapter 7 (Environmental Piracy) focuses on other aspects of behaviour and how this relates to the definitions of piracy. I focus on environmental movement organisations the Sea Shepherd's Society and Greenpeace as they have referred to illegal fishers and whalers as being piratical. This draws attention to how certain actors within environmental social movements have specific perceptions of ocean-space and use language in a particular way to influence ocean policies and further their own interests.

Introduction

¹ Steinberg (2001, p.14) noted shipping carries 95% of ‘world-trade by weight and two-thirds by value’. Global shipping capacity has grown in relation to global productive output. Global fleet capacity reached 758 million deadweight (dwt) by 1996 – almost ten times its capacity of 1870.

² See glossary for the definition of ‘moral entrepreneur’.

³ A definition of FOCs is included in the glossary and discussed in Chapter 6.

⁴ Interestingly, one aspect in establishing rapport with those interviewed was that they increasingly regarded or subconsciously categorised me as ‘anti-pirate’ and or ‘pro-ship owner’ and their cooperation grew. However, care had been taken to undertake interviews and analyse data from as ‘detached’ a perspective as possible.

CHAPTER ONE – LITERATURE AND THEORY

This chapter provides an overview of literature that highlights approaches undertaken to analyse piracy. The applications in this literature differ in orientation between empirical study and theoretical interpretation. Both broad perspectives are questioned by the use of social constructionist literature that I use to contextualise my theoretical position.

The perspective of this dissertation was selected after consideration of some other possible forms of analyses, which were later rejected, such as those of Vagg (1995), Worrell (2000) and Kvashny (2003). Vagg (1995, pp.63-80) analyses the reported increases in piracy that occurred in Southeast Asia between 1990 and 1992 from a positivist perspective. He argues that the frequency of piracy in that region could be explained by the wide socio-economic polarity in coastal communities. He contends that a proportion of the populations around the Riau Archipelago, Malacca and Singapore turned to maritime crime because of poverty. This argument is often repeated in reports and media articles, for example in Abhyankar (2005), Kvashny (2003), and Singapore Shipping Times (2002; 2002a; 2002b). Although some media reports have claimed that pirates are poverty stricken (see for example ‘The Pirates Who Came from Paradise’, Lloyd’s List 2000p, p.6), the argument that all pirates are motivated by poverty prevention does not appear to be based on systematic analysis of the correlation between the frequency of piracy and ambient political economic conditions. Reports of piracy do not provide sufficient data to confirm the extent to which ‘poverty’ is a causal factor. This argument is reinforced by the IMB’s own admission that although some pirates have been caught (see for example Lloyd’s List Maritime Asia 2000, p.6; Fairplay 2000i, p.14), few have been apprehended, even in ‘piracy-prone’ regions (International Maritime Bureau, 2001a).¹

However, the ethnographic work of Frécon (2002) makes progress toward understanding some communities in the Riau Archipelago that reportedly

undertake piracy in the Philip Straits and the Straits of Malacca. This ethnographic work draws attention to some association between poverty and piracy although this work is based upon an overall account of activities that do not appear to have been witnessed first-hand. Noteworthy are Frëcon's (2002) concerns about the dangers of trying to penetrate pirate groups. A researcher's safety could be compromised if pirates became suspicious of their motives.

Vagg notes a culturally oriented acceptance of piracy as a wealth-accumulating activity within this population and that pirates took full advantage the region's geographical characteristics. The Malacca Straits is a sea-lane of communication (SLOC), which is extremely narrow in parts.² Vagg (1995) also notes that official corruption facilitated piracy in the region, implying that pirate gangs either consisted of officials, or of others who operated with covert official sanctions.

Worrall contextualised contemporary piracy using routine activities theory, and argued that crime occurs when perpetrators are motivated, when there are opportunities to commit crime and when there is an absence of effective agencies of social control (2000, p.44). Worrall argues that anecdotal evidence provided by some agencies of social control indicates the extent of motivation of some pirate gangs operating off Nigeria and in the Malacca Straits, the ample opportunity to attack ships in those regions, the ineffectual preventative measures undertaken in those regions by authorities and the extent of compliance by government agents (2000, pp.45-47). Worrall notes that data available for analysis are incomplete but does not express any concerns about problems associated with reporting (2000, p.37). Kvashny (2003) asserted that the behaviour of pirate gangs could be explained within the context of rational choice theory and that pirates undertook cost-benefit analyses of their situation. Before we can accept that piracy can be explained by rational choice theory, we need to know more detailed information about specific pirate gangs, such as their organisational setup, financial resources and culture. We also need to know more about the local societies in which allegedly, are 'venues for the transfer of goods' (2003, pp.67, 68, 72).

My initial research objective had been to evaluate the social characteristics, prevalence and motivation of pirate gangs, possibly within the contexts of social network analysis, such as that presented by Coles (2001), or the political economy of informal economies in which contemporary pirate gangs interact, consistent with arguments raised by Henry (1987). These objectives had been initially chosen as opposed to an assessment of contemporary piracy prohibition or piracy reporting. Evaluations of behavioural, sociocultural and socioeconomic characteristics of gangs that had reportedly operated off Brazil, Nigeria, Somalia, Bangladesh, Indonesia, Singapore, Philippines, and China, and of gang relationships with ambient law-enforcement authorities could have been central to research concerning the correlation between poverty within communities of peripheral coastal states, political unrest and the frequency of piracy. My analysis of global piracy was to have been based on analysing secondary data concerning pirate gangs.

This research was partly motivated by the expectation that accurate studies of pirate gangs had been published. Yet, over time, a review of data did not reveal any substantial or reliable empirical data on the structure or behaviour of contemporary pirate gangs. This encompassed reports released by the IMB, the IMO, flag states, the media and academic institutions, many of which used an authoritative tone.

Analyses of gang structure and motivation were limited to description of socio-economic and sub-cultural structure of gang membership, using limited data available to them. Authors who had written about ‘piracy’ tended to refer to pirate ‘gangs’, in terms of them being cohesive, monolithic groups. But little reliable evidence concerning the structure of pirate gangs has been accumulated. The term ‘gang’ is frequently used imprecisely (Covey *et al* 1992, p.3). Reports did not support implications that a gang culture existed based on semi-closed social groups. They did not describe individual pirate status within gangs and factors

that may affect this status. Nor did they address specific social expressions and social processes, which might serve to unite the alleged pirate gangs against agencies of social control. Reports did not answer questions concerning socioeconomic and sociocultural backgrounds of pirates (beyond contending that they were poor and ‘culturally’ inclined to ‘piracy’). There was no work identified on pirate gangs within the context of small group dynamics, concerning circle of association, emotional focus, connection to wider organisations and dehumanisation of victims such as the analysis undertaken on small terrorist cells by Horgan (2005), Sageman (2004; 2005) and Silke (2003; 2004). Kвашny (2003, p.77) noted that dockers involved in cargo handling, customs procedures and ship management could use this operational knowledge to undertake criminal behaviour. However, whether they do remains open to question.

None of the literature surveyed, except that of Frécon (2005) considered contemporary ethnographic research into pirate gangs, or participant observation of at least one gang. Simple or disguised field observations could have yielded other data if research remained oriented around observational settings (Hagan 1997, p.245) and could have validated the authoritative tones often used in literature about pirate gangs. Ethnographic research could have provided frameworks with which to analyse criminal and sub-cultural groups and thus confirmed arguments raised in mainstream reports. Ethnographic analysis, which evaluated collective motivation, could have confirmed institutional data that asserted that pirate gangs were motivated by economic conditions in peripheral coastal states. It could have also revealed unexpected factors concerning social processes within groups.

Literature concerning gangs, which attempts to identify particular social processes evident in gang subculture, such as by Klein (2001), Grennan *et al* (2000), Decker *et al* (1996) and Thompson (1998) emphasised the need to place analytical emphasis on 'symbolic social focal points identified' and also recognised a need to perhaps even undertake analysis from the gang's perspective. This argument was

consistent with the work of Campbell (1987), Fagan (1990), Fine *et al* (1979) and Moore (1994) who indicated that structural and cultural definitions of gang membership needed to be identified as part of gang research. None of this has been done in relation to piracy.

No attempt was made to undertake participant-observation studies for this dissertation. The practical difficulties in executing ethnographic research of pirate gangs are noteworthy. There are logistical difficulties in establishing participant-observer study of 'pirate gangs' in peripheral regions. Gaining access to 'partial or wholly deviant groups' is legally questionable. Deviant groups could be suspicious and therefore not tolerate the presence of a researcher. University authorities might not permit a postgraduate researcher to interact with those labelled as criminals. Coastal state authorities would not permit the unauthorised boarding of merchant ships in their territorial waters to closely observe pirate gangs.

Patrick (1973), Cohen (1971) and Hadfield *et al* (2001) identified other difficulties with participant-observation studies, which emerge when contact with gangs is established. Gang members are likely to change their behaviour when under observation. The notion of passive participant is questionable as there could be problems with role confusion and changing circumstances that one came to observe (1973, pp.14, 15).

Membership of pirate gangs may be permanent, sporadic or may change frequently. Patrick (1973) observed a Glasgow gang that had a cohesive membership. Literature tends to assume a similar cohesiveness among pirate gangs. Yet, it is possible that 'pirate gangs' may not be homogeneous groups of people with similar objectives, culture, life-style and socio-economic status. The membership parameters of pirate gangs may change over time and between regions. Individuals may come together before attacks and interact just to undertake piracy, temporarily act cohesively and only tolerate a temporary,

operational hierarchy. Some gangs may act secretly. Other gangs may tolerate interaction with peripheral members. No data reviewed gave any indication of any penal sanctions being issued or pirates' acceptance of penal sanctions.

Certain provisional conclusions were drawn from the absence of these factors in the reviewed piracy literature. Law-enforcement agencies, academics and the international media have demonised 'Pirates'. Some agencies reported that pirates operate in violent subcultures. Yet, most of the assumptions about pirates were based upon information transmitted by few agencies. My initial search of the literature identified questions concerning the quality of piracy data being transmitted by these agencies. This suggested my analysis should be oriented toward examining the social construction of piracy.

Kvashny (2003, p.vii) noted that there was an absence of a text in the piracy literature, which provided a complete overview of contemporary maritime criminality. Scholars have produced to date a number of texts and articles that have contributed to the debates in maritime deviance literature. Most articles about piracy released from maritime and academic institutions evaluate piracy in wider geostrategic contexts, such as multilateral cooperation (Young 2004). Articles released by the Council for Security Cooperation in the Asia-Pacific (CSCAP) are examples of this. Seo-Hang Lee (1998), Kawamura (1996) and Weeks (1998) focus upon the strategic importance of Sea Lanes of Communication (SLOC), and potential military and non-military threats to SLOC stability. The empirical aspects of piracy are discussed in these articles in terms of the crime representing a direct threat to the stability of SLOCs. Some academic articles on piracy stress the need for strategic maritime cooperation in the Asia-Pacific. The needs to identify maritime geostrategic issues and to develop cooperation regimes are emphasised by an array of realist authors. Weeks (1999) undertakes a review of existing maritime cooperation measures in Asia, while Rahman (1999) questions the viability of multilateral civilian-oriented cooperation in a maritime area that contains so much potential for military

confrontation. Additionally, Valencia (1999) notes that complete ratification of the United Nations Convention on the Law of the Sea 1982 (UNCLOS 1982) and the adoption of standard rules could be a problem. Individual states may realise certain special circumstances in terms of, for example, geographical location, and seek a more regional rather than global approach to maritime governance. Lai (1998) also identifies this and provides an analysis on the Southeast Asian Programme in Ocean Law (SEAPOL), a multilateral forum designed to study the impact of UNCLOS policies upon the region's states.

Bateman (1999) reviews the continuation of systematic empirical academic study of maritime policy and strategic cooperation measures within the Asian region. Bateman and Bates (1996; 1996a) present papers that demonstrate the number of strategic issues taken into account when evaluating effectiveness of intra-regional maritime cooperation where piracy is one of many concerns. Ball (1996) reviews the growth of multilateral confidence building measures, through the institutionalisation of cooperation, in the Asian region. Bergin (1998) gives an overview of Australia's commitment regulation of its ocean-space, which concerns border control, resources protection, anti-pollution and marine safety. Much of this policy concerns cooperation with Asian states in terms of marine surveillance. Djalal (1998) takes the same approach to consider Indonesian maritime policies and the problems it has had identifying its archipelagic boundaries. Hamzah (1998) reviews maritime policies of Malaysia. These policies play an integral part in its development considering that its marine area as three times as big as its land mass and marine industries contribute significantly to the Malaysian economy. Lui Tuck Yew (1996) and Santa Maria (1998) provide insight into Singapore's current arrangements for regional maritime cooperation and its readiness for interaction to continue given its dependence on maritime industries.

The security of shipping from a macro-analytical perspective is surveyed by Grove (1998). The importance of shipping security to regional and global trade is

focused upon by Kawamura (1998) and Grove (1996). The security of SLOCs and the management of potential conflicts arising from shipping safety are surveyed by Townsend-Gault and Stormont (1998). Maritime-strategic concerns within a militaristic context are also emphasised by Sunardi (1996) and McCaffrie and Hinge (1998), who primarily focus upon sea power and national strategic priorities and justifications to maintain strategic naval forces given perceived 'strategic uncertainties'. Grazebrook (1998) and Punch (1998) identify Australia's maritime interests and subsequent strategic plans to ensure its maritime defence assets as adequate to meet perceived threats. Hamzah and Mak (1998) and Da Cuna (1998) extend the scope of this and evaluate some strategic concerns of ASEAN in terms maintaining naval contributions to regional cooperation. Bateman (1998) reviews the prospects for continued naval cooperation in the Asia-Pacific region. These articles tend to focus upon the need to avoid inter-naval military conflict, but with the underlying assumption that conflict is always a possibility. Bulkeley (2003) reviewed data concerning contemporary piracy in Asia and explored regional cooperation in anti-piracy initiatives within the context of this being evidence of greater multilateralism in the region.

Townsend-Gault (1999) evaluates problems of regional maritime regime management agreements from a geo-strategic perspective but identifies several social constructionist points. States are frequently willing to accept rights gained from international agreements but often construct arguments to assert non-acceptance of some obligations raised in treaties. Multilateral negotiations may stall due to differences in the construction of interpretations. The nature of transnational social problems in the maritime environment, such as piracy in a territorial sea, show that the definition of an internal issue is narrowed. When states successfully conclude agreements, they are often recognised as having supported the 'international legal order', while having managed to avoid some obligations they interpreted as being against their interests. This was also noted by (Lloyd's List 2001d, pp.24-25).

Van Dyke (2004), studies the legal and strategic implications of military aircraft and naval vessels operating in the exclusive economic zone (EEZ) of other coastal states. Obviously, piracy is only one aspect of maritime crime that creates the need to develop international cooperation. Rothwell (1996) considers the development of the United Nations Convention on the Law of the Sea (UNCLOS) in terms ‘confidence building measures’ and legal mechanisms by which the territorial waters could be managed by signatory states. Mo (2002) identified and reviewed a wide array of possible coastal state responses to reported piracy, which included many of the aforementioned points.

Some of the literature on piracy is now exploring the possibility of pirates engaging in international terrorism at sea (Lloyd’s List 2000b; Lord 2002, p.48; Stankiewicz 2005). One can argue that this has in part been fuelled by terrorist attacks that have occurred. A number of reports such as from Lloyd’s List 2000o, p.16) and Fairplay 2000h, p.7) have highlighted the maritime terrorist activities of the ‘Tamil Tigers’ off Sri Lanka. This has expanded the debate on maritime security. Richardson (2004) appears to have been one of the first to identify the possibility of ‘pirates’ becoming ‘terrorists’ and this idea has been seriously considered in debates. This notion was explored in Lloyds List 2003b, p.7) that highlighted pirates using automatic weapons had attacked two chemical tankers. However, Mak (2004) countered this notion by asserting that dialogue of this nature, where the importance of ports is stressed and thereby socially constructed as targets, could draw the attention of terrorists toward the vulnerability of such facilities. He adds most terrorist groups appear highly organised and ideologically motivated, which is allegedly different to the mere criminal pirates operating in Southeast Asia. Lloyd’s List (2004, p.3) also reported experts’ scepticism about the piracy-terrorism link. According to another report by Lloyd’s List (2004c, p.3), shipping vulnerability should not be equated with actual threats to shipping. A comparison of anti-piracy and anti-terrorism policies in Southeast Asia was given by Valencia (2005). In addition, Abhyankar (2005) provided an overall outlook on maritime terrorism. Ho (2006) also noted that the maritime threat by

terrorists and pirates has been overstated given the anti-piracy initiatives implemented by regional littoral states. Despite this Young and Valencia (2003) note that piracy has become synonymous with terrorism in US domestic coverage of the issue.

The aforementioned articles do draw a distinction between piracy and terrorism, but this was analysed by Lumpkin (1995), who argued that the traditional definition of terrorism in the maritime environment at the time of writing was too narrow to successfully categorise all violent behaviour at sea. After identifying piracy (narrowly defined), politically motivated violence, 'sub-state conflicts', 'interstate warfare' (large-scale to smaller scale) and 'state belligerency' as sources of maritime violence he introduces the term microviolence to the paradigm of violence at sea. 'Microviolence' is used to categorise those incidents, which are perpetrated by those with specific motives. The comparative weaknesses of perpetrators draw them to focus on incidents more than their campaign originally intended to influence wider audiences about broader principles (1995, p.15). He cites both the Sea Shepherd's Conservation Society and Greenpeace as two sources of microviolence (1995, pp.53, 54).

The aforementioned articles are written within a 'realist' theoretical context. Other articles that mention piracy are written within a geostrategic context but emphasise environmental security. Hewison (1996) provides an overview of marine environmental concerns. Hewison and Nizam Basiron (1996) focus upon marine environmental security issues, pertaining to Southeast Asian states. Sarsito (1998) evaluates coastal marine management of the Malacca Straits. Guangjian (1998) elaborates on the Chinese perspective concerning marine pollution prevention initiatives. Hewison (1998, 1999) focuses upon the issue of shipments of radioactive waste material being transported by sea from Europe to Japan. The ITF and Greenpeace have produced an array of publications concerning the adverse impact of maritime activities at sea, including a broad definition of piracy

to include worker exploitation (theft of labour power) at sea and the theft of ocean resources.

Some consider the concept of 'maritime crime' and various judicio-legal responses to reported piracy. Chalk (1997, 1998a, b) considered piracy as a 'grey-area phenomena' and the response of piracy in an international context by reviewing unilateral, bilateral and multilateral anti-piracy responses of maritime institutions in Southeast Asia. Many authors emphasise that piracy should be eliminated by the use of strategic force and penal sanctions for the benefit of private enterprise. Other articles consider piracy as a sub-type of 'maritime crime'. Gill's (1995, a) consideration of maritime crime focuses on the need to develop maritime legislation as there is reportedly, a connection between piracy and maritime insurance fraud. This was also raised by Conway (1981). The need to develop some international cooperation to deter piracy in the Pacific region is also suggested by Weeks (1996, a; 1999). Paul (1999) also considered legal initiatives for national maritime cooperation to maintain law and order at sea.

Other academic articles relate to piracy in various ways. Chalk (1997; 1998, a, b) and Forbes (1998) provide an empirical overview of reported piracy and note the frequency and characteristics of reported attacks. Like Ellen (1989) and Shea (1992), they did recognise problems with the piracy definition, but do not analyse this adequately. Anderson (1995), Birnie (1989), Brittin (1989) and Hart-Dubner (1995) note that debates about piracy definitions have continued for considerable time, but do not develop the significance of this, even when noting that legal definitions of piracy remain somewhat ambiguous.

Vagg (1995) comes closest to identifying the principal concern of this dissertation when he argues that that the definition of piracy needs to be considered on relativist terms and less from a theoretically positivist perspective, stressing the need to clarify a definition of piracy, to highlight the problems of piracy reporting process and suggest what a theoretical analysis of piracy ought to explain. Vagg

(1995) draws attention to the IMB's definition of 'piracy', designed to work within a commercially-oriented frame of reference, namely, that *any* theft or violence occurring on board a ship is piracy. The IMB piracy definition is 'the act of boarding any vessel with the intent to commit theft or other crimes and with the capability to use force in the furtherance of the act'. This definition is considerably broader than the definition established in the UNCLOS conventions and does not consider territorial jurisdiction. Indeed Vagg (1995) recognises that any theoretical analysis of piracy would have to consider violence and theft on ships at sea or in port, kidnapping of crew or passengers; the theft of vessels and cargo and attacks upon merchant ships by political terrorists.

Vagg (1995) recognises and stresses that the accuracy of piracy data depends entirely upon on how and to what extent piracy is reported. He also notes that there remain problems with the piracy reporting processes, the availability of piracy data and that frequently the incentives for crews to report pirates attacks to their shipping company, or the ambient coastal state, are minimal. Beckman (2002) also notes problems within recorded piracy data. Vagg's analysis shows consistency with social constructionist arguments by questioning the accuracy of criminal statistics and how data on deviant behaviour are reported and recorded. For example, several personnel Vagg interviewed mentioned logistical difficulties in reporting attacks to Indonesian authorities. Although attacks occurred in Indonesian waters, some crews preferred to report attacks to Singaporean authorities, despite these agencies having no legal power to investigate attacks in foreign jurisdictions. Vagg raises the often-mentioned suspicion that many companies do not report attacks because of the chances their ships may be detained by coastal states while investigations are carried out, and because of suspicions that particular policing agencies are corrupt. Vagg does not, however, make the direct theoretical connection between analysis of the reporting processes and social constructionist arguments.

Piracy definitions and reports in this dissertation came from the IMB, the IMO, United Nations Commission on Trade and Development (UNCTAD), Organisation for Economic Cooperation and Development (OECD), flag-states, marine insurance agencies, private military companies (PMC), the international media, academia, the ITF and social movements. An analysis of this literature revealed that many reports used specific definitions – predominantly the definition in Article 101 of the United Nations Convention on The Law of the Sea 1982 (UNCLOS 1982) and the definition developed by the IMB, with little consideration to the limitations of these definitions. Almost all reports labelled those attacking ships as ‘pirates’, and stated that ‘pirates’ undertook ‘piracy’.

Some definitions were even narrower. Chalk (1997, 1998, a, b), Ellen (1989, 1995, 1998) and Shea (1992), for example categorised piracy as ‘low-level petty theft’, ‘medium level-armed robbery’ and ‘highly organised hijack’. Kvashny (2003) used the slightly different categories of piracy as opportunistic ‘short term’ piracy, lasting from between thirty minutes to four hours, ‘long term’ piracy lasting up to seven days (during which a transshipment of stolen cargo at sea could occur), ‘Permanent seizure’ when a ship is stolen (phantom shipping) and ‘State-sponsored piracy’ referring to when government elements undertake piracy. The reports may indicate more about the nature of some research methodology than ‘pirate gangs’. The overall review of this literature confirmed that definitions are socially constructed although many authors do not acknowledge this.

Radical members of some maritime labour unions and the ITF, for example, argue that the adverse effects of FOC use, shipping companies’ exploitation of seafarers and their avoidance of taxation and operational rules constitute a form of piracy. IMO and IMB piracy reports, however, contend that any problems that may occur on FOC vessels (for example, theft of seafarers’ wages and coercion by shipowners) are not piracy but are entirely separate problems (without a direct relationship), which should be reported separately.

The social construction approach, however, considers this separation as a potentially politicised act. Decisions that are made about the inclusion of exclusion of elements in definitions are often politically motivated. Of the two major piracy-reporting agencies, the IMO is funded by flag states; four of the top five flag states are FOC states. The IMB is a subdivision of the International Chamber of Commerce (ICC), which is ideologically allied to international shipowners who use FOC facilities.

Piracy appears somewhat different from the perspective of the ITF and the merchant seafarer. From a Labourite perspective, it can be seen that the position of the seafarer is difficult. A substantial amount of data issued from the ITF and a number of national maritime unions worldwide show that merchant seafarers (and oil rig workers (Lloyd's List 2004e, p.11) face many problems other than narrowly defined piracy. Primarily their problems result from employment conditions imposed by unregulated capital. This statement does not attempt to trivialise incidents where seafarers have been victims of pirate attacks but comparison between narrowly defined piracy data and data showing seafarer exploitation, abandonment and their dependence on shore-based charities show narrowly defined piracy is one of several problems, which could be and has been considered in the same contexts under an expanded definition of piracy of theft at sea.

Most piracy reports issued by the IMB, IMO, flag states and the media do not mention the frequency of crews being abandoned in foreign ports by their employers nor do they refer to the extent to which some ships are detained in ports having failed ship inspections under Port State Control (PSC). They may argue that these are different issues from the act of piracy. However, the label piracy is socially constructed to serve some interests and not others. The broader ITF definition of piracy and the treatment of FOC seafarers limit moral arguments about ship owners being 'victims' of piracy. If shipowners' associations regarded

piracy in a wider context, questions concerning the unacceptable degree of exploitation would be valid ones to consider.

Reported pirate attacks may provide opportunities for shipowners to falsify reports of losses. There is evidence suggesting that reported piracy attacks help ship owners and traders to engage in maritime insurance fraud,³ facilitated by the extensive use of some FOCs and tax haven jurisdictions that offer confidentiality conditions. Given the nature of maritime fraud, marine insurance claims can be difficult to verify as legitimate.

Those organising piracy may be legitimate business people with legitimate business contacts and may not be undertaking criminal activity continuously. They would remain aware that recruitment, operational planning and capital investments are necessary to make successful attacks and distribute high volumes of cargo (Conway 1981, p.5). The parameters between behaviours labelled ‘legitimate’ and ‘criminal’ activity, especially within a free market economy, may be blurred (Edwards & Gill 2002, pp.203-223; Hand 1999; The Telegraph NUMAST, July 1998, p.9; Tift 1979, p.392).

This dissertation contends that piracy has been socially constructed. Social constructionism refers to sociological theories, including symbolic interactionism, social reaction and labelling theory, which place emphasis on ‘the socially-created nature of social life’ (Marshall 1998, p.609). Social constructionists argue that humans create societies, social norms and definitions. This is distinct from positivist arguments that socially *accepted* facts can be verified by quantification of human behaviour via an adopted scientific method reinforced by the maintenance of scientific objective neutrality. In contrast, social constructionists regard the human world, as essentially ‘social’ and that reaction to phenomenon are dependent upon subjective and interpretive analysis.

Some conventional analysts consider that 'social constructionism' is too broad, as all sociological work seeks to determine the socially created structure of social phenomena and therefore too vague to possess effective analytical meaning.

Taylor, Walton and Young (1985) argued from a radical perspective that constructionism, social reactionism, symbolic interactionism and labelling theory emphasised important theoretical ideas, but the interactionist emphasis on questioning legal definitions and social reaction to crime did not go far enough. Radical analysis recognises the need to question more thoroughly *whose* interests the definition of crime and the labelling of 'pirates' really serve. This dissertation adopts their radical interpretation of social constructionism. I contend that maritime agencies are capitalist-oriented, essentially pro-ship owner, and work to further their own ends.

Social constructionist emphasis on the labelling of deviant phenomena allows analysis of reporting within a wider macro-context and consideration of the ocean as an entire system (Steinberg 2001, p.10). Social constructionist criticism of criminological positivism also provides impetus to question definitions of piracy raised by the IMB, IMO and flag states. Social constructionism provides theories and methods to consider and analyse the accumulation and presentation of piracy data in periodic and annual reports, institutional motivation behind reports and the possibility of systematic exclusion of data concerning related issues. I argue it is necessary to consider how international media and government agencies reacted to these data.

This dissertation contends that the national and international legal definitions of a particular crime reflect collective institutional reactions to that form of behaviour perceived as 'deviant'. This principle is one element of the social constructionism developed by Becker (1973). Becker contends that criminal behaviour is not necessarily 'caused by the social environment' but rather defined by agencies of social control, primary definers operating within particular social environments.

Becker (1973) argues that 'deviance' is determined by collective reactions by particular governing groups and institutions to particular forms of behaviour. Collective social reactions are determined by how data are recorded, legally categorised, organised and presented to the ambient, wider society. What is 'criminal' is determined by what nation-state politico-legal institutions determine as 'criminal'. From this perspective, various categorisations of crime are neither fixed across politico-legal jurisdictional boundaries nor over time. Cohen (1988) reinforces Becker's perspective by emphasising that 'behavioural' questions concerning why people commit certain crimes are less effective than questioning why particular laws exist.

The term social-constructionism was created by Berger and Luckmann (1966) from an attempt to synthesize theories developed by Emile Durkheim and George Herbert Mead – to emphasise that social phenomena (including law) and definitions (including legal statutes) are all social constructs (Marshall 1998, p.609). Scholars such as Becker (1964, 1971, 1973), Douglas (1970), Erikson (1967), Kitsuse (1962), Lemert (1951, 1967) and Schur (1971) consolidated symbolic interactionism and social reaction theory during the 1950s, 1960s and the 1970s. They showed that 'deviant' behaviour was socially constructed via processes of legally and politically oriented categorisation.

More recently, Goode and Ben-Yehuda (1994) and Rubington and Weinberg (1999) argued that definitions of crime should be regarded as 'subjectively problematic' rather than 'objectively given'. They reiterated notions developed by symbolic interactionists such as Becker (1971, 1973). However, Chomsky (1989, 1997), McChesney (1997, 1999) and Schlesinger and Tumber (1994) expanded these arguments (and gave them a more radical twist) by considering how media socially constructed crime. All emphasise how definitions of crime and notions of criminal justice have been influenced by 'crime fighting' agencies which have become more sophisticated in terms of public relations and have gained a greater

ability to influence policy decision-making processes. By this, they identified the significance of politically motivated agendas (1994, p.43).

All social problems are socially constructed, whether maritime or land-based. Conceptions of what constitute a social problem vary enormously. There is an array of definitions of social problems by a large number of interest groups. The existence, nature and extent of a particular problem are socially constructed. Phenomena are interpreted as problems in particular ways as opposed to others, in which a specific characteristic of the issue will be discussed as ‘the problem’ (Becker 1964, p.10). Irrespective of how reasonably or unreasonably the identification of a social problem has been applied they are ‘issues of concern which may be interpreted differently, depending on who the audience is. Therefore, the created consensus varies by degrees, depending on the nature of the social problems (Goode and Ben-Yehuda 1994, pp.100, 102).

International organisations have collectively dealt with concerns about piracy more intensely and for longer periods than they have with other social problems, therefore embarking on a ‘moral crusade’ whereby they are determined to persuade wider audiences of the need of new regulations (Becker 1973, pp.155, 156). Crusaders often appear motivated by a wide array of interests, which include their own immediate interests, rather than the moral grounds implied by the term (Goode & Ben-Yehuda 1994, p.20).

Becker (1973) introduced seminal constructionist terms. ‘Moral entrepreneurs’ are those who label certain issues as ‘social problems’. Having identified the problem, they often embark on a ‘moral crusade’ to control or eliminate the behaviour causing it. They often seek to influence ‘rule creators’ or undertake rule creation themselves to establish a new set of regulations. ‘Rule enforcers’, such as agencies of social control are given authority to enforce regulations. Gaining support is vital and although selective, the media may assist by providing coverage of the ‘moral crusade’. The public reaction may be measured or may

consist of ‘moral panic’ – a short term, intense collective response that is out of all proportion to the severity of the behaviour.

There are important differences between a ‘moral crusade’ and a ‘moral panic’. A crusade is what the IMO, IMB, ITF and others have embarked on by having identified social problems of ‘piracy’ and continued to try to eradicate them. However, a ‘moral panic’, which according to Thompson (1998) emerges in stages, is what happens when societal reactions to the problem, defined by the crusaders as a threat to society, reach sudden high levels of intensity. Moral entrepreneurs (such as media personalities, the clergy and politicians) build a demonology and the mass media present this in a stereotypical style. Accredited experts state their interpretations and solutions for the problems in response to heightened concerns. Panics built around a range of issues either novel or longstanding may spontaneously appear. The panic may sometimes diminish or disappear or may have long term consequences that might create major changes in policy or even in the collective conception of the society (Cohen 1972, p.9; Young 1971). I evaluate why the anti-piracy crusades undertaken by these institutions have not resulted in ‘moral panic’ later in the dissertation.

The theoretical approach of social constructionism identifies the importance of social interaction and relationships between issues, how institutions define, generate importance and disseminate information about social problems (Leon-Guerrero 2005, p.6). Social constructionists such as Goode and Ben-Yehuda (1994) emphasise two broad perspectives in the constructionist approach, which can also be conceptualised on a continuum (see Figure 1).

Figure 1. The Orientation of Strict and Moderate Constructionism.

STRICT CONSTRUCTIONIST ↓	MODERATE CONSTRUCTIONIST ↓
Complete rejection of ‘objectivism’.	Definitions of social problems and levels of generated concern are ‘sociologically relevant’. The objective threat that some reported problems has emerged from several sources. The objective dimension ‘is not to be discounted entirely’. However, ‘objective seriousness’ of a threat will not necessarily determine the societal reaction. Moderately constructionist interpretations can also incorporate structural analyses of society.

Source: Goode & Ben-Yehuda 1994, p.96.

My moderate social constructionist approach can be used with Nadelmann’s (1990) examination of globalised piracy prohibitions, which contextualises the development of a universal codification against piracy. He argues that there are four, possibly five, evolutionary stages through which global prohibitions emerge. Initially, the legitimacy of a certain behaviour that *could* be widely acceptable in various states depends on political and strategic objectives of governments. Transnational moral entrepreneurs may, at a certain point, scrutinise and criticise the previously standardised behaviour. Resultantly, they may embark on a process to get the behaviour ‘delegitimised’ by relevant internationalised agencies of social control. Entrepreneurs at this juncture seek to influence rule creators’ approval to codify behaviour with a view to implementing future preventative measures. The relevant rule creators, in unison with moral entrepreneurs may themselves also campaign for criminalisation via the creation of international conventions (Park 2006). The fourth stage emerges when conventions have gained acceptance and are ratified by the necessary majority of signatory states. Finally, the selected rule enforcers then start to co-ordinate implementation of legislation after legal codification.

This dissertation argues that the moral crusade concerning maritime piracy is both a cause and a consequence of expanding definitions of the term. It analyses definitions of ‘piracy’, which are changing and expanding as the term is being

used to encompass an ever-broadening range of maritime deviance, including activities which are outside earlier conventional definitions. The term ‘piracy’ is increasingly and frequently being used to refer to theft occurring at sea other than those considered as piracy by established maritime authorities. Thus my analysis includes established definitions of piracy, of the ways piracy has been reported, the Global Piracy Prohibition Regime (GPPR), new definitions of piracy, and data that have been excluded from the conventional piracy debate.

Social constructionism and allied linguistic with philosophical perspectives are important because they address problems concerning language use. Logical positivism provides insufficient solutions to language problems (Katz 1971, p.102). Table 1 shows how I suggest that these perspectives should be applied to the word ‘pirate’ used in the Anglophone world to denote theft at sea:

Table 1. A Broad Social Constructionist Perspective.

Social Constructionism (Moderate) ↓	Related Sociolinguistic Arguments ↓	Related Philosophical Arguments ↓
Moral entrepreneurs and rule creators label particular social phenomenon to improve society. Deviants and deviant behaviour are labelled negatively or positively (Becker). Flag and Coastal States' labelled 'Piracy' formally under LOS 1958 and UNCLOS, under UN approval.	The assumptions made about the social phenomenon implicit in the labelling process are linguistic presuppositions. 'Prescriptive grammarians' or language and linguistic purists often consider dialect of socioeconomic elites and use narrowly defined [legal] terms as the correct form of language (Fromkin et al).	Philosophy is the examination of distinctions (Rollin). Conventional definitions are derived from logically positivist processes (Comte). Names occupy a central role in language (Clack) and create 'a mutual knowledge of meaning' (Schiffer). Knowledge of language is based on 'experiential truth' (Hill).
Labels are socially constructed through selective use of language, which is consistent with moral entrepreneurs' and rule creators' political arguments and objectives (Becker). Flag and Coastal States and the IMO identified particular behaviours as piracy and excluded others.	Actors make full utilisation of linguistic knowledge and linguistic performance to portray argument (Fromkin et al).	Language is a tool used for infinite number of tasks. (Wittgenstein). Language is a formal construction based on structured principles to portray argument (Katz).
Moral entrepreneurs' particular uses of language are central to their moral crusades (Becker). They use both connotative and denotative meanings in their constructions. Denotative meaning: Describes particular concept. Connotative meaning: Evaluative association with denotative meaning. (Fromkin et al). Flag states, coastal states, the IMO and shipping companies developed and use UNCLOS definition. IMB has different definition. Both are subject to debate.	Arbitrary connection between word and meaning (Saussure). Linguistic signifiers (words) and linguistic signifieds (meaning) and the relationship between them are arbitrary as they become conventionalised through social use (Fromkin et al). There is rhetorical analogy and logical analogy (Fromkin et al).	Philosophical problems are based in language (Glock). Meaning is a function of behaviour (Alston). Language is a creative process and derives meaning from its social context (Bakhtin). 'The Meaning of a word is its use in language.' (Wittgenstein).
Moral entrepreneurs often act as agents of social control (Becker). They may seek to disseminate their claims among transnational audiences (Best). The acceptance of the UNCLOS and IMB piracy definition consolidated by widespread use in shipping and international law enforcement.	Pragmatics denotes the relationships between linguistic signs (semantics) and their users (Fromkin et al).	Cognitive structures that influence knowledge (through language) evolve as a result of interaction between environment and actor (Piaget).

Labelling processes, word meanings and laws change over time and differ between communities and states (Becker). Historically use of the term 'piracy' depended on state's social construction of ocean-space and strategic maritime role in political economy (Steinberg).	Etymology often demonstrates lexical change in meaning over time, irrespective of syntactic category. This reflects changes in the semantic property of the word (Fromkin et al). Meaning context relates to time and place and social position and authority of linguistic transmitter and audience. Communities create 'linguistic guidelines' about what and how things may be expressed. (Volosinov).	Truth is created by those in power to create 'truth' (Kauppi & Viotti). Word meaning determined by who said it, their status and the status of audience and in what context. Community establishes sanctions about what may be said (Bakhtin). The power of a word reflects delegation of power invested in spokespersons. Production and reproduction of authorised language reflects symbolic power. Language is socially authorised and compels populace to think of words and language in a certain way (Bourdieu). Language is used to evoke certain emotions in audiences (Alston).
Analysis of the social construction of prose and dialogue in media shows that they use various labels to construct urgency and sensationalism. They act as primary and secondary claims makers (Loseke). Convey impressions about political and social priorities (McQuail). The popular and media have mostly conveyed piracy (narrowly defined) reflecting dominant status quo but have also used postmodern expanded definitions.	Discourse analysis encompasses consideration of style, cohesiveness and rhetorical force (Fromkin et al). Evaluation of semantic differentiation focuses on variances in meaning (Osgood et al). Sensationalist headlines are linguistic syntagms aimed to attract reader (Fromkin et al).	Technical use provides meaning of a word but behaviours can become associated with a word (Wittgenstein). Discourse reflects ideology (Macdonald) and the class struggles between capital and labour (Marx and Harvey).
Some Labourites and postmodern environmental groups use 'piracy' to describe theft at sea that they are against. This is postmodern claims diffusion (Best).	This is an example of the extension of the definition of piracy by both rhetorical and logical analogy (Fromkin et al).	Expansion of definitions may occur if socially necessary with varying success (Wittgenstein).

Source: Alston (1964, pp.28, 47); Bakhtin (1994); Barthes (1986, pp.3, 107); Becker (1973); Best (2001); Bourdieu (1991); Clack (1981, p.10); Comte (1970); Fromkin et al (1988); Glock (1996, p.236); Hill (1971); Harvey (1990); Kauppi & Viotti (1993); Katz (1971, p.102); Loseke (2003); Macdonald (2003); Marx (1976); McQuail (1987, p.280); Osgood et al (1980); Piaget (1977); Rollin (1976, p.13); Schiffer (1972, p.30); Saussure (1959); Steinberg (2001); Volosinov (1973); Wittgenstein (1968).

Chapter 1

¹ Noel Choong, Manager of the IMB Reporting Centre Kuala Lumpur, stated that pirate attacks in the Straits of Malacca were directly due to the economic recession and political instability in Indonesia. While it is plausible to argue that economic recession and political instability within the archipelago could result in pirate attacks, I have not found any systematic analysis of comprehensive empirical data (Singapore Shipping Times 13th May 1999). Even if a correlation could be demonstrated, scepticism about it is consistent with Murray, Schwartz & Lichter (2001, p. ix) who indicate the limitation of risk studies and how the results of risk studies should be interpreted. Correlation is often mistaken for causation. An association between two phenomena remains just an association until more comprehensive findings can be found through rigorous analysis.

² The Malacca SLOC is 3.2 nm wide at its narrowest point (between Sumatra and Singapore), is 900 nm long from its widest point (between North Sumatra and Thailand) and in parts is relatively shallow (Permal 2004; Wilson 1998, pp. 3-7).

³ An estimate of approximately 13 billion pounds for total annual maritime fraud in 1985 was claimed by Gill (1995) though there was no indication as to how this figure was established. The legal industry predicts that maritime cases 'will increasingly involve fraud and piracy', but there is little data, which justify this prediction (Ellen, in Gill 1995, p.4). The IMB has data concerning phantom shipping that involves the theft of massive volumes of cargo and even merchant vessels but the accuracy of these data is questionable (Ellen 1997, p.63).

CHAPTER TWO

PROHIBITION AND PIRATES

‘Law is a practical craft of systemic control of social relations and institutions. Sociology is the scientific enterprise that seeks systematic knowledge of them.’
(Cotterrell 1992, p.5).

The application of the label ‘piracy’ to behaviours defined as social problems or ‘crime’ in the ‘marine environment’ (Hart Dubner 1980, p.1), all of which include theft in some form, has spatial and historical dimensions. Interpretations of law breaking and law-enforcement have varied throughout pre-modern, modern and postmodern societies. The use of definitions and derivations resulted in the legitimisation of explanations. This provides a basis for Becker’s (1973, pp.9, 124) argument that ‘social groups create deviance by making rules whose infraction constitutes deviance.’

This chapter analyses the social construction of piracy definitions and piracy prohibition regimes. Their evolutions involve different socially constructed perceptions of ocean space. That is, the political, economic and cultural perceptions of ocean-space influenced different regimes’ constructions of piracy and pirates, territorialisation and regulations concerning littoral and distant seas. Questions about how much sea space they wished to and could exert control over were central to this territorial response (Steinberg 2001). This validates Singer’s (2000, p.17) argument that ownership of objects, land or sea is not a ‘natural relationship’ but a legally defined social construct.

I argue that evaluation of the GPPR should consider the semiotic nature of piracy codification. This is a central element (Nadelmann 1990, p.486). Legislation expresses ‘institutional culture’ (Axelrod 1986, p.1101; Cotterrell 1992, p.24; Seidman 1965, p.46). The process of inclusion of some behaviour in and the exclusions of others from piracy definitions is a political process undertaken by agencies of social control (Becker 1973). Legal codification represents certain

'objectively given' facts (Goode and Ben-Yehuda 1994; Rubington and Weinburg 1999, p.3). Like many other crimes, activities labelled as piracy (narrowly defined) tend to consist of behaviours that conflict with national and international 'bourgeois' interests (Quinney 1970, 1974, 1979). Despite this, Nadelmann (1990, p.479) notes the lack of study concerning the 'dynamics by which norms emerge, evolve and expand in international society.'

I identify historical periods in which the social construction of ocean-space (Steinberg 2001) influenced piracy prohibition. This approach integrates the concepts of time, space and political hegemony. Table 1 shows a diagrammatic overview of the relationship between historical phases, ocean constructs and hegemony in relation to piracy prohibition that ultimately resulted in global prohibition. My conceptualisation incorporates Nadelmann's five-staged theory of global prohibition, Thompson's (1998) systematic categorisation of moral panics, Best's (2001) analysis of cross-national claims diffusion of social problems and Becker's labelling theory. My first five historical periods follow Nadelmann's but incorporate insights from social constructionism. My analysis of the postmodern period adds a new sixth stage. An outline of each stage is followed by an analysis of piracy definitions and their evolution. By doing so, I consider the uses of the term 'piracy' to make analytical connections between empiricism, positivism, social constructionism, radical analysis and piracy reporting, which have not previously been made (Table 2.1).

The social construction of the labelling of piracy and anti-piracy law depended on specific regional actors' perceptions of ocean-space and their strategic macro-position in relation to the world-ocean (Anderson 1995). The Romans, Venetians, Portuguese, Dutch and British developed different world ocean constructs, which along with advances in marine architecture, navigation and their hegemonic power, influenced their reaction toward 'piracy'. These historic, world-ocean constructs also influenced the development of the modern world-system and the subsequent post-1945 GPPR. Control of resource extraction, transportation regulations and the exertion of strategic power influenced ocean-space constructs that are 'human-marine interactions'. Some recognise that these uses relate to others, while some analysts consider them separately (Steinberg 2001, p.8, 11, 18).

However, ocean-space is ‘explicitly constructivist’ (Steinberg 2001, p.21) as historic definitions result from ocean-space constructs derived from controlling institutions’ ‘social production of space’. This links environmental factors to strategic expansion (a ‘political ecology’ perspective). It also links space and society in terms of ‘uses, regulations, and representations’ (a ‘territorial political economy’ perspective). The ocean is not just a biome used by societies, but a major aspect of societal space (Steinberg 2001, p.20, 21).

Table 2.1: Ocean space and Piracy Codification -

HISTORIC PERIOD:	Greco-Roman Empire.	Mercantilist Capitalism Pre Modern Europe.	Post-Westphalian Mercantilism. 1648 – late 1700s.	Industrial Capitalism 1800 – 1972. Emergence of Internationalisation.			Postmodern Capitalism 1973 → Postmodern Social Movements →
DOMINANT MARITIME POWER:	Romans → 300 BC – AD 500	Venetians →1200 – 1700s Spanish → Portuguese → Dutch → British →			British hegemony United States hegemony 1945 – Present		
CONSTRUCTION OF OCEAN-SPACE:	Mediterranean construction of ocean-space	Indian Ocean construction of ocean-space 500 BC – AD 1500	Consolidation of European construction of ocean-space. Hegemonic control of vital trade routes.			Continuation of core state construction of ocean-space. Heterotopic ocean-space.→	
LEGAL PIRACY CODIFICATION:	The Rhodian Code. (Roman).	The Malacca Code. Late 13 C.	Hugo Grotius / Seraphim de Freitas / John Selden debates concerning what constituted maritime territoriality and piracy. 1580 – 1650	Declaration of Paris (1856) (Privateering). LOS (1958)			UNCLOS (1982) Rome Conventions.
STAGE OF GLOBAL PIRACY PROHIBITION REGIME:	STAGE 1		STAGE 2	STAGE 3	STAGE 4	STAGE 5	STAGE 6 (New)

X Axis continuum →

NB: There is continued debate about dates concerning the historical rise and decline of particular maritime powers. This is beyond the scope of the dissertation.

It is pertinent to outline the five stages that Nadelmann identifies in the social construction of the global prohibition of piracy and how these relate to moral panic, claims diffusion and labelling theories of Thompson (1998), Best (2001) and Becker (1973) respectively. I extend Nadelmann's stages to include a sixth stage.

Stage 1. The potentially deviant behaviour (piracy) is widely acceptable (Nadelmann 1990). Legitimation depends more on state objectives than moral values. Labels are being developed, but are unlikely to be applied if the condition does not threaten state objectives (Becker 1973; Best 2001, p.8). This precedes the first stages of Thompson's (1998) moral panic and Best's (2001) claims diffusion theories.

Stage 2. Moral entrepreneurs label the behaviour as a problem during debates.¹ The behaviour is gradually delegitimised as it continues (Nadelmann 1990). This reflects the social origin of labels (Becker 1973). Thompson's moral panic theory states moral entrepreneurs scrutinise the behaviour and label it a problem. Claims-makers initiate a diffusion of claims to agencies of social control, the *potential* adopters, and advocate action (Best 2001, pp.8, 11; Loseke 2003). At this point these agencies behave ambiguously as they may tolerate some instances of the behaviour, while overtly campaigning for its abolition. In Thompson's (1998) stages, a threat to accepted moral values is identified (stage one) and (applying it to contemporary instances) portrayed in somewhat simplistic form by the media (stage two).

Stage 3. Agencies of social control, supported by moral entrepreneurs, continue to campaign for criminalisation (Nadelmann 1990). They focus on effective claims diffusion (Best 2001, p.8) and attempt to initiate the creation of international conventions, consistent with Becker's (1973) labelling process. This stage incorporates Thompson's stages three and four of moral panic theory. Thompson's (1998, p.8) stage three is that there can be intensification of public concern, with reactions from agencies of social control and those who express concern through the media (stage four). Anderson (1992) noted the emergence of the mass-media era in which state power and the potential for state co-operation intensified (facilitated by claims diffusion).

Stage 4. The behaviour is codified in domestic and international law if prohibition proponents have succeeded (Nadelmann 1990, p.489). A majority of signatory states ratify international conventions and organisations coordinate implementation of legislation (Park 2006). The moral crusade has been successful because new rules have been established (Becker 1973, p.153). Claims-makers successfully ‘diffused’ claims to relevant recipients, the adopters (Best 2001, pp.9-11).

Stage 5. The frequency of the activity diminishes following the implementation of prohibition (Nadelmann 1990, p.489). Nadelmann (1990, p.489) argued that historically, this stage could not be attained until the nineteenth century when ‘states...eliminated...the vacuums in sovereign authority’. But this stage was not fully realised and did not become globally codified in international law until the post 1945 period.

Stage 6. Definitions of the term are expanded as other claims-makers apply this label to other activities they regard as a problem, to further their agendas. This attempted expansion of a definition relates to an ongoing tendency of language and meaning to evolve but also to the inclusion of other forms of theft at sea.

Nadelmann had not considered that the definition of this prohibited behaviour (piracy) could be challenged to include other deviant activities within postmodern ocean space, which is a heterotopia. This is a space in which multiple social, political-economic phenomena occur that may change over time. As capitalism progresses, this space becomes more abstract, increasingly socially constructed, resulting in an increased potential for conflict (Steinberg 2001, pp. 192-205). This process is consistent with Becker’s (1973, p.152) argument that organisations often search for new causes to devote time and attention to.

The Greco-Roman Period.

In the Greco-Roman, Mediterranean construction of ocean-space, in which piracy was defined in local and regional terms (Steinberg 2001), law became central to Greco-Roman elite constructions of sea space (Benton 2005, p.701; Semple 1916). Analysis

of the Mediterranean construction of ocean-space reveals examples of states labelling, defining and exerting influence over the sea during which time pirates were more of a threat to instability than land bandits. The world-ocean expanse, however, despite Rhodes having codified laws applying to seas in 900 BC, prevented the extension of authority beyond adjacent waters (Semple 1911).

Consistent with Nadelmann's stage one, maritime theft and piratical activity was legitimate in many jurisdictions. Prior to Roman domination, the Mediterranean was a politically unstable, multi-powered region. Pirates were active within localised economies. Their booty was an important trade element for some coastal dwellers (De Souza 2001, p.48). Pirates were in an advantageous position as most maritime traffic followed coastal routes. However, this forced coastal states to control trade routes and launch moral crusades against pirates (Semple 1931). Thus, Alexander the Great raided Aegean pirates (356 and 323 B.C). The (Greek) Aetolian League raided Grecian ports between 300 and 186 BC (Rogozinski 1997, pp. xi – xvi). The attachment of labels of piracy to some theft at some times indicates elements of Nadelmann's stage one. Greek ambivalence in this respect was determined by strategic objectives rather than moral concerns, as they applied the label to enemy ships but not their own.

Ultimately, the Romans dominated the Mediterranean with their own constructions of the sea and responses to piracy (Semple 1911, p.314). They used the Rhodian Code with its freedom of the seas (*mare liberum*) principle, but developed law resembling contemporary maritime law by territorialising sea space (*mare clausum*). The Roman world-view encompassed a known world, in which sea space was used to trade and project strategic power, and an outside world, labelled barbarian and piratical (De Souza 2001, p.48). Their constructions of empire and territorialisation of their known-world influenced how they labelled piracy and their state objectives, as they exerted hegemonic influence over a sea-area within which they claimed to have abolished piracy.

Nevertheless, Romans sometimes regarded piracy with indifference, ambivalence and made spasmodic responses to control it unless it threatened trade or military expansion (De Souza 2001, pp.48, 53; Rogozinski 1997), consistent with

Nadelmann's stage one. Greco-Roman elites identified and labelled enemies through political expediency. These rule-makers created rules, which rule-enforcers applied. However, Becker (1973, p.122) noted that 'it is more typical for rules to be enforced only when something provokes enforcement.' Some Romans labelled political opponents 'pirates' to invalidate their political aspirations (De Souza 2001). Roman piracy suppression, reinforced by technological and strategic superiority, often involved authoritarian figures attempting to further personal ambitions and manipulate Roman perceptions of sea-space. They constructed themselves as protectors to justify their dominance, arguing they were protecting communities such as during the war with the Illyrians in the third century BC and when they conquered the Balearic Islands in the second (2001, p.49). The Rhodesians, dependent on maritime trade, pressured the Romans to counteract piracy, particularly against the Cretans, who they labelled piratical.

There are numerous historical records from the period of leaders who became moral entrepreneurs and labelled pirates as a social problem to further their own political and economic aspirations. Marcus Antonius the Orator, supporting his candidacy for the Roman consul, raided Cilician 'pirate enclaves' on the Turkish coast 103 B.C. since they were labelled piratical as they raided settlements and shipping in the Eastern Mediterranean. He justified this under the Rhodian law *lex de provinciis praetoriis*, and declared Cilicia praetorian, which provided legal justification and encouraged allies to support imperial expansion (De Souza 2001, p.49).

Publius Servilius Vatia during 78-74 B.C raided Cilician pirates in an attempt to increase his prestige. The Romans manipulated Greek fears by labelling Mithridates the king of Pontos who controlled parts of Anatolia and Eastern Greece, and associate mercenary forces (Cilicians) as pirates (De Souza 2001, p.49). The Cretans had assisted Mithridates and the Romans deployed Quintus Caecilius Metellus to bring 'pirate' Crete under Roman control. But the Roman Senate reached a point of dropping charges and declaring Crete a Roman ally, to the disapproval of the politician Spinther (De Souza 2001, p.50).

The Mercantilist Period.

I have accepted Steinberg's (2001, pp.68, 110) dating of the mercantilist period from the 1450s (the start of Iberian hegemony) to the 1760s (with Dutch but mostly British dominance). European constructs of sea-space in this period resulted from 'socio-spatial processes' developed by European mercantilists (Steinberg 2001, p.68) who formed founding elements of European empire building (Mancke 1999, p.225) and the resultant modern world-system (Chenoweth 1996, p.107). I argue that the impetus for later universal notions of maritime law and piracy prohibition evolved from the ocean-space constructs of this period.

Mercantile capital emerged with the expansion of European-dominated maritime trade routes. Successive hegemonic powers allocated strategic importance to the different areas of the oceans, which they attempted to control and police to ensure unhindered freedom of navigation.

Figure 2.1. Merchant Capitalism and Hegemonic Control of Sea Space.



Nadelmann (1990) noted the intermittent emergence of international society and international regularisation of prohibition. The mercantilist period was largely characterised by Nadelmann's stage one of prohibition; piracy was widespread and often accepted, although it was conceptualised differently in Southern Europe, Northern Europe and in the Indian Ocean. Thus, Tai (2003) and McManamon (2003) highlight the frequency of Mediterranean piracy in the fourteenth and fifteenth centuries. Benton (2005) also notes that piracy extended into the Indian Ocean. Concomitantly some states legalised privateering (another form of theft), which was extensive and as Davis (1973) notes, became intrinsic to the consolidation of the Atlantic economies. This behaviour remained legalised until the mid 1850s.

The spatial orientation of merchant capitalism emerged from the fusion of Southern and Northern European sea-space constructs, which influenced reactions to piracy. The Southern European construct of ocean-space followed the Roman model through the Middle Ages and the mercantilist period. Coastal states accepted stewardship of the seas, *mare imperium*, even a force field construct, but not ownership. For example, The Venetians, a maritime power from the 1200s to the 1700s, had a defensive orientation as they projected power across sea-space to defend sea-borne trading interests against threats (Steinberg 2001, p.69, 71).

There were different social constructions of sea space in Northern Europe, primarily because of worse weather. Important waters were coastal, navigable, contained fish stocks but were highly territorialised. The Northern European hegemony had no concept of the high seas but regarded distant waters as *res nullius*, waters that could possibly be claimed (Steinberg 2001, p.69). Northern and Southern Europeans traded extensively by the 15th Century. At this time, the Southern European powers, Spain, Portugal and the Italian city-states such as Venice and Genoa, ventured into the Atlantic and the Indian Oceans (Steinberg 2001, pp.70, 71; Tai 2003, pp.261-265).

The small, localised coastal communities bordering the Indian Ocean (500BC – 1500AD which predated notions of universalised law and order) had no concept of marine sovereignty and few maritime power aspirations. Indian Ocean societies used the sea extensively but not to gain power the way the Romans had, or the way the Europeans did later. In contrast to the Mediterranean construct of a controlled but unclaimable space, these coastal communities constructed the sea as socially external non-territory - a surface to traverse while trading in comprehensive commercial networks that linked East Africa, Arabia and the Far East (Steinberg 2001, pp.41-47). However, despite the absence of collective strategic expansion by coastal communities, Risso (2001, pp.294-319) demonstrates piracy in the Indian Ocean and Gulf regions. Onley (2004, p.31) also drew attention to Arab 'toll levying' and raiding of British Indian shipping, which the British considered 'extortion and piracy'.

Indian Ocean communities never conceived of military domination of ocean-space in the way that the Spanish, Portuguese, Dutch and the British achieved later (Steinberg

2001, pp.47, 49). There was no overriding form of governance. Marine rules in existence applied to ships themselves, not territorialisation. The 13th Century Kingdom of Malacca's Code of Malacca was one of several maritime law codes known in the region and was oriented toward shipping rather than sea-space in which ships were regarded as territory of nations where they were registered. Anti-piracy rules then took on a different orientation as piratical behaviour was regarded as that which violated rules aboard ship and stipulated punishments for their violation (Steinberg 2001, p.51).

Emerging colonial powers influenced international relations with implications for state conflicts that extended out on to the seas. Thus, European interstate relations were transformed from a regional orientation to a more globalised one (Mancke 1999, p.225). The concept of the high seas belonging to no state, consistent with the Hobbesian principle of *bellum omnium contra omnes*, was not codified in international law until the sixteenth century. From that time, 'piracy' reportedly increased as maritime trade increased. Core state naval powers had frequently favoured piracy or theft at sea, in the form of privateering against enemy ships. They encouraged pirates to remain loyal to core state authorities and to attack other pirate ships or coastal communities not under their influence (Rogozinski 1997).

Anderson (1995), Birnie (1998), Braudel (1976), De Souza (2001, 2001a), Gosse (1934), Nadelmann (1990), Reber (1966), Ruben (1974) and Rogozinski (1997) show that dominant maritime authorities possessing effective naval power approved piracy before the seventeenth century. Neville (1924) examines Elizabethan concepts of piracy and privateering in an age when attacks on foreign shipping were regarded as heroic and normalised. Groups and individuals that raided ships were either approved or criminalised, depending upon the political relationships between those undertaking piracy and controlling agencies that exercised strategic dominance. This reflects Nadelmann's stage one.

The mid-1600s saw a transition from Nadelmann's stage one to stage two. From the mid-fifteenth to the mid-sixteenth Centuries, the Spanish and the Portuguese dominated 'long-distance' trade. In the post reformation and post Westphalian mercantilist eras, the rise of the Dutch and later British naval power reflected state

competition and the need to consolidate overseas trading markets and routes and secure them from pirates. This followed social changes in hegemonic countries. Following the Treaty of Westphalia, which codified the existence of the nation state in 1648, distinctly different labels of privateering and piracy were applied to the same activity of theft at sea. A consensus from a cross-national diffusion of claims was that unlike privateering, piracy was a problem for them all. Hegemonic powers issued privateers Letters of Marque. These sanctioned their activities in their national interest; it was considered a legitimate expression of strategic influence.²

During the 1700s, the international political economy and relations between core states and political authorities outside of Christendom were changing. There occurred dramatic increases in international trade, corresponding increases in volumes of sea freight and diplomatic communication between core states and geographically remote states. It was realised that successful international trade depended upon maritime strategic stability, which provided an impetus for Nadelmann's third stage of global prohibition (Birnie 1989, p. 132; Nadelmann 1990, p.486). There was growing acceptance of common law relating to maritime issues, which threatened pirates. A noteworthy move in this direction was the US statute in the 1790s, which included the common law of piracy (Rubin 1998, pp.331-72). This included territorialisation of small sea areas adjacent to coastal states that exercised authority. The sea beyond these jurisdictions was consolidated as high seas in naval agreements. Laws were enacted to maintain 'freedom of navigation' to ensure safety of maritime traffic and international trade. Piracy was considered a threat to international economic and political expansion, which dominant powers needed eradicated (Birnie 1989, p.132).

Colonial agencies of social control and core state naval forces implemented state-sanctioned violence, which was codified in core state law to eliminate piracy. Nevertheless, as European states 'regularised their relations', competitive states acted against each other in remote areas in ways which were only accepted during a state of war in Europe.' Standards of behaviour depended on whether they dealt with European states or with states outside of Europe over which they exercised imperial power (Nadelmann 1990, p.487). The significance of this increased as industrial capitalism superseded mercantilism (Steinberg 2001, p.110).

The Industrial Capitalist Period.

Industrialisation has been characterised by maritime technical innovations, which have compressed time and space continuously since the late 1700s (Harvey 1990). Increasingly mobile capital expanded internationally capitalising on the network of maritime trade routes (Steinberg 2001, p.110). A new oceanic ‘spatial logic’ emerged which consolidated the mercantilist construct of sea space as a network of sea routes dominated by key powers. Early in the industrial capitalist period, piracy was identified internationally as a problem, albeit within the parameters of core state perceptions. Nadelmann’s stage three was realised, as privateering was gradually abolished and core states attempted to abolish piracy to protect sea space.

The hegemonic powers constructed ocean-space as a mere transportation surface between nodes of production and consumption. Simultaneously, however, while it separated these places, it was a vital link between them and a significant source of resources. This provided additional impetus for more internationalised governance, the projection of power to prevent hindrance to freedoms of navigation (Steinberg 2001, p.112, 113, 125) and ultimately, the global prohibition on piracy (Nadelmann 1990).

The socially constructed British definition of piracy imposed in Southeast Asia during the nineteenth century was consistent with British strategic interests (Beckman *et al* 1994; Reber 1966; Rubin 1974; Tarling 1963; Trocki 1979), and this construction could also be considered using discourse analysis (à Campo 2003). The jurisdictional definition was intended to prevent attempts to hinder British domination of East-West maritime trade, reflecting a British ‘elite consensus’ (Goode & Ben-Yehuda 1994, p.34) to eliminate threats of ‘acts of violence which were not sanctioned by the British’ (Beckman *et al* 1994, p.3). The British imposed their definition on the Malays who had previously defined the same behaviour differently. This affected traditional livelihoods. The British defined Malay raiding as piracy, whereas the Malays viewed it as standard political activity necessary for survival. Examples of the types of activities include the Malay coastal communities’ frequent raiding of ships sailing in Southeast Asian waters prior to European colonisation (Beckman *et al* 1994) and the Orang Laut collection of port duties from Chinese vessels using their waters under

authority of the Sultan of Johor (Trocki 1979). This demonstrates Becker's (1964, p.10) argument that there exist numerous definitions and interpretations of problems.

Ruben (1974) highlighted the British legal principle of paramourty with which British elites legitimated their role of suppressing other maritime entities to their strategic advantage. The British did not define this suppression as 'piracy'. Reber (1966) noted that Raffles (a British moral entrepreneur) defined piracy in terms of its adverse or positive affects on British interests in the Malay region, reflecting an elite-engineered moral crusade (Goode & Ben-Yehuda 1994, p.135).

Socio-cultural and socio-political labelling processes, consistent with arguments raised by Becker (1973), created the image of the 'pirate', which became a familiar and consistent symbolic image in nineteenth century literature and theatre.³ These fictional depictions demonstrated how labels were disseminated. These popular symbols emerged in western culture long after piracy had reportedly threatened western traders. The 'pirate' image was based upon syntheses of fact and fiction, which were often contradictory (Rogozinski 1997, pp. vii – xvi). However, these labelling processes from social and cultural reactions to piracy influenced the continuation of the pirate myth.

By the late 1800s, Europeans had developed their own image of 'the pirate' that had become entrenched in popular culture in various ways. In various paintings, pirates were portrayed as fierce and fearless with an enigmatic, intense individuality. In another way, writers used romantic literary pirate figures to influence stories about humanity that interacted with the sea and lived on shorelines, which were socially constructed as a source of 'romantic nostalgia' (Corbin 1994, pp.215, 228). Victorian authors, such as Defoe and Stevenson (Moore 1943), concocted pirate behaviour that was by Victorian values, evil. Pirates were portrayed womanising, drinking and swearing.⁴ The notion of pirates being pitiless was expressed in Defoe's *General History of the Pyrates* (1724 – 1728) (Boulton 1975; Shonhorn 1972). Pirates' bad habits were also described and exaggerated in children's storybooks (see Robert Louis Stevenson's *Treasure Island*, 1883). Pirate characters created by Conan Doyle and Exquemelin were portrayed as incorrigible, which answered an audience demand for

such characters. This tradition continued into the twentieth century when films perpetuated these images.

Rogozinski (1997) argued that there were few *accessible* examples of piracy upon which nineteenth century European writers could base fictional characters. By 1837 Ellms had collected a series of non-fictional piracy stories. Pirates had been eliminated from the Atlantic by 1725. It has now been over 300 years since piracy was a problem in the Atlantic, although several cases were recorded in the 1820s (Rogozinski 1997, p. vii-xvi). The Barbary Coast Corsairs had posed some threat until the 1830s but pirate activity had diminished in waters closer to dominating European maritime states by this time. These historical images have influenced how core-state media have sensationalised reports of piracy in peripheral states⁵ (Kleinen & Osseweijer 2002). Popular stories about sea life and piracy became more prolific as core states' maritime activity increased during the industrial capitalist era.

Maritime trade growth, requiring ocean-space regulation, depended on freedoms of navigation. Most shipping regulations remained the responsibility of the states where ships were registered (flag states). However, closely related to Nadelmann's third stage of internationalised regulation, the nineteenth century shipping elites recognised the need for standardisation of ship governance, including the normalisation of relationships between flags and ships on the high seas and in those territorial waters. Support within international shipping (core states, manufacturers, shipowners and marine insurers) for conferences to codify standardisation of maritime regulation, including those relating to piracy, were made between 1850 and 1890. This represented an expansion of the influence already exerted by Lloyd's of London that had created its shipping register by the 1760s. They classed ships according to specified construction and maintenance standards – predating the contemporary classification society (see glossary). Lloyd's had formed the first shipping intelligence network, to assess shipping dangers; this is still in operation (Steinberg 2001, p.126).

There was recognition that piracy law needed to be standardised, yet privateering (state sanctioned piracy and theft at sea) continued until this international conference constructed the Declaration of Paris in 1856. There is no absolutely clear historical demarcation between Nadelmann's developmental stages because of the nature of the

social construction of the definition of piracy and varying interest groups were influencing prohibition. For example the British rule creators, who had defined Malay raiding as piracy (à Campo 2003) and had previously supported privateering, sought an end to it along with other states' elites keen to protect their commercial fleets from British naval supremacy. The treaty also protected neutrally-flagged ships carrying non-contraband goods from seizure by ships of warring states even if carrying cargo destined for those states (Steinberg 2001, p.13).

Great Britain, France, Prussia, Russia, Great Britain, Austria, the Porte and Sardinia signed the Declaration of Paris. The United States government however, refused to cooperate at this time. It argued that its navy reserved the right to privateering during time of war. Nevertheless, privateering throughout the duration of war was finally codified as piracy, during the fourth stage of global piracy prohibition (Nadelmann 1990, p.489, Piggott 1919, p.142).

As part of the merging moral crusade against piracy, the subsequent conferences dealt with various marine issues. The first step to standardise the maritime convention system emerged in 1889. The United States government held an international conference to address the standardization of maritime regulations and the possible establishment of a permanent international maritime governing agency. This conference dealt with one issue on the agenda (the start of many international disagreements over legislation) but formally confirmed the existence of a number of pressing issues. The conference set the pattern for the future by which legislation would be developed as a result of member state consensus (Stopford 1997, p.441).

However, the Comité Maritime International (CMI), convened in Washington in 1889, largely failed because core state powers, while supporting standardisation of certain rules and remaining committed to 'preserving the construction of ocean-space as 'non-territory'', were hesitant to adopt international standards as they feared that an international maritime entity would gain ultimate territorial authority over the deep sea (Steinberg 2001, pp.125, 126). Therefore, control remained determined by state power.

The CMI however, developed an alternative system allowing the Belgian government to conduct intergovernmental conferences and propose treaties based on its proposals that required national legislation. The CMI, an association of maritime-law associations that first met in 1897 discussed maritime issues, including piracy, and many of its recommendations required changes in state law (Steinberg 2001, p.127).

International piracy codification remained complex for several reasons. Piracy, labelled as non-state sponsored violence and theft, meant that mere state commitment to cease this could have limited impact. Additionally, state claims of territorial control over large expanses of ocean-space required considerable policing resources. It implied that increased territorialised expansion would reduce the high seas and therefore its freedoms, upon which most shipping depended. Foreign ships in newly territorialised waters would be labelled as potential pirates. At this juncture, the notion to grant policing authority to a supranational administration was not possible in the nineteenth century (Steinberg 2001, p.130).

Anti-piracy legislation emerging in the nineteenth century consolidated the piracy prohibition regime at Nadelmann's third stage. The legitimacy of *pirata hostis humani generis est* (piracy is the universal enemy of mankind) strengthened. Core state claims-makers increasingly recognised piracy a threat to economic and political dominance and accepted the common law declaration that they could legally label, apprehend, try and punish 'pirates' under national law irrespective of whether offences occurred in territorial waters or the high seas. The principle of piracy *jure gentium* (a piracy definition accepted under international common law) became widely accepted by core state governments under customary law during this third stage prior to globalised codification (Birnie 1989, p.132).

The strategy to hold the flag state of a pirate vessel or its citizens to account would have been consistent with the industrial capitalist construction of ocean-space and the flag state principle that were consolidated by the early 1900s (Carlisle 1981), but this approach had problems. Ships crew nationalities often varied from the ship's flag state. Some pirate ships claimed they belonged to more anarchic entities well away from Europe, outside the control of any recognised state at the time (Steinberg 2001, p.131).

The ultimate approach adopted this last option to avoid increased ocean territorialisation. It was asserted that the land areas contained civilisation and the seas were constructed as a 'non-civilised' space. European anti-piracy construction from then onward expanded the system of national-sovereignty across all land-space. Colonial settlements, often taken by force and incorporated into the domain of a colonial power and its laws, were constructed as civilised land-space and authorised to control shipping sailing from these areas (Steinberg 2001, p.131).

The sea was constructed as 'anti-civilisation' (Steinberg 2001, p.131). Ships sailing on the 'non-civilised' sea were seen as small, civilised communities adhering to sovereign state authority. Civilisation meant adherence to the rules of a civilised state. Ships sailing without a flag, sailed without rights or protection afforded by states. States that acted piratical were associated with an anti-civilisation sea construct. They were regarded as enemies of mankind (*hostis humani generis*), not just the enemy of states whose ships they pirated (Steinberg 2001, pp131, 132).

The civilised nations targeting of pirates was justified by a construction of land-space authorities attempting to control ocean-space. This created an internationalised impetus to address piracy in which states could exert power without the sea being completely territorialised but the anti-piracy construct was not applied to other behaviours at sea.

Birnie (1989) highlights the social constructionist nature of piracy by noting the jurisprudential basis of *jure gentium*. Despite its categorisation by customary law as an offence 'against the human race', under the third stage of the piracy prohibition regime, piracy may not be necessarily criminal. It may be considered merely deviant or subject to civil law. Continued debate surrounded the legal definition of piracy under both international and national laws. States accepted their moral obligation to suppress piracy. At the same time, piracy 'illegality was notional' and in that sense was 'broadly acknowledged' among states in the international system as being an international moral norm (Nadelmann 1990, p.490). Nadelmann (1990, p.485) argued that global piracy prohibition remained at the third state of development from when

common law norms of piracy were widely acknowledged. I argue that this stage remained until the 1930s.⁶

In 1932, as moves toward international codification and clarification of contemporary piracy definitions continued, the Harvard Law School defined piracy as acts of violence at sea from another ship to steal property. The school researched piracy law, evaluated labels of piracy and other potentially deviant behaviour and prepared draft legislation for the International Law Commission. The League of Nations' law report from its Committee of Experts for the Progressive Codification of International Law, regarded piracy as acts occurring on the high seas, and disassociated piracy from submarine warfare, government ships and politically motivated acts (Birnie 1989, p.137). It agreed that piracy on the high seas was both a crime against national law and also required international jurisdiction, which depended upon the will of states (Birnie 1989, pp.132, 138). This draft proposed codification of original customary law of piracy. It recognised every state's legal right to legislate against piracy. It approved of hot pursuit under which ships could legitimately enter foreign territorial waters while chasing pirates, since states had right to protect their citizens, shipping resources and trading organizations. Vessels not sailing under a flag would be piratical, so too warships subject to mutiny. However, politically motivated acts of violence, labelled under a different legal category, were excluded from the draft (Birnie 1989, p.138). Birnie (1989) argued that the Harvard Draft ultimately formed the foundation to the International Law Commission's work on piracy later included in the Geneva Convention on the High Seas (1958), the Geneva LOS Convention.

I argue that World War II interrupted the internationalised prohibition process, which in part, was resumed at the Nuremberg Trials. The high modernist, post 1945 era (which lasted until 1972) consisted of a transition of geopolitical configurations consolidated by state oriented modes of political regulation and resulted in the realisation of the fourth and the fifth state of the global piracy prohibition regime. The orientation toward linear progress, rational planning, standardisation of knowledge, and comprehensive law remained intrinsic to post war modernism. These modes helped stabilise the global regime of accumulation and also the American post war hegemony to the benefit of dominant, post war powers (Harvey 1990, pp. 35, 123).

Transformations from previous maritime law constructs began with President Truman's Proclamation on the Continental Shelf in December 1945, which was a modernist, globalised oriented response to maritime issues. Modernist constructs of international norms centred on sea space as external to individual state territory, but amenable to governance within the state system. It was, however, also defined as an area of anarchic military competition. The US hegemonic social construction of ocean space reflected emphasised control of sea areas (Steinberg 2001, pp.16-18; Townsend-Gault 1999). Traditionally, state governments maintained jurisdictional autonomy of legal decision-making and remained reluctant to transfer this decision-making to supranational bodies. However, particularly within this hegemonic period, given the degree of state interdependence, a need for normalisation in multilateral relations and governance, nation states relinquished some law making authority (Simmons 1998, p.76).

The modernist response to piracy prohibition became globalised by the broad acceptance of the piracy definition in the Geneva LOS Convention (1958). The piracy definition specifies theft in the form of 'depredation', but violence is also stressed. The convention specified that 'All States shall co-operate to the fullest possible extent in the repression of piracy...' (Article 14). 'Piracy consists of any of the following acts: Any illegal acts of violence, detention or any act of depredation, committed for private ends...' (Article 15 (1)). 'On the high seas, against another ship or aircraft, or against persons or property on board such a ship or aircraft;...' (Article 15 (1) (a)). 'Against a ship, aircraft, persons or property, in a place outside the jurisdiction of any State.' (Article 15 (1) (b)). 'Any act of voluntary participation in the operation of a ship...' (Article 15 (2)). 'Any act of inciting or of intentionally facilitating an act described...' (Article 15 (3)).

The Geneva Convention of 1958 demonstrates the full realisation of the fourth stage of piracy prohibition, which Nadelmann argues, emerges when prohibition of the offending behaviour is codified in international conventions, ratified by signatory states, and sanctioned organisation coordinate implementation of legislation.

Powerful moral entrepreneurs and agencies of social control emphasised certain behaviours at sea that dominated the legal evolution of piracy definitions and

acceptance in international law. These entrepreneurs came from core states and private sector shipping. Their political interpretations influence and political, economic agendas reflected hegemonic strategic interests. They sought to label and codify piracy within specific moral parameters. Nadelmann (1990, p.480) argued that domestic and international pressure from lobby groups and agencies of social control wanting to codify the norms of dominant societies through a process of proselytization influenced action of law-creating authorities. Global prohibition in the fourth stage and its emphasis on legal positivist approaches reflect a modernist, technocratic orientation toward law formulation.

It emerges when prohibition of the offending behaviour is codified in international conventions, ratified by signatory states, and sanctioned organisations coordinate implementation of legislation (Park 2006). Bureaucrats with professional autonomy (Cotterrell 1992, p.16) drafted empiricist, legal-positivist piracy legislation. Agencies of control developed a body of regulation that can be subject to interpretation and reinterpretation. Piracy legislation at Nadelmann's fourth stage, like all law, should be analysed within a social constructionist rather than formalistic or positivist context as it highlights the values, social responses and dominant political and cultural ideologies evident in agencies responsible for regulation (Cotterrell 1992, p.5, 8; Vago 1988, p.3).

Several principles proved problematic because of the legal positivist approach. There was some agreement concerning definitions, but as cases were heard in national courts, debates concerning national and international definitions led to confusion. The attempted clarification of a universal definition under the Law of the Sea complicated matters since each state had numerous, varying laws concerning maritime crime (Birnie 1989, p.133).

Some government response to the 1958 codification was superficial, however, as they no longer regarded piracy a threat⁷ (Birnie 1989, pp. 138). Their reactions suggest that Nadelmann's fifth state of prohibition, concerning the reduction of piracy as a result of prohibition, had already been reached. Some nations however, while acknowledging that piracy existed, had varying constructions about its definition.

Chinese nationalists thought themselves justified to intercept ships bound for the People's Republic of China. The Soviet Union proposed that politically motivated interference by warships constituted piracy. Czechoslovakia asserted that any acts interfering with shipping constituted piracy but this was rejected. The International Law Commission draft excluded most contentious aspects and finally regarded piracy as acts undertaken for 'private ends in the high seas outside state territorial waters' (Birnie 1989, p.139).

The third Law of the Sea conference occurred in the 1970s under UN instruction that a LOS treaty, acceptable to all member states be created. It produced no internationally accepted definition of piracy. The problems and controversies concerning the definition of piracy were not reconsidered through fears of delaying proceedings. The original definition raised at the LOS Convention (1958) remained unaltered for twenty years (Birnie 1989, p.139).

Agencies maintained an approach to definition creation consistent with positivist assumptions. Certain social phenomena can be identified, theoretically isolated from other social behaviours and labelled. Labels can be codified legal or illegal by judiciaries and discussed within this context. The linguistic meaning applied to definitions can highlight degrees of emphasis and importance within claims diffused from one moral entrepreneurial agency others. Furthermore, this activity or behaviour creates other defined behavioural responses and consequences. Causal relationships between behaviours have resultant social consequences. Finally, what has been objectively identified as being 'real' and 'true' can be verified by valid empirical data concerning observable phenomena (Bilton 1981, pp. 631- 633). These positivist assumptions have been widespread in agencies responsible for reporting and controlling piracy.

Codification of UNCLOS III (1982).

The development of UNCLOS was initiated by UN General Assembly resolution 2749. This reflected recognition by maritime states that changing economic and political circumstances of the 1970s meant that the overriding Law of the Sea needed revision. Most IMO member-states, many of which are flag states and many the

newer FOCs, had no involvement in previous UN Law of the Sea conventions. They ratified the UNCLOS 1982 Convention by 1994 and legitimised its articles concerning the definition of piracy. These articles are virtually the same as those in the 1958 Convention (see Appendix 1 for UNCLOS definitions of piracy contained in Articles 100 to 107).

This definition of piracy is limited to attacks occurring on the high seas, outside territorial jurisdiction. It labels attacks within coastal state jurisdictions as 'armed robbery'. From this, some coastal state representatives argue that there is no 'piracy' occurring in their coastal waters (Wang 1992, pp.19 –39). Signatory states are obliged to charge assailants with armed robbery, assault, theft and murder only if incidents take place within territorial waters (Vagg 1995, p.64).

The Rome Conventions.

The IMO member state and legislative assembly recognised a need to create a definition of piracy under UNCLOS (1982). It created legally sanctioned labels. These exhibited neo-classical aspects of positivism producing meaningful categorisation⁸. In this view, maritime conventions remain the administrative datum of international maritime law. International agreements drawn up in conventions are just that, not laws. Signatory states, often with different legal systems, may introduce measures established in the convention into their domestic maritime law. Despite minor differences, the laws provide standardisation of legislation, removing or minimising contradiction and inconsistency. This is vital for states and ship owners dealing with this trans-jurisdictional industry (Stopford 1997, p.440). This conforms to positivist criminologist assumptions that 1) valid methods of the legal categorisation and quantification of behaviour exist; 2) the definition creation process can remain objective; 3) it creates a morally valid judicial response to behavioural parameters. It proceeds from the assumption that there are discoverable, consistent, causal phenomena of deviant behaviour (Bilton 1981, pp.630, 631; Taylor, Walton & Young 1985, p.11). Conservative, classical criminologists accept unquestioningly the norms of capitalist society. These include the concept of private property, the preservation of the socio-political and socio-economic status quo, and the recognition of state-authorised deterrence to protect citizens and administer appropriate sanctions

(Taylor, Walton and Young 1985). These assumptions provided the framework within which the IMO bureaucracy statistically analyses behaviour in terms of the IMO definitions.

The IMO identified the need to address the threat piracy posed to maritime navigation and the reported escalation of 'acts of terrorism', which restricted freedoms, endangered life and jeopardised member state security (IMB 2000, p.22). Therefore, it sponsored the Rome Conventions (1988), which produced two protocols. The first protocol was *The Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation* (1988) and the second was *The Convention for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf* (1988) (See Appendices). The Conventions advocated international law with a comprehensive judicial framework to deal with highly mobile pirates who traversed international borders. This ensured rights and freedoms consistent with the UN Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

The IMO Assembly supported UN Resolution 40/61 (1985) that *inter alia* urged co-operation between states and appropriate UN bodies to combat international terrorism, including that against merchant ships and crews and '...violation of human rights and alien occupation which endangered peace and security'. UN Resolution A.584 (14) (1985) of the IMO Assembly called for unified, practical measures to prevent 'terrorism' and piracy against ship and buoys.⁹

The Conventions' construction of proscribed or punishable activities is broader than UNCLOS. They incorporate elements of UNCLOS Article 101 but their definition expanded its boundaries beyond it. The UNCLOS definition applied only to the high seas, whereas this Convention's definition was extended to include territorial waters. It also emphasises threats to navigation, which are not directly mentioned in the UNCLOS articles relating to piracy. In constructing its definitions the conventions drew on IMO piracy data (based on the positivist definition under UNLCOS), IMB data (based on the IMB piracy definition) and flag state data (which tend to use both definitions but are inconsistently supplied to the IMO) (IMB 2000, p.22).

The prohibited acts in the protocol suppressing threats to maritime navigation included: 1) the forceful or violent seizure of a vessel; 2) the destruction or damage of a vessel or cargo; 3) compromising navigational safety (including adversely interfering with navigational aids) in any way; 4) communicating false information endangering navigation; 5) attempts to commit any of the aforementioned offences (Article 3). The Convention applies to offenders caught within the jurisdictional territory of all signatory states, including their territorial waters (Article 4). (See Appendix 2)

The construction of definitions extended to the introduction of measures, which clearly place obligations on signatory states to create laws and impose sanctions. It specifies the extent of those obligations. Please see Appendix 3 for an overview of Signatory state obligations.

It was some years before most states attending signed the conventions; only China, Japan and Australia in the S. E Asian region were initial signatories to the Conventions. The IMB reported that the shipping sector was frustrated by the lack of legal jurisdiction available in the Asian region to prosecute alleged pirates. Acting as moral entrepreneurs, the IMO and IMB lobbied ASEAN to sign the 1988 Rome Conventions, which were considered a solution to legal problems that national and international judicial agencies faced when processing piracy cases (IMB Annual Report 1999, p.21). Now, over one hundred states have signed the Rome Conventions and the fifth stage of the global prohibition regime has been largely realised.

The Postmodern Capitalist Period.

The ratification of UNCLOS and the Rome Conventions legislated over greater areas of ocean-space. It created potential for conflict between marine territorialisation and the conception of ocean-space as a great void - both highly delineated modernist constructs (Steinberg 2001, pp.163-170). Since 1973, however, the international political-economic system has been undergoing transformations to postmodernism and postfordism. A decline in hegemony has further decentred global production nodes and ocean space use.

Postmodern capital, although driven by many processes that drove industrial capitalism (hyper-commodification and hyper-consumption), has become increasingly oriented toward global movements of flexible production and accumulation (Steinberg 2001, pp. 159, 160). Postmodern capital generates much greater ‘time-space compression’ to establish new consumer markets in specific ‘world-regions’ and in ‘globally-dispersed social strata’ (Harvey 1989). It does much of this through high-speed, high-bulk shipping. Ocean spatiality remains significant to postmodern capital (Steinberg 2001, p.163), but it becomes less regulated – for instance, as a growing proportion of global trade is carried by vessels flying flags of convenience issued by offshore tax havens.

The need for capital to react instantly to changes in the political economy, such as exchange rate fluctuations and flexible, competitor initiatives influencing productivity and accumulation, has intensified in the postmodern era. Information has become commodified by specialist business consultancies, which emerged with the realisation that profit accumulation and business security depended on access to accurate information networks (Harvey 1990, pp.159, 160). The IMB, a subdivision of the International Chamber of Commerce, is one agency that provides commercial information (including piracy data) to shipping in this postmodern context.

I argue that Nadelmann’s stages should be extended to include a sixth, postmodern stage, which has seen the rise of new social movements. In this period, piracy definitions are expanded by other claims-makers, considering heterotopic ocean-space, applying them to activities they label as a problem of theft or depredation at sea. Social movement organisations frequently do this to further their agendas. These expansions of definitions relate to the social evolution of language and meaning in an oceanic context. Increasingly, the term ‘piracy’ is used to refer to the theft of labour power by owners of flag of convenience vessels (a definition favoured by the labour movement), plundering of the marine environment (a definition favoured by the green movement) or depredation by sea-borne terrorists (a definition promoted by anti-terrorism moral crusaders).

Conclusion.

Social constructionists argue that definitions remain central to crime prohibition, but definition-creation cannot be considered in isolation. The historical definitions of piracy were influenced by the ways maritime communities, thalassocracies, and later the hegemonic powers, constructed ocean-space. These constructions in turn, were influenced by strategic and political-economic conditions present, whether during classical antiquity, the European Middle Ages; or the mercantilist, industrial modernist or post-industrial eras of the capitalist world-system.

Chapter Two

¹ The debate between the Dutch jurist Hugo Grotius, the Portuguese monk Seraphim de Freitas and the English scholar and polymath John Selden in the sixteenth century, resulted from the Dutch and the English challenge to Iberian dominance of maritime trade (Davis 1973). The legal status of the sea and the justifications for certain behaviour at sea were discussed in this debate. Grotius tried to defend the Dutch capture of a Portuguese ship and argued that Portuguese attempts to territorialise the sea and to counter *mare liberum* under common law, was an act of war. Seraphim de Freitas had replied by 1635 and described the basis upon which Portugal had attempted to enclose some sea space in Asian waters. John Selden attempted to validate England's claim to its own coastal seas. The debate demonstrated an early example of state maritime policy development and the emerging role and importance of ocean-space in geostrategic planning (Steinberg 2001, pp.89, 90).

² These Letters of Marque were used extensively and reflected, for example, British naval interests. For an excellent insight into naval dominance enjoyed by the Royal Navy, see Kennedy (1976).

³ There are many reports of piracy written in the first-person. Some of the accounts cannot be verified, but many can. However, Andrews (1964), Barlow (1934), Bradley (1990), Briggs (1970), Burney (1951), Dow (1996), Drury (1969), Ellms (1837), Exquemelin (1992), Gerhard (1960), Gosse (1934), Hepburn (1994), Lloyd (1957), Seitz (1971), Smith (1824), Whipple (1957), Woodes (1928), do not use social constructionism, symbolic interactionism and labelling theory to analyse reported accounts.

⁴ Less attention was given to them smoking tobacco, which was a habit not criticised until the late 20th Century - an example of how socially-created values change over time and space.

⁵ The terms 'core' and 'peripheral' states are taken from Wallerstein's Stratification Model of 'World-Systems' analysis whereby the 'core' consists of metropolitan countries, which have a high GDP, significant political economic influence and high rates of geo-strategic and technical ability. Peripheral states refer to all states outside this category with much lower GDP per capita, high mortality and illiteracy rates (Kauppi, & Viotti 1993, p.459; Wallerstein 1997a, 1997b, 1999a).

⁶ The 1889 Montevideo Convention and the 1856 Declaration of Paris had shown state agencies of social control were keen to eradicate 'piracy', having used a constructed definition. Interestingly, attempts were made via the Washington Declaration of 1922 by core state agencies of the UK, Italy, Japan France and the United States to treat as piracy those attacks upon merchant ships by submarines, which fell outside rules of engagement. By implication, it can be deduced that some attacks on merchant ships could be deemed 'acceptable' under certain circumstances and therefore not 'piracy'. The Nyon Agreement (1937) established between several maritime authorities restricted use of submarines during the time of the Spanish Civil War. Both of these agreements were regarded as unjustified as *jure gentium* was well established under customary law. Relevant members of the German Navy, later on trial at Nuremberg, were not accused of piracy for sinking allied shipping (Birnie 1989, p.137). One U-Boat commander, tried, found guilty and executed for war crimes at the Nuremberg trials after WWII was Kapitanleutnant Heinz-Wilhelm. He sank the merchant ship SS *Peleus* and the crew of U-852 shot survivors in a lifeboat on March 13th 1944. The trial opened on October 14th 1945 in Hamburg under Royal Warrant issued June 14th that gave authority to the British to 'try cases of violations of the laws and usages of war committed during any war in which we have been engaged or may have been engaged at any time after 2 September 1939' (Messimer 1998). It has been argued that not all horrendous acts at sea by Nazi U-boat and Allied crews were piracy although a number of naval atrocities were committed during the Second World War - see Bridgeland (2000). Most horrendous reportedly undertaken by one of the authorities influencing the Nuremberg trials, but these were rarely labelled 'piracy'. A Russian submarine torpedoed the *Wilhelm Gustloff*, carrying 8,000 refugees after it departed from the Bay of Danzig on January 30th 1945. This was the world's worst maritime disaster (Sellwood 1996). The *General Steuben* was torpedoed with the loss of 3,000 people and the *Goya* was torpedoed on April 16th losing 7,000 souls. They had been carrying refugees from Poland and East Prussia to Western Germany (Faith 1998, p.2).

⁷ Birnie (1989, p. 138) noted that the Romanian government recognised the need for an international piracy convention and during this initial drafting stage submitted a draft to the League of Nations. They submitted this preliminary draft of international legislation, which would codify law within international society.

⁸ There are initial consultations and drafting of preliminary documents. Authorities decide what issues require legislation and agencies such as the IMO, ILO or UNCTAD, draft initial documents stipulating problems and propose solutions. A draft convention is adopted. The conference meets again after agreement has been established concerning draft contents. This conference confirms consensus for the proposal and the legal structure of the regulations. Thirdly, the convention becomes available for government personnel to sign if they approve of the contents. This shows a commitment to ratify the convention and make state domestic law consistent with the convention. Finally, each state then ratifies the convention so that this legislation is introduced into the law of each state. However, the convention comes into force after a certain number of states have ratified it. The convention then becomes law in the country that has signed it. It is not law in states who have not ratified it (Stopford, 1997, p.442). Administrative effort is undertaken in order to ensure that the existing conferencing remains relevant to contemporary issues within the merchant shipping industry. The IMO, the ILO and the UNCTAD Shipping Committee draft and deal with different conventions dealing with different but related issues concerning shipping. All of the conventions reflect a consensus among the ratifying maritime states about certain issues. Once the convention has been ratified by certain states, then they are obliged to introduce this into their own maritime law. Those shipowners who have registered ships under these ratified states (flag states) are then obliged to follow the laws established by the convention (Stopford, 1997, p.443).

⁹ The IMO adopted resolution A.545 (13) and (14) 'Measures to Prevent Acts of Piracy and Armed Robbery Against Ships after the m. v *Achille Lauro* hijacking in 1983.

CHAPTER THREE

THE INTERNATIONAL MARITIME ORGANIZATION, THE INTERNATIONAL MARITIME BUREAU AND THE REPORTING OF PIRACY

‘Statistics are supposed to reduce complex data to their meaningful minimum. That requires that the writer needs to know, and the reader to be told, what the meaning might be.’
(Pease 1999, p.xi).

This chapter describes the IMO and the IMB and analyses their piracy-reporting processes, which, I argue, are central to their moral crusades against piracy. The data are analysed within the context of Nadelmann’s stages of global prohibition and social constructionism. In my original approach, I argue that this analysis clarifies the contemporary reporting processes. The IMO and IMB construct statistical reports, which, however, should be evaluated with care (Best 2004, p. ix). The data used are commensurate with constructed definitions and reporting procedures. Pease (1999, p.xiii) argued that statistics are a ‘social document’ that record what is judged ‘important’ data. A social constructionist interpretation of crime measurement and explanation regards statistics as products of agencies of social control, more representative of legal and administrative policy than crime indicators (Jupp 1989, pp.90-93).

Most IMO and IMB data discussed have been released in non-classified periodic and annual reports, distributed both in hard copy and electronically. The IMO’s and the IMB’s collations and analyses of piracy data and dissemination of reports are fundamental to both organisations’ moral crusades against piracy. Their reports are authoritative in tone and appear widely accepted within international shipping and law enforcement agencies as a valid source of data. This is one similarity between the institutions. They undertake differing roles, however, which relate to their beginnings at different times in the international political economy. The IMO emerged in the modernist, largely Keynesian era whereas the IMB was established in the postmodern period. The UN and contributor flag states funds the IMO (IMO 2000, p.3) and the IMB is funded operated by the Commercial Crime Services, the anti-crime department of the

International Chamber of Commerce (ICC) and various shipping sources (Ronit & Schneider 1999, 255-259) (see Figure 3.1).

Figure 3. 1. The Orientation of IMO and IMB Funding.

IMO: Supranational (Public Sector) Organisation with UN member state and flag state funding. ↓	IMB: Funded by private sector entities. ↓
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Both organisations' piracy reports are of considerable relevance to this dissertation. Considerable additional data, however, were gained from meetings and telephone interviews with individuals who have had some professional association with one or both organisations (see List of Informants). I make extensive use of interviews, taking into account the sensitivity of the subject (Lee 1993), as personal accounts assist in interpreting reports by providing further empirical details. The subjects' views about their roles, other actors and macro-sociological phenomena contribute to 'culturally embedded normative explanations' (Orbuch 1997, p.455)¹ about piracy reporting.

Garfinkel (1981, p.77) justifies this ethnomethodological approach to social research, by arguing that interviewees' practical knowledge may provide insight into issues and allow opportunity to undertake comprehensive interpretation with a practical orientation (Garfinkel 1981, p.77; Handel 1988, p.3; Metzler 1975, p.76). Subjects provide accounts in particular social contexts with the audiences in mind (Goffman 1968). Verbal communication, the main method subjects use to justify their actions, convey subjective explanations that reveal individual interpretations of social phenomena. It is also used to consolidate social and professional identity as well as institutional and social status (Orbuch 1997, pp.457, 462, 464). Field researchers undertaking social inquiry, therefore, must interpret responses to questions and accept that answers and the knowledge gained are based on socially constructed interpretations (Garfinkel 1981 pp.77, 78).

The International Maritime Organization:

Despite being one of the smallest UN organisations, the IMO's role in global governance is more than symbolic. It has a stable administration and has created a forum in which maritime states have continued to interact (Abbot & Snidal 1998). The supragovernmental IMO began as the *Ad Hoc* Intergovernmental Maritime Consultative Organisation (IMCO), established by the UN in 1958 to construct international maritime conventions. This continued well into the modernist era. Its legal constructions and diffusions of various claims resulted from the modernist bureaucratisation of international crime reporting (Harvey 1989, pp.173-180). This followed recognition of its authority and normative, social constructions by a transnational elite of law merchants – a mercatocracy (Cutler 1999, pp.63, 67).² The creation of the LOS and pan-institutional dissemination of data remain central to understanding piracy reports and the IMO's role within Nadelmann's stage five of prohibition.

The IMO's dissemination of claims about piracy is consistent with Nadelmann's fifth stage - a public, nation state oriented response toward a social problem, which reduces the incidence of a 'proscribed activity' and results in confining its small-scale continuation to peripheral areas (Nadelmann 1990, p.485). As noted, Nadelmann (1990, p.489) argued that this fifth stage began to emerge in the nineteenth century as core hegemonic powers reached broad agreement and wielded power over wide areas of sea space. Nineteenth century agreements, however, were merely internationalised, somewhat limited in scope and not truly global. Piracy was shown to have decreased during this fifth stage (Steinberg 2001); however IMO data demonstrate that piracy continues in peripheral territorial waters (despite being comparatively low). That this outlawed behaviour has not been entirely eliminated is consistent with Nadelmann's fifth stage of prohibition (Abhyankar 2005; IMO 2000; Mukundan 2004, pp.308-315; Nadelmann 1999, p.489).

It was intended that the IMCO generate a transnational framework to control maritime safety and marine pollution. This has had varying successes. The IMCO became the IMO

in 1982 and expanded membership to 155 full and 2 associate nation state members whose total merchant fleets constituted 98 per cent of global shipping (Stopford 1997, p.443). Since then, the IMO Assembly has met biannually to discuss maritime issues and decision-making processes (IMO 2000).

The IMO has no authority to enforce member states to ratify conventions. It can only recommend that they do so. Despite authoritative tones used in reports, the IMO can only invite governments to eradicate piracy. It does not have the power to prosecute (IMO 2002a; Informant Two 2002). Member states (but not all) have ultimately ratified conventions but flag and coastal states have varying objectives and decide their own extent of participation in maritime regulation development and adherence (Stopford 1997). This highlights the differences between ‘rule creators’ such as the IMO and the IMB, which seek consistent punishment of behaviour they believe to be immoral and damaging, and ‘rule enforcers’ (coastal state authorities) who are more prone to pragmatism and opportunism (Becker 1983).

The IMO Council of 32 member states, elected by Assembly, has overseen committees that carry out legal and technical tasks –

- *The Maritime Safety Committee* (MSC) considers issues relating to marine safety. Its Sub-Committees deal with navigation, communication, equipment, rescue procedures and dangerous goods.
- *The Marine Environment Protection Committee* works on maritime pollution issues.
- *The Technical Cooperation Committee* deals with legislation and provides assistance to governments that implement technical standards.
- *The Legal Committee* deals with legal concerns.
- *The Facilitation Committee* works on issues concerning the international maritime traffic flows and the unification of related administrative procedures of ships (Stopford 1997, p.444).

The MSC and the Legal Committee are the two organisations that predominantly deal with piracy issues.

The IMO bureaucracy has been continually disappointed at the continuation of attacks (BIMCO Bulletin 2000, p.16). Therefore, it promoted the need to systematically collect and disseminate piracy data to interested groups, including member states. The IMO, taking a highly administrative approach to its anti-piracy crusade, has compiled, evaluated and presented piracy data (periodically and annually) since the mid-1980s. Reports include the name and type of pirated ship, its position, time and the circumstances of the attack. The data collected from member states and subsequently consolidated and disseminated in reports, are integral to discussions held at IMO seminars about piracy (IMO 2000; IMO 2002a).

It labelled piracy a 'problem that could no longer be ignored' (IMO 2002a) in an attempt to generate longer-term concern and consensus about this social problem, following increased reports of incidents during the 1970s and 1980s. It then started to release its own piracy incidence reports. In its advisory, moral entrepreneurial role (Becker 1973), it has urged governments to implement measures to strengthen security and eradicate or reduce piracy since 1984 (while simultaneously working on the aforementioned UNCLOS), when the MSC reviewed the situation and evaluated various flag, coastal state and shipping company data (IMO 2002a; Informant Two 2002).

The MSC acting as an agent of social control (Becker 1973) created the ongoing 'Piracy and Armed Robbery Against Ships' working programme (IMO 2002a; Lloyd's List 2000i, p.5), using details of piracy from flag states, P&I Clubs, shipping companies and the IMB. In 1999 the MSC revised two stipulations, the 'Recommendations to Governments for Preventing and Suppressing Piracy and Armed Robbery Against Ships' (Revised MSC/Circ.622) and 'Guidance to Shipowners and Ship Operators, Shipmasters and Crews on Preventing and Suppressing Acts of Piracy and Armed Robbery Against Ships' (Revised MSC/Circ.623). Representatives at seminars urged coastal and flag states to 'intensify efforts to combat piracy and armed robbery' and recommended that the IMO develop 'an international code for the investigation' of such acts (IMO 2000; IMO 2002a; Informant Two 2002).

The MSC drafted a code of procedures for piracy investigations in December 2000. The IMO created a 'draft resolution' recommending that flag states prevent illegal re-registration of phantom ships (see glossary) on national, secondary or open ship registers (IMO 2002a). These actions are consistent with Best's (2001) theory of transnational claims diffusion, which is applied in the next chapter.

At its 74th session in 2001, the MSC approved and presented the 'Code of Practice for the Investigation of the Crime of Piracy and Armed Robbery Against Ships' to the IMO's Assembly, which adopted the code (A.992 (22)) to encourage member states to implement. Again the IMO could only disseminate claims and make recommendations but not enforce any rulings. It stated that:

‘...piracy and armed robbery against ships *reported* [my italics] to the IMO during 2000 was up by more than 50 per cent [from] 1999. The Committee recognised that the maritime community could no longer tolerate this and...repercussions it has on the safety of passengers and crews and...invited all governments (of flag, port and coast states) and the industry to intensify...efforts to eradicate these...acts.’
(IMO 2002a).

This raises several issues. While it highlights a fifty-percent increase in acts of piracy reported to the IMO between 1999 and 2000, it is questionable whether this represents an actual increase in attacks, or results from an increasingly efficient flow of data from shipping companies, flag states and the IMB (Informant One 2002; Informant Two 2002). The reliability of statements can be sometimes undermined by the omission of details concerning the severity of cases. Increases could result from petty theft, rather than major crime. The IMO refers to passenger and crew safety, yet most reported attacks occur on freight ships (IMO 2002a; Informant Two 2002).

The IMO reporting process continues to construct information about piracy using shipping company, P&I Club, flag state and IMB data. The claims-diffusions by this supranational governmental ‘claims-maker’ (Loseke 2003), involve them distributing

data throughout shipping, institutions and the media. Data collection and dissemination, however, help the IMO politicise, consolidate and validate dominant intergovernmental judgements about piracy despite the occasional attention to possible inaccuracy of figures. For example, the Indonesian government has questioned the accuracy of IMO figures showing rates of piracy in the Indonesia archipelago (Lloyd's List 2003d, p.16). In addition, Admiral Sondakh of the Indonesian Navy (TNI AU) reportedly asserted that the stipulated piracy and terror threat was a deliberate exaggeration by Western interests (Fairplay 2004, p.4; Lloyd's List 2004d, p.1).

Its anti-piracy campaign and compiled data influence reactions against pirates by flag and member states. It appears that in principle, Asian governments have supported IMO anti-piracy initiatives (Lloyd's List 2004a, p.3). This support has been demonstrated in various anti-piracy forums and missions that IMO officials have conducted in Europe and in Asia (Fairplay 2001c, p.18; Lloyds' List 2001a, p.6; Lloyd's List 2001b, p.3; Lloyd's List 2004f, p.3; Parliamentary Maritime Review 2001, p.12). The IMO has also successfully sought UN Security Council involvement in the reaction against piracy (with the support of the BIMCO), particularly the piracy off Somalia. As a result of UN Security Council action, the US is now involved in anti-piracy patrols off the Horn of Africa (Fairplay 2005b, p.6; Lloyd's List 2001g, p.3; Lloyd's List 2005h, p.1; Lloyd's List 2005i, p.1; Lloyd's List 2006b, p.7; Tradewinds 2005, p.43).

It also appears that the shipping industry remains supportive of its reporting process and its role in the continuation of anti-piracy dialogue. It is supportive of other initiatives such as the plan to develop an electronic bill of lading system to prevent pirates from reselling cargo (Fairplay 2001a, p.18; Lloyd's List 2000h, p.22). This seems to have the support of the marine insurance industry (Commercial Crime International 2001b, p.1). Also, maritime scholars' general acceptance of IMO reports, such as in Abhyankar (2005), reinforces the consensus that its reports have helped generate about piracy. Resultant articles often draw on IMO data showing incidences of piracy, to assert various arguments such about the correlation between the frequency of reported attacks and

ambient economic conditions of coastal states and that merchant ships are largely unguarded (particularly in SLOCs), which leaves transient shipping vulnerable.

The International Maritime Bureau:

‘Before the IMB was set up, I don’t think that there was any data on piracy that was as complete as what the IMB have. I know that the IMO had their own data....So without the PRC [Piracy Reporting Centre], I think it is fair to say the number of reports may well be lower. Also, the IMO may have an even more incomplete picture of the situation than they have now, because ships wouldn’t have anyone to report to if they are attacked in international waters.’
(Informant One 2002).

The ICC created the IMB in 1981 (Ronit & Schneider 1999, 255-259) well into the postmodern era, to ‘contain and prevent fraud and malpractice, particularly in the commercial sector’ at a time when the IMO was reporting increasing piracy incidents. It was discovered that a ship would often report piracy to its ship management company and not local policing agents who in turn, may or may not have reported it further (Kvashny 2003, p.58). The IMB established its Kuala Lumpur Far East Regional Office and its Piracy Reporting Centre (PRC) in 1991. Since then, the Piracy Reporting Centre has been open 24 hours per day (Kvashny 2003, p.5) and IMB personnel have collected primary data and written reports concerning piracy attacks:

‘The IMB has set itself the task with both collecting and presenting. Situation reports SITREP are issued by the IMB at 0000 GMT to all ships in the world except Europe and North America – as there are so few or no situations of piracy in those regions the IMB do not deem it necessary [to transmit there].’
(Informant One 2002).

The IMB aimed to collect details of all piracy around the world. It disseminates coverage containing warnings about piracy, organised maritime crime and preventative recommendations as widely as possible (Commercial Crime International 2000, p.12; Commercial Crime International 2001d, p.1; Lloyd’s List 2000n, p.5):

‘...no matter how small, even if they boarded and stole ten US dollars, the IMB wants it recorded. They are trying to emphasize to all shipping operators and marine agencies, during regional conferences that it is important to report all incidences of maritime crime to the IMB. The more data received the more ammunition to pressure states to do more in the region. If 100 attacks occur and the IMB receives just one report and the nation state agencies just sit on the details of the other 99 attacks they are in less of a position to pressure those states. If there were 100 attacks, international shipping wants reports of 100 attacks. The shipping companies should report to the IMB, as this will help them in return. The IMB can then pressure governments to take action. They are trying to make it clear to shipping companies that they have to help them.’ (Informant Two 2002).

Distance is no longer the issue that it was in previous years. Due to political economic time-space compression from improved telecommunications (Harvey 1989) and increases in shipping volumes through the world’s eight major SLOCs (Steinberg 2001), many maritime areas are no longer remote. Real-time communication systems, such as the Global Maritime Distress Safety System (GMDSS), have helped eliminate remoteness:

‘Sometimes they get details of attacks in real time. Nowadays ships call by GMDSS. The ships’ officers can dial the IMB hotline number and then ask the duty officer help in real time. A few years ago the ships had [specialist] radio officers who communicated ashore and with other vessels by radio. Now, partly because of the GMDSS system, just a navigational officer can contact through a telephone system.’ (Informant One 2002).

The IMB issues warnings to shipping electronically as part of its claims disseminations.

‘The SITREP is transmitted on IOR satellite which has a footprint of East Africa to Japan and EOR satellite covering Central America...All ships equipped with INMARSAT system can receive the SITREP and subsequently plot their courses accordingly. INMARSAT allow the IMB to transmit the SITREP free of charge. If a ship receives a SITREP and is notified that some attacks have occurred in [its] area, the master can initiate an anti-piracy watch and rehearse procedures the crew would take in the event of an attempted attack. The navigational officer can plot a course away from the area...Time is money on a charter and therefore, [the crew] will be spending fuel and time sailing around an area. Ships

carry incredibly valuable cargo so these reports give them guidance. The INMARSAT receiver has become standard communication equipment on merchant vessels under IMO agreement.’
(Informant One 2002).

Since 2002, it has extended its daily warning dissemination to shipping in the South Atlantic and the West Coast of South America (Commercial Crime International 2002a, p.4).

The IMB has developed an online piracy map, which provides crews with a visual indication of the position of attacks to help them understand and trace incidents. The map can be accessed via the IMB’s website. The map is available as either a satellite view or a view indicating political boundaries. It shows the relief of coastlines and highlights bays from which pirates may initiate attacks. Instead of using statistical data to establish a picture of the piracy risk in a certain area, the live, electronic map will help seafarers spot warning signs and perhaps anticipate possible trouble. According to the IMB, law enforcement agencies will find it useful in deciding where best to concentrate searches for pirates, and researchers may benefit from seeing spatial distributions of attacks to predict trends (IMB 2006).

On the map, red locators mark actual attacks while yellow ones show attempted attacks. Clicking on any of these initiates a window, which provides a summary of the attack including the date, time, vessel type, type of attack and crew numbers affected. As with IMB’s quarterly and annual reports, the information comes directly from captains and shipowners. Indications of new or attempted attacks will be added to the map within 24 hours once incident details have been verified by the IMB’s Piracy Reporting Centre (IMB 2006).

The formation of their reports forms part of an expanding anti-social problems agenda in what I identify as an additional stage (stage six) to Nadelmann’s global prohibition regime, a stage of postmodern, and more privatised crime-fighting expansion. The IMB was established

‘...in response from elements within shipping who drew attention to the then increasing number of attacks (especially in the Malacca Straits) who argued the situation needed to be monitored. [This area was] notorious for this activity...[Several] historical sources...can be referred to. They started to collect data from then on at the piracy reporting centre.’
(Informant One 2002).

Companies whose ships had been attacked and which had initially approached the IMO and INMARSAT (created by the IMO in 1979 as an intergovernmental organisation, privatised in 1999 and listed on the London Stock Exchange in 2005) also approached the International Chamber of Commerce (ICC). The notion of the ICC’s involvement was supported in principle by INMARSAT. The UN Security Council passed a resolution giving permission for the IMB and authorised other UN agencies to cooperate with it (Informant Two 2002). The newly formed IMB drew on this authorisation to establish political and institutionalised legitimacy in this postmodern period.

‘Based upon this resolution the IMB has some degree of authority to liaise with national and international legal and law-enforcement authorities. They [the IMB] have observer status in INTERPOL. I know that they are authorized to liaise with some military authorities when necessary.’
(Informant One 2002).

The IMO, INMARSAT and the UN Security Council have continued to support cooperation with the privately funded IMB in principle (Informant One 2002). Subsequently, the IMB has promoted itself as being a premier 'anti-piracy' agency, a primary claims-maker and has emphasised the importance of collecting and disseminating data and actively undertaking investigations from their centre in Kuala Lumpur.

‘Piracy unchecked would become a major problem, remains a major problem and shipowners and ship management companies react to piracy by not wanting to trade in areas where pirates are operating.’
(Informant One 2002).

UN approval gave the IMB a source of credibility. Resultantly, there is a tendency for IMB reports to be taken seriously by agencies of social control and the media. This is

demonstrated in part by the number of times the IMB gets mentioned in media articles. The IMB has media exposure and it is pleased with this. It recognises that positive coverage would be advantageous, as it enables it to become more recognised. Although the IMB enjoys the legitimisation condoned by states and international organisations, it is, in fact, created and financed by the private sector (Informant Two 2002).

‘What is important to know is that the IMB is a non-profit organisation, with a mandate from the UN. They [the IMB] operate from finance provided by sources within international shipping. All services to the ship are provided free. So in that respect they are regarded as a semi-government body. Because of the mandate from the UN, they are sometimes treated like a government body and contact governments through channels via law enforcement agencies or through standard diplomatic channels. The IMB has to request the reaction of a coastal state. But they cannot go demanding action. The IMB has a seat at the IMO, the UN and makes this known and makes use of these opportunities to highlight concern. The general experience is that requests for action are often sufficient for a national coastal state to take action.... Our experience is that the IMB can pressure countries, armed with this data and they need international pressure. They can employ the pressure of other international maritime agencies, IMO, BIMCO, classification societies, P&I Clubs and other marine insurers through the presence of regional forums and occasional international conferences.’
(Informant One 2002).

The IMB also remains aware of the role the international media play in disseminating claims and generating collective concern and consensus about institutional reaction.

‘Getting press involved also helps as it draws attention to a particular government. It helps persuade regional authorities to maintain a maritime presence. The style and tone of IMB pressure upon governments was guarded though. The IMB communicates in a diplomatic style.’
(Informant One 2002).

The IMB has created its own positivist piracy definition, which it considered unambiguous. It is broader than the UNCLOS definition, and it represents an expansion of the definition of piracy:

‘Piracy is an act of boarding any vessel with the intent to commit theft or any other crime and with the intent or capability to use force in the furtherance of that act.’
(Ellen 1989, p.2).

Ellen (1989) argued that the IMB’s definition was created for the purpose of compiling statistical data, which allowed analysis of the crime. Informant One said

‘...before the IMB definition was established there was a lot of confusion about this. There is the UNCLOS convention, which has another definition...now the IMB definition is gaining more credence, the IMB definition is the one being widely used. The IMO reports also use a definition, which is now more similar to the IMB definition. The IMB is confident that if the IMB reports 400 attacks to the IMO, the IMO would not change their statistical category to any significant extent so that the IMO would also record 400 attacks...By this definition established, the IMB can pressure governments and the shipping industry which is what everybody wants.’
(Informant One 2002).

The IMB, nevertheless, agreed with the general consensus within shipping and marine insurance companies, that piracy, particularly in the Malacca Straits (Baker 2005; Rhidian 2004, p.355) needed long-term monitoring. It introduced the first privately funded long-term, systematic collection of piracy data and has disseminated statistical reports to international law enforcement agencies and shipping companies since 1991. It has since tried to gain better access to subsequent public court records, to improve their statistical accuracy (IMB 2000, p.22). It hoped that emphasising severity would motivate relevant authorities to initiate preventative measures (Informant One 2002; ICC Commercial Crime Services 2004).

The dissemination of information about any piracy attack follows a pattern. The ideal progression of data begins with the ship reporting initial details of an attack to the IMB, coastal police or maritime rescue co-ordination authorities and continues until it the incident is reported to the public. There are problems at each step, however. One or more steps may be omitted. Thus, data may not reach the IMB, IMO, law enforcement agencies or to public audiences. However, the reported frequency of piracy attacks has been used

as part of a threat analysis, to help assert that piracy remains an ever-present danger, and that ships should remain ready to counter pirates in piracy-prone regions by following reporting procedures:

- *The ship reports initial details of an attack to the IMB, coastal police or maritime rescue co-ordination authorities.*

‘They should then provide their position in latitude and longitude, the name of the ship and IMO call sign. The IMB then gets in contact with the local relevant authorities there to hail them about the problem and try to muster help....They recall the ship, try to restore some calm by telling them help is on its way. They get more details from the ship and provide them with some more advice...about what to do about repelling pirates with fire hoses, as long as they think it would be safe enough to do so, increase speed, changing course.’
(Informant One 2002).

As stated, direct reporting is possible using pre-programmed GMDSS, which can automatically send a message to the Piracy Reporting Centre in Kuala Lumpur (Informant One 2002). The IMB also promotes the idea of reporting attacks as soon as possible (Fairplay 2003b, p.10).

When attacks are reported directly to the IMB, there are usually no problems as by reporting to the IMB, the reporting process becomes more efficient.
(Informant One 2002).

But ships, once attacked do not always contact the IMB initially.

‘When the ship is attacked the ship will either call the local law enforcement agency or the IMB (depending upon who it is being attacked, and also when and where)...If it occurs in port, the ship contacts the local port authority. Many times they get just no response.’
(Informant One 2002).

However, problems for the IMB arise when information about attacks is not reported to them. Informant Two (2002) noted that one particular Southeast Asian nation state

(unquotable) had not passed data to the IMB and was keen for reports of piracy occurring in its waters to remain classified and another official said

‘The small ships in the Philippine archipelago had clearly just reported to the coast guard or the police, which had not been passed to the IMB. There are several countries that seem more reluctant to pass on data. I. E. the Philippines coast guard may have 200 attacks but the IMB get the details of only one attack. Therefore, the IMB only can provide general SITREREPS that are enough to warn vessels that they are in piracy-prone areas. Local law enforcement seems to have data on coastal ship attacks. Philippines – a big disparity. China – though the situation may get better now that China has become a member of the WTO. Vietnam and Thailand also are suspected of withholding data from the IMB and the IMO. All the countries are like this really.’
(Informant One 2002).

In addition, Informant Three (2002) asserted that certain shipping companies would pass data on to their nation state police forces but not necessarily to the IMB, as they did not see any point. He noted that each time his company had learned of pirate attacks aboard one of their vessels they had contacted the Malaysian police force and left it for them to decide the next course of action.

Informants Four and Five noted that some companies were reluctant to report at all as this could result in ships being delayed as investigations take place.

‘It has been reported, that in Brazil for example, once a Captain has reported an attack, the authorities will force a Captain to sign a document before the Brazilian authorities to say nothing happened before they give the ship permission to continue trading...’
(Informant One 2002).

The IMB is concerned that even many ships attacked in areas close to its Kuala Lumpur reporting centre do not report to it.

‘Ships have a tendency once they have reported the incident to one agency, they do not report again. The VTS in the Malacca Straits does not pass that information on to the IMB unless the ship is a large merchant vessel continuing on a voyage, which continues past the Malacca Straits...’

countries are reluctant to tell the IMB about the attacks as international pressure can be applied, which they think is worse. The IMB often comes across a big disparity. I. E. during a conference is often when they get to learn of it - once during a presentation they learned of a statistical disparity between the data on attacks in the Philippines and data the Philippines authorities had on the number of attacks....’
(Informant One 2002).

- *The security forces are alerted. The crew or the IMB notify the relevant shipping company.*

‘When the IMB receives details of an attack, they tell relevant police agencies and the IMO. So, Attack – Inform IMO, who tells local police, owner, insurer, cargo owner, manning agent, flag state...Many ships traversing these waters in this region wouldn’t know what particular law enforcement agency to contact in an emergency...So by contacting the IMB they can get provided with immediate assistance, then the IMB will contact the relevant law enforcement authority...’
(Informant One 2002).

The co-operation of coastal states is important at this point. The levels of cooperation the IMB receives from coastal states vary. Some may respond and help the ship straight away. Others may do this but then keep the IMB’s role to a minimum. Some may ignore the IMB entirely. So authorities may not always act and when they do, may act in different ways. There may be localised conflicts over which state authority is responsible to react. Coastal states are often unwilling to allow details about incidents or piracy reports to leave the state (Fairplay 2000, p.4; 2000b, p.13).

‘Nation states didn’t really want acts of piracy, armed robbery at sea or whatever you want to call it to be shown. Most acts of piracy occur in the territorial sea of nation states or in their ports, which according to UNCLOS is not an act of piracy. Piracy officially occurs only on the high seas. Therefore, this UNCLOS definition suited many of the nation states...’
(Informant One 2002).

The fact that under this definition piracy only occurs on the high seas and not in territorial waters directly affects the assessment of Nadelmann’s (1990) stage five of prohibition

because it raises the question about what behaviour can be reported and counted as piracy.

‘Law enforcement may take action but not pass on information about the action to the IMB. This mostly is about attacks within coastal state waters on mostly smaller ships. All seem reluctant to pass data on and increase statistical number of their country. So, the IMB tries to bypass this problem and ask the merchant ships to get their ships to respond straight to them.’
(Informant One 2002).

The reluctance of coastal states to issue reports also appears demonstrated by flag states. Most flag state reports are issued by core state flag administrations. FOC administrations, however, rarely issue reports. This appears to be because of their minimal motivation to get involved in anything beyond offering ships a flag and companies tax-exempt status (Informant One). This will be explored in Chapter Six.

The IMB is aware that some initial reports may be false alarms or result from crew overreaction.

‘I know the IMB does get false alarms. And they cannot, on the basis of having received a message just go charging off contacting, the local SAR [search and rescue], law enforcement people, shipowners, insurers etc. and then find later it was a false alarm. The agency would be subject to litigation.’
(Informant One 2002).

- *Data are eventually passed to the IMO from either the IMB or the shipping company.*

The IMB asserts that it is the only agency that systematically collects data.

‘Essentially, the IMB is the only one.... The bulk of the data included in IMO reports comes from the IMB.’
(Informant One 2002).

Informants Two and Three confirmed Informant One’s answer. Furthermore, about 25% of data reaching the IMO comes from shipping companies directly (Informant Three

2002). The issue of underreporting again influences the accuracy of data transferred by the IMB to other sources.

‘Some shipping company or flag state reports however, may bypass the IMB entirely and go straight to the IMO for collation. Flag states and coastal states also keep data...The IMB feels that at least 50% are not reporting to the IMB as they are reluctant to report...they could be reluctant to report to the IMB as they have found another source...or they are reluctant to report the incident. Masters want clear records, want to be seen competent, not to delay trading or give the company a bad name.’
(Informant One 2002).

Noteworthy is the IMB’s claims that the reports are underreported by 50%, which was raised by Informant One and also asserted by Kvashny (2003, p.6). However, to determine that underreporting by 50% one would have to have had an idea of the total number of all types of attacks. This the IMB or IMO cannot calculate. Informants Two and Three both stated that underreporting is prevalent because ship operators may not pass on data. However, neither presented evidence indicating a total number. In addition, Kvashny (2003, p.15) asserted that some states could be reluctant to pay for expensive enquiries. This was consistent with what was stated by Informant One:

‘Many coastal states have shown a reluctance to pass piracy data to international bodies as this could result in those states coming under international pressure to deploy scarce and expensive resources to patrol areas.’
(Informant One 2002).

It can be argued that the IMB forms an example of a non-government organisation using statistical data to assert a particular political agenda while they position themselves as a moral entrepreneur.

‘It is important to get all the numbers then there'll be a clear picture about what is happening. Then the IMB or whoever can pressure states to set up patrols and greatly reduce the number of attacks....’
(Informant One 2002).

- *The IMO and the IMB release press statements.*

Data are then transferred to the media for widespread dissemination. Although Kvashny (2003, p.8) asserted that no one knew from IMB reports how much maritime armed robbery there was compared to piracy, in later IMB reports, each attacked ship's position in longitude and latitude are provided, which gives a clear idea of whether the ship was in territorial or international waters. The media receive details of attacks from ships' crews (when interviewed), the ship management company, the shipowner, the relevant coastal state authorities or maritime security forces. However, it is usually IMO or IMB consolidated reports that they use.

Both organisations have used periodic and annual reports to emphasise the seriousness of piracy and hopefully to generate concern in the relevant maritime states. This emphasis of course, also consolidates the IMB's position as a moral crusader. The IMB's Annual Report includes annual totals of actual and attempted attacks both in territorial waters and on the high seas, in all maritime regions (See Table 3.1). Kvashny (2003, p.vii) noted that piracy had increased in the 1990s, that pirates were 'a major problem on an international scale' who were becoming 'more sophisticated and ruthless' (2003, p.19). The social construction of the urgency about piracy, however, is questionable. The following IMB and IMO data indicate a relative degree of numerical stability in their reports. In addition, Ho (2006, p.564) argued that piracy against the total number of ships that traverse in the Malacca Straits annually ranges between 0.04% - 0.11% per annum.

Table 3.1 IMB Annual Piracy Figures.

Year	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
Total	90	188	228	288	202	200	469	335	370	445	329	276

(Source: IMB Annual Piracy Report 2005).

The IMO also established totals for the 1995 – 2004 period (see Table 3.2). The IMO's annual reports differ from the IMB's, despite the contention that

‘...the annual IMO reports consist of data given to the IMO by the IMB and coastal states whose marine police have recorded incidents...Although approximately 75% of the data on piracy in possession of the IMO comes via the IMB...’
(Informant One 2002).

Table 3.2. IMO Annual Piracy Figures.

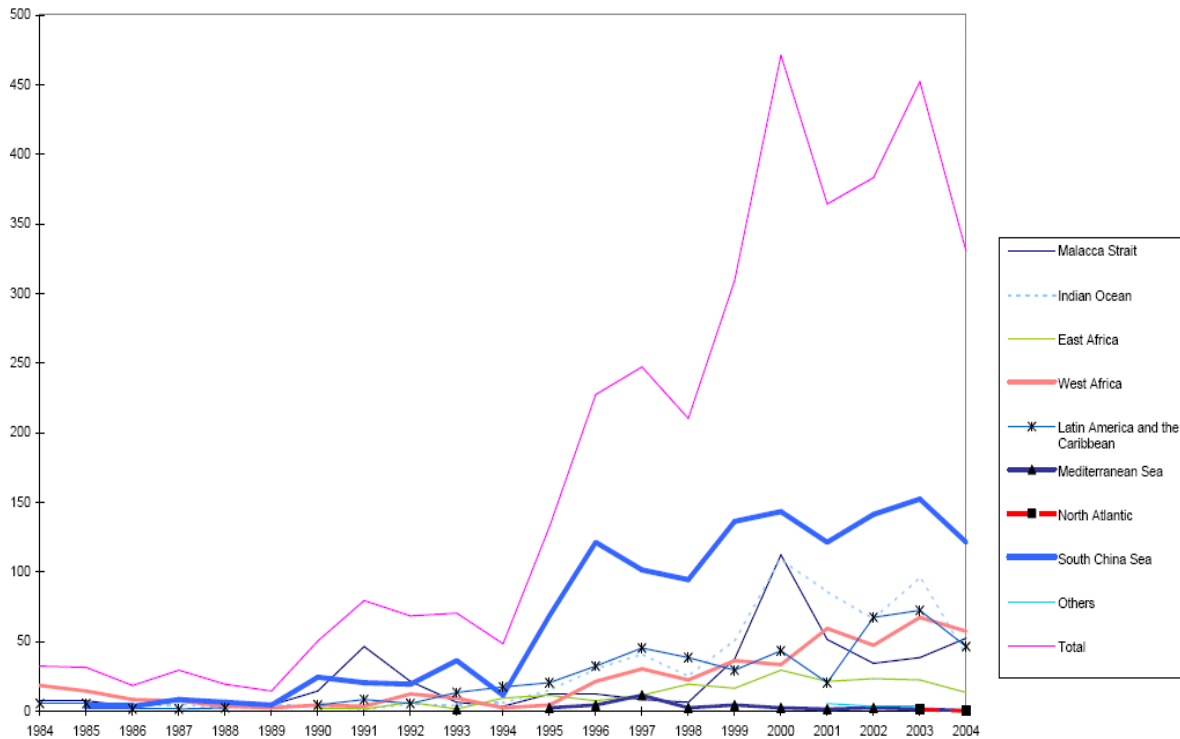
Year	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
Total	138	232	257	210	235	471	370	383	452	330	266

(Source: IMO Periodic Reports 1995 – 2005).

Despite the broader IMB definition of piracy, the IMO generally reports more incidents of piracy. As already mentioned, some ships, companies and flag states have reported directly to the IMO and not to the IMB. These numerical differences in totals have occurred every year between 1995 and 2005. The disparities between years vary. It could reflect the fact that the IMO is receiving more figures from more sources than the IMB. This confirms arguments of Bruyneel (2003) whose systematic statistical comparative analysis of IMO and IMB data showed numerical disparities between the two accumulated data sets in a five year sample size (1998 and 2002). Figures are in a state of flux as they are being continually updated as details of attacks emerge. The intermittent movement of data between companies and organisations and between the IMB and the IMO creates variations between totals. There is often a lag time between an incident and when it gets reported to either organisation. Both organisations constantly amend figures due to the lag time between incidents and the production of reports and from the need to update previous totals after having learned of past attacks. See Figure 3.2.

Figure 3.2

Yearly Statistics of Incidents Reported by the IMO (which have occurred since 1984) -



(Source: International Maritime Organization Annual Report 2005).

Nation state governments should be aware of the disparity between the number of actual and reported attacks and the disparity between the two organisation's data. For example, the United States Department of Transportation's Bureau of Transportation Statistics (USBTS) details on international piracy from 1995 – 2001 in 2002 used the IMO figures known during that year (see Table 3.3.). However, the figures differ from the updated IMO figures. The IMO figures shown previously differ from those, below as they were updated in 2006. This again indicates the state of flux of statistical figures. The British Government's House of Commons Transport Committee (2006) inquiry into piracy used the IMO (2005) Annual Report to assess its impact on British shipping interests.

Table 3.3 U.S Bureau of Transportation Statistics' Piracy Figures.

Year	1995	1996	1997	1998	1999	2000	2001
Total	138	232	248	209	310	492	325

(Source: US. Bureau of Transportation Statistics 2002).

Reported piracy data indicate that most attacks occur in coastal waters of peripheral states and are legally regarded as armed robbery by littoral signatories of UNCLOS. The IMO and IMB reporting process contribute to the social construction of statistics, as the accumulation of data is selective. Both claim the underreporting of pirate attacks taints their data. Concomitantly, they encompass minor infringements such as dockside pilfering and sea robbery in territorial waters as piracy. In addition, recent reports give totals that distinguish between 'actual' and 'attempted' attacks. The 'attempted' attack category is a problem as it may include actions that have been interpreted as only actions that might lead to an attack. Since 2002, the IMB statistically separated 'attempted' attacks from 'actual' attacks. Informant Two accepted this as an improvement in statistical presentation and is analytically adequate.

'I think...why the IMB adopted the statistical category of 'attempted' and 'actual' was because during a lot of meetings the shipping representatives didn't know whether the attacks were successful or unsuccessful. During the anti-piracy watch, pirate attacks nearly always fail. The moment the ships know the pirates are coming they can report to authorities and to the IMB. A pirate attack needs 15 minutes at least. They have to board the vessel, go to the crew accommodation and bridge to find valuables... The reason for introducing the attempted and actual attacks was to gauge the effectiveness of anti-piracy watches that shipping companies had been encouraged to adopt when ships unavoidably sail in areas from where piracy gets reported with some regularity.'
(Informant Two 2002).

The IMB is aware of its past problems with presentations and Informant Two provided details about how they were rectified. To gauge the confidence merchant shipping has of IMB data, Informant Two was asked about the statistical reliability of reports. He was asked whether there was an acceptance that the reporting process evolved, which resulted

in greater statistical reliability: Informant Two provided details of problems and how they were rectified:

‘Since 1991, the IMB has been doing these presentations. They have improved the statistical presentation by including more categories of ‘attempted’ and ‘actual’. They have also included more graphs of piracy attacks by region, type of ships, flag etc. But the main concern is the basic sum of the number of reports of attacks that they have received.’
(Informant Two 2002).

Informant One was asked about ways IMB piracy reporting was improved:

‘I think the IMB improved reports by including tables, adding graphs and data. In the last report, the IMB added a new table into the report after receiving feedback from shipping and law-enforcement agencies.’
(Informant One 2002).

IMB data raise other fundamental points. The recording of the number of incidences of piracy per year expresses a piracy *rate*, which shows prevalence. The statistical incidence counts crimes that reportedly occur and fails to indicate numerically the extent to which reported piracy is focused on the same ships or the same social groupings. The usefulness of the rate of incidents per unit-time is limited to indicating the concentration of reported attacks per region (Pease 1999, p. xv).

Nevertheless, the IMO and IMB accessed statistical reports detailing the frequency, characteristics and locations of attacks help establish concern, hostility toward pirates and consensus about the piracy problem. As part of this attempt at diagnosing the problem, the IMB labelled some maritime regions, such as off Nigeria (Tradewinds 2003, p.39) as contemporary piracy ‘hot-spots’. In this way, they are attempting to define a particular maritime area a certain way. In social constructionist terms, this could be defined as an attempt to create moral panic.

‘Through time-series analysis of the reports... the IMB has identified several piracy hotspots... The Straits of Malacca, in the South China Sea – Hainan, Hong Kong, Luzon Triangle. There have been incidents off the

coast of Burma, Bangladesh, and in some ports in India and Sri Lanka. The East coast of Africa (the Horn), off the Somalian coast. West Africa (off the port of Lagos, Nigeria). Ports of Brazil, Venezuela and Colombia.’ (Informant One 2002).

Both the IMB’s and IMO’s reports also highlight regional variations in the frequency of attacks. Some ‘hot spots’, such as Venezuela, report relatively fewer incidents compared to the Straits of Malacca, through which 30% of world shipping passes annually (Jinks 2001c, p.1). Nigeria, however, is becoming a ‘hot spot’.

Despite regional disparities, the IMB emphasises a correlation between ambient economic conditions and the frequency of piracy in territorial waters:

‘Refer to these piracy ‘hotspots’ and you’ll see that they are mostly in the coastal waters of poorer states.... Some areas have a long history of piracy. The main reason why piracy occurs really results from economic problems in the coastal states. Economic problems are the main problems causing contemporary piracy. The Asian economic problems of 1997 have exacerbated the problems. Take Indonesia as an example. Many people living in both rural and urban communities were out of a job or undertaking insecure employment. One of the ways to survive would be to rob a bank, burgle a house. Nevertheless, these behaviours carry risk.’ (Informant One 2002).

The correlation that the IMO and the IMB draw between ambient economic conditions and piracy tends to be interpreted from three perspectives – which are also present in the academic literature - state failure, economic failure or income inequality. One argument is that state failure to control national levels of crime, encourages criminal groups to violate laws (state failure). Another argument suggests that that poor ambient economic conditions resulting from unemployment, low per capita GDP, dependence on informal economies, dysfunctional tax systems, and large public sector deficits, collectively trigger criminality (economic failure). The third argument, relating more directly to class relations, is that the peripheral states’ poor are motivated toward crime because they are governed by an extremely wealthy, third world comprador minority, which tolerates a resultantly wide socioeconomic polarity, demonstrated by their high Gini coefficient

(income inequality hypothesis). These points relate to Kвашny's (2003, p.46) argument that 'piracy', by its own nature is a product of modern states (Chalk 1998a, 1998b; Hung-En Sung 2004, pp.111-129).

I argue, however, that the correlation between economic conditions and piracy frequency needs to be considered with caution. While people in the IMO and IMB may generally accept and propagate these hypotheses in their reports, their reports do not show any systematic empirical study of this correlation. It could be argued therefore, that it is part of the 'folk wisdom' of these organisations.

Accounts from informants may highlight more 'culturally-embedded' interpretations, as informants may provide answers that are persuasive yet unsatisfactory (Orbuch 1997, p.460). The IMB remains convinced of a correlation between 'poverty' and the frequency of piracy, but their data stop short of reporting arrests or following any accused of piracy through various legal systems (Kempf 1990, p.43). As mentioned, few pirates have been caught, and in relation to piracy motivation, no systematic social scientific interviews of captured pirates have been released. Therefore, motivations remain supposition despite the apparent plausibility that pirates are poor.

Both organisations' reports emphasise that they consider piracy a threat to the international strategic *status quo*, vis-à-vis the strategically and ecologically vulnerable SLOCs (Lloyd's List 2003f, p.6).

'The Malacca Straits is a strategically sensitive SLOC and it is important to review the situation there as merchant ships sailing under many flags sail the straits every day. Japan, for example, is very sensitive to it, as there have been some Japanese tankers attacked.'
(Informant One 2002).

They have noted that some pirate raids have resulted in ships' crews being held captive, leaving deep-draft vessels making way under no control for long periods (The Telegraph 1998, p.9).³ This has reportedly occurred in the Malacca Straits, which possess navigation

hazards and vulnerability to environmental damage. For example, the fully laden tanker *Valiant Carrier* was attacked four hours from Singapore. The ship's engine power was cut and it was left drifting (Redmond 1995, p. 293).¹ The VLCC mv *Chaumont*, 269,713 dwt, was also attacked in the Phillip Channel off Singapore on 16th January 1999. This attack could have had catastrophic ecological consequences had this vessel ran aground (Hughes, 1999). According to Kvashny (2003, p.4) more oil is spilled ashore than at sea, media audiences often appear far more sensitive to maritime oil spills. Shipping is always present in the Malacca Straits- up to 100,000 vessels enter it annually, including 1,100 laden tankers (approximately 58% of Asian interregional cargo that passed through in 1993 was crude oil). The region's littoral states reportedly possess limited capability to respond to incidents, which compounds the threat of oil spill.⁴ This is presented as potentially devastating for the area's fishing and tourist industries that provide major sources of revenue for Indonesian, Malaysian and Singaporean communities (Wilson 1998, pp. 3-7).

The IMB notes that reports have worldwide implications for shipping and Protection and Indemnity (P&I) Clubs (Agbakoba 1998, p.1; North of England P&I Association, 1988). IMB employees stress that shipping interests use reports to assess risk in regions they label 'piracy prone'. Despite Kvashny's (2003, p.2) assertion that Lloyd's of London and Tokio Marine and Fire Insurance Company (which merged with Nichido Fire and Marine Insurance Company in 2004) had denied that piracy existed, Lloyd's List has reported on piracy extensively. In addition, the Lloyd's and London insurance Joint War Committee declared the Malacca Straits a war-risk, showing some consistency with the IMB's reports (Lloyd's List 2005b, p.3) to the dismay of the Malaysian government and the Hong Kong Shipowners' Association (Lloyd's List 2005c, p.1; Lloyd's List 2005d, p.1):⁵

'Piracy attacks have an impact upon marine insurance, which would manifest itself into high freight rates and therefore higher import costs leading to higher inflation. Governments in the region are fully aware of this so therefore really need to suppress pirates. Insurance companies remain vigilant as to the number of pirate attacks in whatever areas. They would be prepared to increase premiums if ships were exposed to a dangerous area. This happened in the Gulf War and is happening now to

ships in the Gulf region while the US led war on terrorism is continuing in Afghanistan and there remains tension between India and Pakistan.’ (Informant One 2002).

As agencies of social control, embarked on a crusade, the IMO’s and IMB’s identification of the crimes characteristics and their emphases on the seriousness of the crime remain part of their impetus and justification to continue. They have even offered financial rewards for information leading to arrests (*Tradewinds* 2000c, p.24). Informant One noted:

‘Banks and houses become even more guarded in areas of low socio-economic people or where the residents perceive a high level of crime. Robbing a merchant ship in transit is a dangerous act – there are thousands of tonnes moving through the water at maybe a service speed of 20kts and pirates have to move from one moving platform on to the vessel. But the act [of piracy] is a fairly good bet that you won’t get caught. Not many pirates have been caught and prosecuted under Malay or Indonesian law.’ (Informant One 2002).

In its role as a moral entrepreneur the IMB positions itself between victim ships and rule-enforcing coastal states. It is often clear to the IMB which coastal and flag state authorities they need to report to. When the IMB knows that a ship has been attacked in international waters, it is assumed that the IMB would contact the shipping company and flag state. Recent incidents off Somalia reportedly saw the IMB contact the French navy, which happened to be on exercise off the Horn of Africa. In the Malacca Straits, there has been effort to establish tri-national cooperation between Malaysia, Singapore and Indonesia (see Chapter Five), in which the IMB may still try to play a central role of report dissemination.

The emphasis on the severity of piracy in their crusade positions both organisations as transnational moral entrepreneurs (see glossary). Becker’s definition states that

‘Moral entrepreneurs are crusaders who believe that some members of the society are wilfully engaged in immoral and therefore damaging behaviour

and are not being sufficiently punished for it. Something must be done, they believe, to discourage or eliminate such behaviour.’
(Becker 1964, pp.147-163).

Becker (1964) identifies ‘Rule creators’ who establish and apply rules and ‘Rule enforcers’ who try to change existing rules, while creating a demonology (Goode and Ben-Yehuda 1994, p.19). The UN, IMO, IMB and flag state governments as rule creators, see it as necessary to cooperate with ‘rule enforcers’ (primarily flag state maritime police), who, as rules are changed, often react against once acceptable behaviour. The enforcer is often not interested in the context of rules but remains aware that the rule provides them with a ‘raison d’être’ (Goode & Ben-Yehuda 1994, p.20).

The IMO and IMB, acting as transnational moral entrepreneurs and primary claims-makers, created anti-piracy rules and campaigned for flag states’ adherence to anti-piracy agreements. The IMB for example, often makes specific requests to coastal states to undertake action (*Lloyd’s List* 2001h, p.5). They are not, therefore rule enforcers despite one being a supranational governmental agency and the other a key interest group.

Informant One commented on some of the inadequacies of ‘rule enforcers’:

‘In the receipt of an increased number of reports of attacks from merchant ships, the IMB subsequently notify the law enforcement authority in the nation state through standard diplomatic channels. Most of the time coastal states respond, like Thailand, Philippines and Indonesia.... Though the Indo bases are in Aceh and in Timor and there is a lot of sea space in between. They need to increase patrols in the area. The IMB actually tries to persuade coastal states to increase patrols often during the periodic regional conferences on piracy. They could see a marked decline in the frequency of the attacks after the relevant coastal states have increased presence... Maybe the Indonesian authorities do not have the situation under control.’
(Informant One 2002).

The IMB has been supportive of several anti-piracy technical inventions, such as the Ship Loc system. The SOLAS Regulation XI-2/6, adopted by the IMO in 2002, requires all ships of more than 500 GT to have a Ship Security Alert System (SSAS). This system

can send a discreet immediate emergency message from ships to shore bases in the event of piracy. ShipLoc, operated by CLS, a French government subsidiary, provides constant long distance tracking of registered ships' positions, speeds and headings. In addition, it is supportive of the Secure-Ship system, a collapsible electrified fence, which once installed around the gunwale of a ship, can prevent unauthorised boarding (Commercial Crime International 2002b, pp.1-2; Digital Ship 2002, pp.10-12).

Conclusion.

The IMB and the IMO remain dependent on seafarers who have been attacked to disseminate raw piracy data. State cooperation is necessary to conduct investigations and accumulate secondary data to place in reports. The ways in which piracy data are collected, categorised and presented to audiences are consistent with the IMB agenda, its need to promote its own position, make extensive use of press facilities to stress seriousness, and its anti-piracy role. Although some have recognised that the IMB is aware of problems with data, few of these considerations are in reports. The IMO and the IMB have distributed data to mainstream and shipping media, which is discussed in the next chapter.

There are, however, problems with the piracy reporting process. There is no guarantee that a merchant ship will report an incident to the IMB or the IMO. However, providing a more thorough account of the reporting processes and greater details about victims and subsequent judicial action may deepen coverage.

- One recommendation could be for the IMB and IMO to categorise attacks, once they have been presented chronologically, by the value of the wealth stolen.
- Another recommendation could be to establish a single global procedure for reporting acts of piracy, which would be agreed and adhered to by merchant shipping – ships, flag states and coastal states.

- As neither the IMB nor the IMO are law enforcement organisations, a third recommendation would be for The International Criminal Police Organisation (INTERPOL) to become involved in anti-piracy initiatives. This could mean the creation of a department within the organisation to examine maritime crimes. INTERPOL has already investigated cases of maritime oriented crime (Tradewinds 2000, p.27). It has also already established procedures for transnational reporting of other crimes and criminal data. This could be extended to involve all ships reporting incidents to INTERPOL directly. INTERPOL has a law enforcement capability and is staffed by law enforcement officers, on secondment from nation states. It is already equipped to deal with a variety of criminality within nation states through member-state cooperation (Sheptycki 2004, pp.117-123). It is in an excellent position to evaluate the various definitions of piracy.
- INTERPOL, which already deals with judicial proceedings, could systematically compile data concerning arrests, charges made, prosecutions and convictions and then compare these data with that concerning the frequency of reported incidents. Meaningful interaction between member states and INTERPOL may then lead to better reporting and more effective international governance in relation to this issue.

Implementation of these recommendations would take time. There may be some time before the effects of policies become apparent. Either way, policy evaluation would be necessary (Howlett & Ramesh 2003, p.210). Assessment of any policies would need to include consideration of stakeholders' opinions about the policies' effectiveness (Dolbeare 1979; Hogwood & Gunn 1993; Nachmias 1979; Nagel & Neef 1979). Evaluation would need to include a comparison of the number of pirates arrested and prosecuted in all jurisdictions both prior and after INTERPOL involvement.

Chapter Three

¹ Bruner (1990), Coles (1989), Harvey (1996), and Scott and Lyman (1968) recognise the importance of evaluating accounts from research subjects. The necessity for researchers to investigate and interpret stories people share in social contexts has gained support since the 1960s.

² Cutler (1999) derives mercatocracy from *lex mercatoria* - law merchants.

³ Of the sixty-six piracy incidents reported to the IMB during the first quarter of 1999, ten attacks reportedly occurred in the Singapore Straits within the designated SLOC maritime traffic separation area. The IMB noted that four ships were left sailing unsupervised within the Phillip Channel between Singapore and Batam during this time (Chalk 1997, pp.26-29; Hand 1999; Hughes 1999; Wilson 1998, pp.3-7).

⁴ The following are ‘horror stories’, which dramatise this danger. The Japanese VLCC, 237,000 grt. mt *Showa Maru* ran aground 8 km South of Singapore and spilled one million gallons of crude into the Singapore Straits in January 1975 (Vertzberger 1982, p.4). Chalk (1998b, p.91) noted that the VLCC *Nagasaki Spirit* collided with the container ship *Ocean Blessing*. Pirates were possibly aboard the *Ocean Blessing*, as it violated shipping lane rules before the collision. The ship exploded, killing the entire crew and twenty seafarers aboard the *Nagasaki Spirit*. The bridges of both the 50,600 dwt tanker *Jag Prantum* and the 75,563 dwt bulk carrier *Arabella* were left unmanned when they suffered pirate attacks in Indonesia’s Sunda Strait in 2003 (Lloyds List 2003f, p.6).

⁵ In the report of the IMB’s Fifth Tri-annual meeting held in Kuala Lumpur in June 2004, Stefan Gussmann of Zurich Financial Services noted that as underwriters, they were concerned with actively discouraging piracy, encouraging law enforcement and shipowners’ loss prevention initiatives. Additionally, he requested that common criteria be established for security devices to be installed aboard ships (IMB 2004, p.6).

CHAPTER FOUR

THE MEDIA AND THE PIRATES: CAVEAT LECTOR

‘...reality...can’t be produced in a half-hour newscast. Nor... can the New York Times...convey “all the news that’s fit to print.”’
(Murray *et al* 2001, p.32).

This chapter analyses the role of media in the dissemination of claims about piracy to global audiences. I assert that the media’s piracy claims disseminations have occurred, in part, within the context of their ‘heightened sensitivity’ toward moral issues, an idea asserted by Hunt (1997, p.630). Piracy reports, however, can be further explained by social constructionism and also the international political economy of the mass media. It is beyond the scope of this thesis to undertake a political economic analysis of media *per se*, but one can however, analyse political economic factors, such as those raised by Harvey (1989). Considering the commodification of information and media-created images and control of time-space in this postmodern era helps relate these characteristics of media reporting to how piracy has ultimately been shown to wider audiences.

The chapter demonstrates the powerful influence of the media in terms of establishing what issues are important to both elite and mainstream audiences. It does this by considering Marxist elements, such as the media as amplifiers because they tend to reproduce the viewpoints of dominant capitalist interests. For example, Marxist media analysts such as Curran et al (1982) noted that the coverage of violence was projected in terms of whether it consolidated state-sanctioned violence or whether it adversely challenged and affected the state sanctioning of agencies of social control. Therefore, we can consider the coverage of piracy in terms of whether it reinforces, amplifies the legitimacy of dominant culture and authority. This ‘agenda setting’ by the media can create a ‘deviance amplification spiral’ as raised by Cohen (1972) and as McQuail and Windahl (1981), McQuail (1987) & (1992) argue, create particular public concerns, which can be based on two arguments –

- The popular media in its various guises, do not demonstrate reality *per se*, but generate particular versions of reality but filtering certain points and creating articles from particular perspectives.
- They are able to concentrate on particular issues over short periods of time, which can create a public perception that these covered issues are more important than others. Different media also have varying ability to establish particular agendas.

Wilkinson (1997, p.51) defined the media as the methods and operations to transmit information and entertainment worldwide. The mass media include newspapers, radio and television, as well as feature-films, music and theatre. International media agencies released a large number of reports concerning piracy between 1990 and 2003. This demonstrates that they play an important, if selective, role in distributing piracy crime data, as the general public has no direct access to maritime agencies and little experience with piracy. Audiences may therefore accept media versions, which tend to report piracy largely in narrow stereotyped contexts, without question and not seek alternative sources of piracy data (Randall 1985, p.281).

To establish which piracy data the media had been transmitting to wider audiences, this chapter draws mostly on newspaper articles. Some references are made to some non-fiction books, in particular *Petro Pirates* (Blyth 2000), based on Captain Blyth's own account of being held captive by pirates, while his ship was in the South China Sea in 1998. I collected and reviewed a sample of approximately 1500 releases that ranged from newswires by Reuters and Associated Press that contained single-line statements, to longer media articles, which were made public between 1990 and 2003. Articles were categorised by 'popular' press and 'industry' press.¹ Many newswires came from agencies such as Reuters and Associated Press news services. The media articles were mostly included in tabloid broad sheets and supplements. Review of The Readers' Guide to Periodical Literature (1990-2001) provided an overview of articles released each year in popular magazines throughout the United States. The New York Times and the London Times were reviewed because both these newspapers frequently set media agendas in their respective countries. Articles from industry sources were primarily from

BIMCO Review, Commercial Crime International, Fairplay, Lloyd's List, Lloyd's List Maritime Asia, Shipping Times Singapore and Tradewinds. These papers are widely disseminated throughout the shipping industry.

Popular media releases showed several common characteristics. Most popular articles were derivative. For example, Cottrill's (1997) 'Modern Marauders' in Popular Mechanics provided a descriptive overview of modern piracy. Most articles use details obtained from other sources, quite often the IMB. The IMB was included particularly if the article aimed to focus on the frequency of piracy to emphasis its prevalence and severity. For example, in Infor Mare, an on-line, Italian outlet devoted to transportation issues, Chan's (1998) review of incidents globally in 'Reported Piracy Incidents in Asia fall in Jan-Sept – But region accounts for highest number of attacks in the World: Maritime Bureau.' used all IMB data to highlight the frequency and locations of attacks from January to September of that year. IMB data were also used to emphasise frequency to express the need for retaliatory action. The Reuters newswire release 'UK: Maritime Piracy to Increase Unless Action Taken', 7th August 1997, includes IMB data and quotes the IMB executive Director Eric Ellen – 'Piracy flourishes and unless positive action is taken, we are on course for an increase in incidents', to emphasise this claim. Lloyd's List, the industry newspaper however, also used IMB data to emphasise increasing frequency. Grey's (1999) coverage in Lloyd's List 3rd March, entitled 'Industry Unrest at Escalating Level of Violent Attacks' reflected industry concerns. 'A series of brutal attacks on shipping which left 67 seafarers confirmed dead and a further 35 seriously injured are listed in the 1998 Annual Report of the ICC International Maritime Bureau, which is published today...'

As was to be expected from routine, non-academic reporting, few were analytical and more descriptive. Although, most that did include analyses used no social scientific perspectives, others some raised interesting analytical points. Dr. Peter Chalk, while a lecturer in international relations at the University of Queensland, wrote an article for Brisbane's The Courier Mail (29th April 1998) and also used IMB data to show the severity of piracy, the prevalence of violence and the need for retaliatory action. He

relates the increase in frequency to the following post Cold War era maritime, geopolitical and political economic circumstances–

- Increased maritime traffic through piracy prone areas in Asia is providing targets of opportunity for pirates experienced in seamanship, who reportedly work in small groups and use high-speed inshore craft.
- Superpower naval presence at sea is no longer adequate to act as a deterrent.
- Armed maritime gangs have Chinese support.
- The Asian currency meltdown of that period would (a) induce more people to engage in this crime type and (b) mean that Southeast Asian states would have less resources to finance retaliatory activity.

Howell (1999), Professor of International Policy Studies, writing for USA Today, raised additional questions concerning who had jurisdiction to actually retaliate against attacks. These aforementioned points have been debated in maritime circles but having experts write for popular newspapers adds importance and validity to their particular claims-making coverage.

Loseke (2003, p.41, 44) raises several points that show why it is necessary to examine the media transmission of details of social phenomena to wider audiences:

- There has been expansion of the mass media and competition among media agencies that operate via many sites. Their scope has widened and piracy is one issue of hundreds that they have examined and covered. While the shipping media sources have acted as primary claims makers, having situated themselves often close to shipping sources, popular press journalists have also sometimes done the same. They have also often used the following Anglo-Saxon shipping industry press sources to compose coverage - Commercial Crime International, BIMCO International, Fairplay, the ITF's Seafarers' Bulletin, Lloyd's List, Safety at Sea, Singapore Shipping Times, NUMAST's The Telegraph and Tradewinds.
- The mass media are in a strong position as a 'claims-maker', whether primary or secondary, as their audiences frequently rely on them to inform and clarify details

about social phenomena in a complex world. With respect to the two main audiences, the popular media have become the main contributor to the dissemination of claims to wider public audiences and the industry media have catered for professionals.

- Audiences are frequently influenced by content and opinion expressed by media agencies. Audience perception concerning the importance of particular social phenomena is more directly influenced by the frequency of coverage than by direct experience. Until media reporting is reviewed and demystified, readers remain vulnerable to misinterpreting piracy news. As public audiences rely on media to inform them about piracy, this coverage influences their personal understanding of it.
- Co-dependence exists between these claims-makers. The media have relied on other claims-making agencies (such as the IMB and the IMO) to provide piracy data. However, the IMB and the IMO have also depended on the media to convey details of piracy to wider audiences.

To interpret media piracy reporting closely, we should examine the claims-making strategy of the media, whereby they act as both primary and secondary ‘claims-makers’ (Loseke 2003, pp.25, 26, 41, 61). ‘Primary claims-makers’ are those investigative journalists and media agencies that have researched topics, undertaken fieldwork and written stories in a role similar to that of activists concerned with other social problems. ‘Secondary claims-makers’ are those journalists who have received data from the IMB, the IMO, other policing agencies, or other secondary sources and who have then either repeated verbatim or paraphrased data released by those agencies or sources, and have included them in their written media releases. This is a reciprocal relationship because these agencies’ use of the media to distribute claims has been fundamental to their moral crusade. The release of reports about pirate attacks that omit information has contributed to a process of mystification about piracy.

One media ‘claims-making strategy’ (Loseke 2003, p.61) is the construction of a ‘simple diagnostic frame’, within ‘a social problems formula story’ (Loseke 2003, p.89). This

standardises composition of reports that are released to audiences. This can be used in the construction of moral crusade or moral panic. This popular media construct can also be used to construct piracy as social problem.

A common predictable pattern of piracy reporting has emerged. It has a superficial style, which adds little to the knowledge about piracy and it is used repeatedly. Goode and Ben-Yehuda's moral panic stages, Thompson's (1998, p.8) moral panic theory, Best's claims-diffusion theories and arguments by Loseke (2003), help to explain the socially constructed nature of reports and the motivation of media agencies. See figure 4.1.

Figure 4.1 The Stages of Moral Panic, Claims Diffusion and Media Dissemination.

Goode & Ben Yehuda's (1994) Moral Panic Stages: ↓	Thompson's (1998) Moral Panic Stages: ↓	Best's (2001) Claims-Diffusion Stages: ↓	Loseke (2003). ↓
CONCERN: A heightened concern about the behaviour of a group and possible consequences for society. →	Stage 1: Behaviour defined as Threat. → Stage 2: Portrayed simplistically by media. →	Stage 1: Claims-Makers that state some condition exists, initiate diffusion. → Stage 2: Information that something is problematic is diffused. →	Industry Media – Primary Claims-Makers. Popular Media – Investigative Reporters: Primary/Secondary Claims Makers. Routine Reporters: Secondary Claims Makers. Social Problems Formula: Motivational Frame: Sensationalism or logical coverage. Construct familiarity. Story typification.
HOSTILITY: Increased hostility toward the clearly identifiable group reportedly engaging in the behaviour and responsible for threat. →	Stage 3: Resultant widespread concern. →	Stage 3: People (various audiences) adopt claims. Accept that problem has specific characteristics. →	Create Popular Worry. Hierarchy of Media Audiences- Professional audience. Lay audience.
CONSENSUS: Widespread agreement in designated section of society that the threat caused by labelled group is real and serious. →	Stage 4: Reaction by Agencies of Social Control. →	Stage 4: Networks via which diffusion occurs, agree that action should be taken. →	Variation in audience reaction between popular audiences and professional audiences.
DISPROPORTIONALITY: Response can be more intense compared to other more dangerous issues. Four Criteria: Figures Exaggerated. Figures Fabricated. Increased observation but no worse than others. Observation more intense than at other times. →	Stage 5: Panic Diminishes as Policy Changes Implemented.		
VOLATILITY: May appear suddenly, or intermittently. May disappear. Can be short lived but can re-emerge.			

The media are central in the IMO's and the IMB's moral crusade against piracy, although only elements of moral panic have emerged. Table 4.1 of some media reports from the agenda-setting New York Times and London Times and from the Readers' Guide to Periodical Literature (indexing popular US magazines) between 1990 and 2003 demonstrates that no full-blown moral panic about piracy has occurred despite, as will be discussed, the alarmist nature of some articles. I argue that attempts at creating moral panic can, in part, be identified by the frequency that popular media sources highlight phenomena.

Table 4.1 The Frequency of Piracy Reports from Three Media Sources and the IMO.

YEAR	<u>Readers' Guide to Periodical Literature</u> (1985 – 2003):	<u>The London Times</u> (1985 – 2003): (From 1985 to collect larger sample).	<u>The New York Times</u> (1985 – 2003): (From 1985 to collect larger sample).	Total (1985 – 2003): (Incorporating all three indices).	IMO REPORTED INCIDENTS
1985	3 (2H)	2	3	8	31
1986	3 (1H)	4	3	10	18
1987	1 (H)	0	3	4	29
1988	1 (H)	5	4	10	19
1989	1 (H)	4	2	7	14
1990	1 (H)	3	None	4 (1H)	50
1991	1	5	None	6	79
1992	1 (H)	12	2	15 (1H)	68
1993	1 (H)	5	1	7 (1H)	70
1994	None	1	None	1	48
1995	1	5	None	6	138
1996	1 (H)	2	None	3 (1H)	232
1997	2	4	3	9	257
1998	3 (1H)	1	1	5 (1H)	210
1999	(1H)	9	3	13 (1H)	235
2000	2 (1 cited in New York Times Magazine and counted in New York Times Table).	7	3	12	471
2001	3 (2H)	3	None	4 (2H)	370
2002	2 (1H)	2	1 (H)	5	383
2003	3 (2H)	7	N/A	10 (2H)	452

NB:

(H) = Historically-oriented article on piracy – historiography, marine archaeology etc. Some articles from 1985 – 1990 in The London Times concerned attacks on Vietnamese boat people by Thai fishermen. The London Times also covered stowaways at sea as an issue. All these were excluded from this table.

Total: 83 Non-historical, contemporary oriented articles on piracy in this sample across 11 years. An average of 7.5 per annum, or 0.63 per month.

Historically oriented articles (H) were counted via the Readers' Guide to Periodical Literature. The total of 83 is small in proportion to the number of articles released between 1990 and 2004. IMO data of 1985 – 1995 was gained from an IMO informant, London. Data from 1995- 2003 was taken from IMO Annual Piracy Report 2005.

Table 4.1 shows that the numbers of piracy articles shown by The Readers' Guide to Periodical Literature (RGPL), indices providing an overview of subject coverage in the US, and in the two chosen press outlets The New York Times and The London Times, released between 1985 – 2003, fluctuated somewhat. The Totals column shows that the maximum released was 15 (in 1992) (2 by The New York Times, 12 by the London Times and one highlighted in RGPL). The lowest total was 1 (in 1994).

The tabulated data indicate that there is little or no correlation between the frequency of released media reports and the number of incidents reported by the IMO. The popular media is constantly *responding* to a wide array socio-political phenomena that it ultimately reports. Piracy is one of many crime types that they periodically highlight. Perfect correlations between the officially defined frequency of criminal events and that of reporting are rare. The commodification of coverage and the distribution of news 'instantaneously though space' by outlets that can produce images as commodities more or less at will' (Harvey 1989, pp.288, 289), comes from newsrooms that are connected to larger economic determinants (Lowe-Davies 1999, p.55).

Piracy Reporting and Sensationalism.

My contention is that media reports of piracy are often sensational. While they pass through the first two stages of Thompson's moral panic and Best's claims-diffusion, they often stall at Stage three – being unable to generate enough widespread public concern to generate much institutional action.

The creation of moral panic depends upon who in an audience actually reacts, how they react and what action is taken in response. In the case of piracy, this would not represent the majority of people within audiences. People rely on their own practical knowledge and interpretation of the world in order to react to specific reports. In core states, although populations depend on the maritime world to maintain living standards, few people have direct interaction with the maritime environment or merchant marine. They are exposed to a myriad of social problems of which piracy is just one.

Consistent with Thompson's stage one of moral panic, most articles identified piracy as a contemporary problem. They started, by 'constructing familiarity' (Loseke 2003, p.61), which makes a somewhat unfamiliar crime seem familiar to public audiences - Elliot's (1999) article in Newsweek, entitled 'Forget Doubloons and the Spanish Main. Think Soda Ash and Seedy Chinese Ports' is one example. Many journalists begin articles by stating that piracy is not confined to the annals of history. They often include references to piracy lore - either figures constructed in nineteenth century literature such as Long John Silver or to some individual historically labelled as a 'pirate' who was known to have existed during a period when the Royal Navy was suppressing piracy off the Berber coast, in the Western Atlantic, or in Southeast Asia. There are numerous examples.

Having included references to maritime history, many journalists frequently state, with implied authority and knowledge, that piracy has never been eradicated. This contributes to their 'claim-making strategy' (Loseke 2003, p.62). Journalists frequently present modern piracy as a new social issue - different but familiar form of a pre-existing problem. Howell's (2006) 'Pirates: Scourge of the Modern Seas' in USA Today, while providing a descriptive overview of contemporary piracy, expanded on piracy as a strategic concern and cited its links with terrorist behaviour. This link also occurred in Montlake's (2006, p.1) 'Hard Time for Pirates in Busy World Waterway', in The Christian Science Monitor. This is consistent with Loseke's argument that characteristics of a pre-existing or former social problem are frequently expanded to create a linkage with a 'newer' phenomenon (2003, p.62). Having presented the problem, journalists then tend to define piracy, to maintain an impression of reporting accuracy.

Audiences are interested in learning about social phenomena as 'objective conditions' and want to receive factual data (Loseke 2003, p.55) about the problem and its social, political and economic implications. Investigative journalists, attempting more serious articles, become secondary definers of this social problem and include the definitions of piracy under UNCLOS Article 101 and the IMB. They act as secondary claims makers by establishing boundaries between piracy and non-piracy and encourage audiences to

accept it as a social issue. Few journalists question the construction of the piracy definitions (as I have done in Chapter One) or consider the expansion of the piracy definition.

The majority of journalistic articles refer to the role of the IMO and the IMB in the creation of anti-piracy legislation and anti-piracy initiatives. Referring to the IMO and the IMB as active anti-piracy organisations adds credence to the validity of their unfolding story, as these institutions are presented as reflecting professionalism and expertise. The media frequently attempt to present detail in such a way that audiences will find the articles meaningful and truthful, and include references to agencies of social control like the IMB and the IMO to emphasise the validity of data. The IMO and IMB are ‘primary claim-makers’, who have interacted with the media in order to transmit their messages about piracy to wider audiences. This is common with media crime reporting (Loseke 2003, p.32).

This form of persuasion, which Loseke (2003, p.63) refers to as a ‘motivational frame’, is based on either logical argument or sensationalism. Media articles frequently draw heavily on a historic, culturally based notion that pirates violate universal maritime norms, violate international trade norms and violate human rights. The British Broadcasting Corporation (BBC) article of July 2006, entitled ‘Rise of Modern Day Pirates’ told readers to forget ‘cutlasses’, but included a picture of the popular U.S actor Johnny Depp in character as Captain Jack Sparrow in the feature film *Pirates of the Caribbean*, before describing the contemporary situation off Indonesia.

Harvey (1989, p.85) notes that (especially in the postmodern period) ‘it is convenient for the media to refer to past historic events. They gain “historic legitimacy” from accessing a “vast archive” instantly retrievable and capable of being consumed over and over again at the push of a button.’ In addition, Taylor (1987, p.105 in Harvey 1989, p.85) noted that history then gets converted into ‘an endless reserve of equal events’, like a postmodern collage. This is despite piracy having occurred from classical antiquity to today under a vast array of differing political economic and strategic circumstances.

The media articles tend to imply that the violated norms are not culturally specific but somehow universal. Journalists appear to emphasise the severity of piracy by including IMO and IMB statistics concerning frequency and characteristics. Some articles that include statistics indicate that these are unreliable because piracy may be underreported by fifty percent or because some crews and shipping companies are reluctant to admit they are victims. But frequently and paradoxically, they do not show that statistical use of the IMB definition inflates piracy attack numbers. Their reports contribute to an overall distortion of reality that cannot be accurately assessed. While routine reporters cannot be expected to make independent statistical analyses or collate their own statistics on piracy, many have continued to emphasise the increase of piracy, even over a five-year period. The articles 'Pirate Attacks Almost Double' 31st July 2000; 'Piracy at 10-year High' 31st January 2001; and 'Attacks by Pirates on the Rise' 27th January 2004, 'Growing Threat of Maritime Muggers' 15th March 2005, all released by the BBC, form examples of this.

The media often highlight a correlation between the increased frequency of piracy, the Asian economic crisis and poverty in coastal communities. For example, BBC coverage on 1st November 2000 noted the association between increases in attacks and Indonesia's economic and political problems. This correlation (as stated in Chapter Three) does not necessarily demonstrate causation. There are insufficient data to establish causal relationships. Living conditions have frequently been precarious in peripheral coastal states, not all of which report piracy. There has never been a complete account of pirate's motives as few pirates have been caught and little data from law enforcement authorities based on investigative interaction with pirates have been gathered.

However, many journalists labelled areas such as Southeast Asia and West Africa as 'piracy prone'. The BBC article of 24th July 2003 included the title 'Pirates rule the high seas' followed by an introductory paragraph that stated piracy 'had hit an all-time high'. Some of the more alarmist articles stated that piracy occurs in wild places 'where anything goes'. This frequently obscures the fact that reported piracy mostly occurs in

maritime regions situated adjacent to large, politically stable, coastal population centres of developing states, which possess high population density, such as Singapore.

Articles often include the most severe examples of pirate attacks to emphasise the seriousness of this social problem. The examples of the attacks remain similar. There exist several examples of incidents that journalists explained in an alarmist way, include the attacks on the mv *Syria*, mv *Tenyu*, mv *Cheung Son* and the mt *Petro Ranger*. Journalists have used any incident where victim seafarers have suffered to show a degree of victimization of a ‘devalued group’ not responsible for the fate they suffer (Loseke 2003, pp.80, 81). The BBC article ‘I Beat Pirates with A Hose and Sonic Cannon’, 17th May 2007 is one example. This is consistent with Loseke’s (2003, p.56) argument, that journalists often ‘typify stories’ to reflect the general conditions observed within particular social phenomena. Journalists commonly refer to known individual attacks and then proceed to describe reported statistics. Despite the IMO and IMB recording and reporting hundreds of attacks per annum, a small number of attacks have received more media attention than others. This shows the socially constructed nature of piracy reporting, as it appears that information from seafarers, shipping companies, P&I Clubs, law enforcement and judicial authorities to the media, does not flow constantly and consistently to global audiences, but is filtered by the media’s priorities.

The media sensationalised the mv *Cheung Son* incident, when reportedly pirates boarded the ship and murdered 23 Chinese seafarers. The pirates were caught, tried and executed under Chinese criminal law. This is one rare case where pirates were caught and convicted (Chang 2001). The western media used this case to construct pirates as dangerous outlaws, to create opportunity for authorities governing the maritime environment to blame particular individuals, and encourage emotional reaction toward pirates among lay readers. Withington’s ‘Nothing Jolly about New Wave of Pirates’ 14th July 2002, is one such example.

It is sufficient for the media as a secondary claims-maker to define piracy, to emphasise its severity by including statistics, and to include a typifying story in an article. Personal

details of particular victims are newsworthy (Loseke 2003, p.82). The BBC's article 'Couple Speak of 'Pirate Attack'', 14th November 2005 is an example of this. The media articles include more details about victims than pirates, as it is recognised that Western audiences tend to react more emotionally toward victims than toward criminals (Loseke 2003, p.85) unless those particular criminals happen to have been severely demonised in the press. However, as few pirates have been caught, the media have focused on piracy victims.

A rare exception occurred in a Time Asia article of August 20th-27th 2001, however, which appears to be the result of interviews of a Philippine captain who had apparently engaged in piracy. The attack on the m.t *Petro Ranger*, which is analysed below, attracted great media attention in Australia, but even the comparative depth and detail of media accounts of this incident, did not diminish many of the stereotypical ways in which the media represent piracy of the problematical way in which piracy is socially constructed. The media identified Captain Kenneth Blyth as the central victim in this incident, and focussed on him.

The *Petro Ranger* Affair.

The m.t *Petro Ranger* incident raises issues relevant to social constructionism. It highlights researchers' dependence on the dissemination of conflicting reports, which result from attacks like these. Many of these inconsistencies can be attributed to the multitude of communications between various agencies. The affair also demonstrates how incidents become legally complex once internationalised governmental and private actors interact. The government policing and diplomatic authorities of Australia, China, Indonesia, and Singapore interacted with the private entities of Petroships Ltd., marine insurers, the IMB and the media. Captain Blyth, who played a central role in the affair, publicised details about what reportedly occurred. However, incidents tended to be reported and interpreted from varying perspectives, as contradictions between Blyth (2000) and journalist Bolt (1998a) will demonstrate.

In April 1998 pirates attacked the mt *Petro Ranger*, owned by the Malaysian Petroships Ltd. (Petroships) and flagged in Singapore but crewed by seafarers from several states. It sailed from Singapore on 16th April, on a standard trading voyage to Saigon. Pirates intercepted it in the South China Sea and sailed to the East of Vietnam, intending to pump its liquid cargo to other pirate-controlled tankers (Blyth 2000, pp. 3, 25, 29, 32). Several days later, the Chinese maritime police captured and interned the vessel and began a complex investigation. The international media labelled the incident newsworthy and reported it widely.

Initial police and media attention focused upon the fate of the Indonesian pirates and the crew of the *Petro Ranger* detained by Chinese maritime authorities - at the expense of other interesting aspects of the case. Evidence emerged of surprising agency reactions to the ship's disappearance. Much of the evidence supporting a social constructionist interpretation of the case comes from the Captain (Blyth 2000), who provided details about piracy reporting processes. He criticised the agencies for inappropriate action and journalists for misreporting developments. He noted disparities between the Chinese legal definition of piracy and those of the IMO and the IMB, between his account of events aboard the vessel and what various agencies and the media had reported. This illustrates the arguments of interactionists that crime definitions are essentially 'subjectively problematic' and that reports prone to distortion (Becker 1971, p.9; Rubington and Weinburg 1999, pp.1 – 10; Tannenbaum 1938). The anomalies indicate that there are problems with piracy reporting on various levels.

Contradictions start with the time the vessel's disappearance was reported. The marine superintendent of Petroships Ltd. reportedly notified the wife of the Captain on Monday, 20th April 1998. He told her that the ship's navigational officers had not made contact for 24 hours and that relevant agencies had been informed of the ship's failure to maintain scheduled contact. Denise Blyth was later notified, however, that last contact with the ship had actually occurred at midday, on the 17th April – three days earlier. This was an unacceptable length of time in terms of search and rescue response and coordination (Blyth 2000, p.34).

On the 21st April, an *unofficial* search was arranged through informal contact between Captain Blyth's daughter, a Royal Australian Air Force (RAAF) officer, a commanding officer of the RAAF and the Defence Adviser at the Australian High Commission in Singapore. An RAAF aircraft flew from Butterworth, Malaysia and searched sea-lanes of communication (SLOCs) for the ship, while undertaking other duties in the area. This search occurred 18 hours after the RAAF was notified. At that time Petroships had not yet finished briefing relevant agencies about the disappearance. Denise Blyth contacted the Australian Department of Foreign Affairs and Trade (DFAT), on 21st April 1998 and was instructed to contact the Australian Maritime Safety Authority (AMSA). According to Blyth (2000), DFAT did not contact AMSA. At that point AMSA had not been officially notified of the disappearance. Petroships Ltd. was reportedly contacted on the 21st April and was instructed to brief the Australian High Commission (AHC) in Singapore, as Blyth was an Australian national. However, Petroships did not notify the AHC Singapore until the 22nd April (five days after last contact), its facsimile falsely stated that contact had been lost on the 19th April. A friend told Denise Blyth on the 24th April 1998 that there had been no Singaporean media reports of the disappearance. On the 25th April, Petroships notified Denise Blyth that constant contact was being maintained with all Southeast Asian diplomatic facilities (Blyth 2000, pp.34-36).

Petroships announced an unconfirmed report that a ship that *could* have been the *Petro Ranger* was seen sailing for the Philippines, which it claimed came from anonymous satellite telephone communications. Blyth stated that this statement was flawed because maritime satellite telephone communications are impossible to send anonymously. Blyth said that he later learned that a clairvoyant employed by Petroships was the source of this misinformation (Blyth 2000, p.38). The Australian media was finally alerted to the case on the 26th April 1998. Blyth (2000) argues that subsequent media reports contained numerous inaccuracies, which is hardly surprising, given the anomalies above.

Blyth later discovered that false documentation found aboard the *Petro Ranger* indicated that the pirates had intended to make it a phantom ship. According to him, it was to be

renamed the *Surin* and re-flag under a Central American FOC, which allows easy ship registration and rarely verifies ship ownership. This was a key aspect of the affair.

Blyth contended that contact with international journalists did not improve his situation while detained aboard the vessel by Chinese authorities. He complained that journalists sensationalised events as part of their claims-making strategy. Reportedly, during the 4th May, Blyth was notified that a small vessel had come alongside the *Petro Ranger*.

Journalist Mr. Andrew Bolt, who stated that he was from Brisbane's *Courier Mail*, had a conversation with Blyth from aboard the small boat. Blyth (2000) cites several reasons for being critical of the way Bolt later reported the affair in the *Courier Mail* on 6th May 1998 and 8th May 1998 (Bolt 1998a, b). According to Blyth (2000), they had a brief conversation whereby Blyth explained that he was being held by Chinese authorities due to a dispute between two Chinese land-based police and Chinese maritime police who both claimed legal jurisdiction for the case under Chinese law. Blyth stated that Bolt had used his initiative to reach the anchored vessel but argued that Bolt (who was in fact acting as a primary claim maker) had distorted details in the newspaper. Blyth claimed that he did not call the affair 'a f..... disgrace', as stated by Bolt (1998a); that he did not ask Bolt to contact DFAT, as he and the Chinese authorities had already done so; that he did not ask Bolt to convey a message to his wife, as in Bolt (1998a). Blyth disputed Bolt's (1998a) use of the word 'prisoner' despite being held. Blyth (2000) claimed that he did not state 'For God's sake, don't come aboard or they'll shoot us all'. According to Blyth, there was no chance of Bolt being able to get aboard the *Petro Ranger* from a small vessel and he saw no indication that the Chinese police would have shot anybody trying to board the ship (Blyth 2000, p.93).

Bolt (1998a, b), claimed that the pirates stole Blyth's watch and all twenty of the crew were locked in cabins aboard the vessel; Blyth (2000) said he had not mentioned anything about a stolen watch, there were twenty-one aboard the vessel (not twenty) and the crew were not locked in their cabins. Blyth denied Bolt's claim that Blyth had begged the Chinese authorities to release him (Blyth 2000, p.93).

According to Blyth (2000), Bolt returned to the vessel the following day on the 7th May but was missed by Blyth as he simultaneously returned to shore aboard a Chinese launch. Blyth noted that two of his crew had seen that two Chinese officers aboard the *Petro Ranger* fired two warning shots into the air and the vessel carrying Bolt retreated from the *Petro Ranger*. However, Blyth notes how differently Bolt reported this incident. Blyth (2000, p.92) reports that Bolt stated –

‘The Chinese soldiers were not mucking around. The first two shots went over my head. Then the guards on the captive tanker *Petro Ranger* aimed at me as I stood on the pitching fishing boat. I decided it was time to give up.’ (Bolt 1998b).

According to Blyth (2000), Bolt stated several more inaccuracies. Bolt wrote that the guards had been falling asleep aboard a small patrol vessel positioned on the other side of the tanker and that when the small launch approached the tanker, the small launch that Blyth was aboard rapidly left from behind the ship and sailed back to shore. Blyth states that this departure happened, but it had nothing to do with the arrival of Bolt. Blyth (2000) in hindsight could see that ‘Bolt had bled the story for all it was worth’ and paid insufficient attention to detail that Blyth considered important (Blyth 2000, p.93). Blyth (2000, p.93) stated that Bolt had reported that -

‘Eventually I was taken ashore to soldiers’ headquarters. There a soldier waved copies of my interview with Captain Blyth from the morning’s Australian papers in my face. ‘Bad, bad, bad,’ he shouted. I was kept under guard for 11 hours before being confronted by some senior officials. Could I sign a confession that I’d made up the entire story? No, I couldn’t. Well, would I promise not to tell any lies? No worries. Would I promise to leave Haikou the next day? Gosh, twist my arm. And would I promise never to write another story about the amazing case of the *Petro Ranger* until they had finished their inquiry? Guess not.’ (Bolt 1998b).

Blyth (2000) contradicted Bolt’s version of events. Blyth said that he had spotted Bolt being escorted into the maritime police headquarters when Blyth had to report there. He claimed that Bolt signed a document apologising for what he had done, since among other things, Bolt had entered China on a tourist visa, not a journalist visa. Under Chinese

law, all foreign journalists are required to enter China on a journalist visa and provide fourteen days notice before conducting any interviews. A Reuters report quoted Mr. Li from the Chinese Department of Foreign Affairs, as saying that Bolt had signed a document admitting to having reported a story at odds with what really happened (Blyth 2000, p.94). Bolt (1998a, b) omitted these details from his stories.

Blyth (2000) said Bolt did not clarify facts even after deportation from China. Blyth states that a feature of Bolt's reporting was 'the inconsistency of the dates used'. For example, in one report in the *Adelaide Advertiser* on 8th May 1998, he had stated that he had visited the *Petro Ranger* on Monday 4th May and Tuesday 5th May. The report cited in the *Daily Telegraph* on 9th May 1998 stated that he had visited the *Petro Ranger* during Tuesday 5th May and Wednesday 6th May. However, Blyth (2000) claims that he could have only made contact with the ship on Thursday 7th May and Friday 8th May. Blyth (2000) noted that Bolt, who had written a great deal about Blyth's ordeal in China, never contacted him after he returned to Australia (Blyth 2000, p.155). He argues that Bolt's inaccurate reporting, which was faxed to different agencies within the region, damaged the relationship between him and Chinese law enforcement personnel. He claims that Chinese authorities were aware Bolt had violated their security around the ship and therefore, they heightened their presence and they tightened security arrangements for Blyth (Blyth 2000, p.94).

The different actors involved in the *Petro Ranger* affair, presented different perspectives on the same events and their reports reflect different interests. Captain Blyth had had his ship captured by pirates, and was later held by Chinese authorities. During this time, he said that he was anxious to maintain crew welfare and to return home. However, his description of events does not indicate that he was particularly distressed during the time he was held, implied in some media articles. On return to Australia, he was reportedly surprised at the volume of media coverage and the degree of inaccuracy. He became a primary claims maker, able to rectify what he recognised as media inaccuracies. He had learned that journalists had approached his daughter, with requests for background data

and reputedly stated that they would simply fabricate a story if she did not cooperate (Blyth 2000, pp.111, 112).

Media references to *Petro Ranger* crewmembers were sparse. They were invariably referred to as one monolithic group. The crew had their own concerns initially about their survival, then about their release, also about whether they would receive wages and about future employment prospects with Petroships Limited. However, these labour concerns were minimised or ignored in media accounts. The crew was never able to use the media to express their own concerns. In this respect, it may be significant that Andrew Bolt, the lead journalist in reporting this affair, is also a prominent right-wing columnist for the Murdoch press and a frequent critic of organised labour.

There were some media references to the Chinese authorities. Reportedly, during the time Blyth was held aboard the ship and later ashore, Chinese authorities were eager to tell the western media representatives that Blyth remained to assist with police inquiries. Blyth (2000, p.105) asserts, however, that they appeared to have kept him separated from western journalists to prevent disclosure of his suspicions that some elements within Chinese officialdom were involved with piracy. In Blyth's account, journalists like Bolt were unable to reach him unaided and Bolt attempted to advance his own interests by trying to sensationalise the affair, to distort details to make the reporting of the affair more appealing to audiences, but Bolt did not report Blyth's suspicions about Chinese official collusion in piracy.

Efforts to heighten awareness of particular social problems, even if it means sensationalising coverage, are central objectives of journalism. Thompson's stage three of moral panic development is characterized by media coverage resulting in a build up of 'general public concern' (Thompson 1998, p.8). Media coverage of maritime piracy has not generated wide general public concern, at least partly because this crime occurs in the remote oceanic environment, although it may concern people who have relatives employed at sea. Most recent media coverage of piracy remains descriptive and derivative. For the third stage to be achieved, media coverage must also result in

increasing concern by agencies of social control affected. However, it appears that increased concern among these such as overt and covert intelligence bodies, government departments of transportation, law enforcement authorities and judicial bodies would stem from the potential significance of piracy information transmitted to them via other official bodies rather than the media. Media information to official bodies has had relatively little effect on policy initiatives. Officials have expressed some annoyance with the media over details and context in articles or their attempt to cause a moral panic by overemphasising the severity of piracy.

There is no correlation between frequency of piracy reports in the media and the frequency of actual reported attacks (see Table 4.1). Therefore, the media are reporting the phenomenon selectively. This contributes to their collective role of creating a particular reality of piracy by drawing attention to a limited number of attacks. Those piracy reports, which have the potential to be rewritten into a sensationalist form, are given some degree of priority by both 'elite media' and 'general public media'.² Elite media sources have a tendency to provide articles with more factual detail - although none detailed an entire case from initial incident to conclusion. Core state journalists, irrespective of media type, favour reporting acts of piracy in which citizens from metropolitan states are victims.

These articles often have to compete with other issues that have gained more public interest. Piracy as an issue is one of many transnational crimes types that are being projected to audiences via media. All piracy claims-makers face a dilemma as articles are being read by increasingly desensitised audiences that appear to becoming bored at faster rates (Loseke 2003, p.62) with some degree of sensory overload of ephemeral images (Harvey 1989, p.289). These characteristics of reporting reflect the priorities established by media that can be further explained by the context in which it operates.

Media is a capitalist as well as a social construct. As such it

‘...has to be seen in the context of the promotion of a culture of consumerism. This directs out attention to the production of needs and wants, the mobilization of desire and fantasy, of the politics of distraction

as part and parcel of the push to sustain sufficient buoyancy of demand in consumer markets to keep capitalist production profitable.’ (Harvey 1989, p.61).

This has been particularly the case, since the postmodern era began in the late 1960s or early 1970s. ‘Postmodernism then signals nothing more than a logical extension of the power of the market over the whole range of cultural production.’ (Harvey 1989, p.62). The media are in the business of informing and creating ‘popular worry’ Loseke (2003, p.67), to create a sense of urgency among readers. This will, in turn, generate increased consumption to maintain a sense of remaining informed. The media create and market images as a commodity and distribute them for financial advantage.

Consistent with arguments raised by Chomsky (1989, 1997, 2002), Chomsky et al (1988) and McChesney (1997), the media have played a role in informing public audiences about a wide array of crime issues - piracy included. Despite the large number of reports released over the past ten years, comprehensive piracy coverage in the popular press remains minimal. I argue that media agencies often report piracy superficially without analysis, because of the large-scale, capitalist-orientation of media bodies. However, socialist states’ media have also demonstrated a tendency to report some phenomena superficially. The nature of piracy reporting can be explained by general arguments raised by Chomsky (1989,1997); McChesney (1997) and Murray, Schwartz and Lichter (2001), that media agencies have increasingly sought to cover issues in a superficial way, extending the range of issues they report.

The media have two broad objectives. One is to make audiences think that what is being reported is of significance. The second is that the media’s main business strategy is to project the notion that they are a primary source of information, that they transmit highly credible information and that their particular articles and coverage should be given more attention than other sources belonging to commercial competitors (Loseke 2003, p.69).

Chomsky (1989, p.2) noted that advertising is a primary income source of mass media entities. ‘The reliance of the media on information provided by governments, business

and experts funded and approved by primary sources and agents of power' helps perpetuate misconceptions and misinterpretation of social phenomena like crime (Chomsky 1989, p.2). Opinion contrary to mainstream opinion is often ignored. In the postmodern period,

‘The closing of the gap between popular culture and cultural production in the contemporary period, while strongly dependent on new technologies of communication, seems to lack any avant-gardist or revolutionary impulse, leading many to accuse postmodernism of a simple and direct surrender to commodification, commercialization and the market.’
(Harvey 1989, p.59).

By examining the ways in which social 'knowledge', in this case piracy data is compiled and presented, it is possible to forearm the news consumer. It is necessary to be aware of misinterpretation- accidental error and misunderstandings or deliberate distortions of truth in every part of information transmission processes (Murray, Schwartz & Lichter 2001, pp.7, 8). Capitalist media have political motives for explaining piracy in a ‘depoliticised’ way. Consistent with arguments raised by Chomsky (1997) and McChesney (1997), the superficial nature of piracy reporting has implications for maintaining the status quo. As in the case of the *Petro Ranger*, seafarers are subject to piracy, but decision-making maritime agencies or the media will seek little input from them. The structural relationships between journalists, media owners, shipping companies and capitalist-oriented governments serve to ‘depoliticise’ piracy. The coverage of piracy is undertaken within the context of piracy primarily being a threat to the capitalist interests of shipowners and shippers. Socio-economic disparities prevent those of lower socio-economic status from fully expressing their concerns via national and international media.

The trade media, however, have reported piracy widely. Table 4.2 indicates the extent of coverage from BIMCO Review, Commercial Crime International, Fairplay, Tradewinds, Lloyd’s List, Safety At Sea, and Telegraph (NUMAST). These tallies of the numbers of reports about piracy were compiled from IMO (2006) data that records piracy media coverage.

These trade publications (except for The Telegraph) are capitalist media and the type of reported coverage included in them tends to be conservative in tone and less oriented to sensationalism. They tend to take up the periodic warnings from the IMB and IMO issued about various spates of piracy attacks (see for example Fairplay 2000b, p.13). They also tend to take into account IMB and IMO reported numbers for particular periods - see for example ‘Pirate Attacks Triple over Last Decade’, Lloyd’s List 2000, p.1; ‘Eight pirate Attacks Logged in Under Two Weeks’ in Tradewinds 2000b, p.28; ‘Asia Still the Blackspot for Attacks on Shipping’ Lloyd’s List 2001f, p.16); ‘Piracy on the Rise’ in Safety At Sea, September 2000, pp.24-25.

Table 4.2. Various Industry Periodicals Containing Articles about Piracy.

YEAR	<u>BIMCO Bulletin</u>	<u>Commercial Crime International</u>	<u>Fairplay</u>	<u>Lloyd’s List, Lloyd’s List Maritime Asia & Lloyd’s Ship Manager</u>	<u>Tradewinds</u>	<u>Safety At Sea</u>	<u>Telegraph (NUMAST)</u>
2000	5	10	63	71	27	2	3
2001	3	12	39	53	7	2	4
2002	3	15	20	51	9	4	5
2003	0	9	14	47	4	1	2
2004	1	6	16	64	7	1	2
2005	2	10	34	154	26	11	3
2006 (To mid June)	1	6	13	43	12	3	1
Total 5.5 Yrs	15	68	199	483	92	24	20

Source: IMO (2006).

These data demonstrate, as one would expect, that contemporary piracy has had more coverage in shipping industry media than in the popular media. The BIMCO Bulletin is published bi-monthly (six times annually). The above data show that it has covered piracy 15 times in its 39 releases between 2000 and mid 2006. Commercial Crime International, released monthly by the ICC referred to piracy 68 times in its 66 releases during the same period. Fairplay, which has been in continual release since 1883, is

published weekly. It highlighted 199 piracy articles in 282 releases between January 2000 and June 2006 (IMO 2006). Lloyd's List is reportedly the world's oldest continually published daily newspaper (since 1734). There were 483 articles providing coverage of piracy in over 2000 issues between January 2000 and June 2006. Safety At Sea, published monthly, is dedicated to marine safety issues but sometimes includes reports on piracy. It included 24 articles about piracy between January 2000 and June 2006 (IMO 2006). Tradewinds has been published weekly since 1990. It has included 92 articles about piracy since January 2000. The final journal, The Telegraph (NUMAST) is not operated for profit. The British Merchant Navy officer's union NUMAST, which has just merged with a Dutch union and changed its name to NautilusUK (see glossary) releases the newspaper. Reflecting the concerns of its members, it has reported 20 articles on piracy (narrowly defined) over the 5.5-year period from January 2000.

Conclusion

Media reports on piracy have tended to reinforce and strengthen the credibility of the reporting process of the IMO and IMB. Reports about pirate attacks have frequently omitted important data and a process of mystification has been created. Despite the sporadic efforts of the media to sensationalise the issue, attempts to diffuse claims and create a moral panic about piracy have stalled at an intermediate stage. The media's role in the transmission of definitions and claims of piracy influences public understanding of the state and private reactions to piracy, which will be discussed in the next chapter.

Chapter Four

¹ The popular media have a high distribution and high turnout of released material. Daily newspapers, such as the London Times, New York Times, The Washington Post, and The Australian, are typical examples. 'Industry media' refer to journals and newspapers released, more limited in circulation, for shipping such as Lloyds List and Shipping Times Singapore. These publications produce less sensationalist coverage of piracy issues but remain pro-capitalist. They tend to write more insightful reports than the mainstream media.

² The 'elite media' and 'general public media' are taken from Randall (1985, p.106) in Geis, Meier & Salinger (1995).

CHAPTER FIVE

THE SOCIAL CONSTRUCTION AND COMMODIFICATION OF SOLUTIONS

‘Associating privatization with both efficiency and effectiveness, [helps socially construct] an unrestrained admiration for private sector performance [which] has caused many countries to apply [it] in virtually every conceivable sector, creating truly an “age of privatization.”’
(Mandel 2001, p.129).

This chapter discusses the social construction of state and private solutions to piracy. It highlights that state discourse involving the US, Japan, Singapore, Indonesia and Malaysia resulted in limited naval deployments. The chapter also shows that private sector entities commodified anti-piracy initiatives and proceeded to sell militarised protection in a transnational market niche. To make ventures successful, however, Private Military Companies (PMCs)¹ have had to socially construct their use as being needed, competent, legitimate alternatives or complementary to state intervention. I argue that hiring PMCs to repel pirates, typifies postmodern/postfordist commercialism in this era of flexible accumulation.

The chapter highlights the social construction of authority, state-sanctioned violence and private action. ‘Security is a socially constructed concept and...discourse is a key element in the construction and identification of security issues’ (Bradford 2004, p.481). States construct legitimacy through domestic and international politicised dialogue. The private sector has had to carefully label its involvement, and construct perceptions of that involvement, as a legitimate solution.

Opinions about the private provision of controlled violence vary across a spectrum. Systematic analysis of these arguments could be centred in a continuum. See Figure 5.1 that illustrates a continuum between libertarians at one extreme and the left wing and ultra-conservatives at the other, which form the most polarised arguments. Libertarians tend to support private action and capitalism in principle, but remain conscious of costs and benefits (Crystall and Knight 2005, p.40). Some libertarians recognise advantages in

state-private security symbioses (Olsson 2003) and all favour greater privatisation of security. Their opponents argue that militarised security should remain the domain of nation states because PMCs, despite their reported extensive use and influence, are problematic due to an absence of relevant, international regulations (Leander 2005, 2005a).

Figure 5.1. The Orientation of Arguments Concerning PMCs.

Private Security Providers should be Encouraged as they Raise Efficiency and other Benefits Associated with ‘user pays’ market systems.	PMCs are unaccountable mercenaries that exploit political and strategic instability, and subsequent misery for material gain.
↓	↓
Libertarian Proponents.	Ultra-conservative and left wing opponents.

The degree of state-private cooperation determines the extent of PMCs’ legal involvement (see Figure 5.2).

Figure 5.2. State/Private Cooperation.

Intra (unilateral) and inter-state (bilateral and multilateral) agreements concerning intelligence sharing, pursuit, preventative naval patrols, and naval action.	State-private cooperation. State accepting degree of legitimacy of private sector. State licensing of PMCs to operate in territorial waters. Intelligence sharing.	Private sector operating independently of flag and port states. This could possibly occur on ships flagged by some FOCs.
↓	↓	↓
State Unilateral Provision	State-private Orientation.	Private sector Unilateral Provision

State piracy solutions result from historic, socially constructed state-judicial-societal-corporate- relations. Under UNCLOS, ratifying states not only have an agreed definition of piracy, as cited in Chapter Two but also a legally constructed *duty* to fight against piracy (Kvashny 2003, p.38). Article 100 (Duty to co-operate in the repression of piracy)

asserts that ‘All States shall co-operate the fullest possible extent in the repression of piracy on the high seas or in any other place outside the jurisdiction of any state’.

The social constructions of state-centric locations of authority, ocean-space and strategic considerations facilitated the ‘transnational expansion of capitalism’ (Cutler 1999, pp.60, 67). Contemporary piracy represents a threat to capitalist assets rather than states *per se* but state-centric authority reflects state desire to maintain the political *status quo* and the capitalist regime of accumulation (Harvey 1989, pp.139, 140). Ownership and control of merchant shipping is centred in the state-private realm. Consequently, ocean-space has been controlled commercially (via larger ship capacities and efficient propulsion, reducing operating costs and freight rates per ton-mile) and militarily (Steinberg 2001, p.158; Stopford 1997, p.10) to consolidate ‘geopolitical and economic’ stability. Therefore, the ‘command [of] space...’and representation allows for ‘control [of] the politics of [that] space’ and the social construction of geopolitical threats (Harvey 1989, pp.140, 233-234). Post 1945 US naval power, for example, became oriented toward–

- readiness to protect merchant shipping, across oceanic voids if necessary
- direct or indirect control of SLOCs
- capability to disrupt enemy shipping, rather than the control of all sea-space
- transportation of resources during strategic power projections
- state and private research and development of naval technology to maintain superiority (Steinberg 2001, pp.156, 157).

The vulnerability of shipping to events in strategic ocean-space, highlighted by the post 1945 period,² had a greater impact (freight rates, shipping capacity and hence, the global economy) than contemporary piracy.³ Piracy has caused increases in shipping costs, freight rates, or insurance premiums (Dale 2005).

Core states have enforced and ensured the continuation of Nadelmann’s (1990) stage five of global piracy prohibition. Various social constructions of maritime state behaviour have emerged as a result. Even in this postmodern period, states, particularly core states with entrenched parliamentary and judicial structures, remain the primary rule creators

and rule enforcers. State authority can empower but constrain people in both domestic and international contexts. They, therefore, can collectively act as moral entrepreneurs and launch moral crusades when politically and strategically necessary. Pirate groups' repudiation of conventionalised moral codes and maritime institutions, often through a 'self-justifying rationale', can be used by states' to legitimate reactions against pirates and those on the periphery of such groups, who are learning the techniques of maritime criminality. Socialisation outside of these groups may be difficult and their members may reject the interests of ambient conventional society in their particular coastal state, as part of their deviant career. Previous ineffective measures to stop them and a known sense among pirates that successful maritime predation is conceivable but outside pressures may force them to stop at sometime, may initiate states to embark on a moral crusade (Becker 1973, p.24, 38, 39, 91, 98). Table 5.1, relates Goode & Ben Yehuda's (1994), Thompson's (1998) and Best's (2001) stage theories. Since pirates have not threatened state or regional power (Kvashny 2003, p.106), it is much more difficult for a moral panic over pirates to arise (see Table 5.1).

Table 5.1. Agencies of Social Control May React in Stages Toward Moral Panic.

Goode & Ben Yehuda's (1994) Moral Panic Stages:	Thompson's (1998) Moral Panic Stages:	Best's (2001) Claims-Diffusion Stages:
CONCERN: A heightened concern about the behaviour of a group (pirates) and possible consequences for society (capital) has been reflected by some Asian states and US Defence policies and maritime-capable PMCs who advertise their services.	Stage 1: Behaviour defined as Threat. Various ASEAN states, the US and PMCS have defined piracy as a threat. Stage 2: Portrayed simplistically by media. Portrayed more comprehensively in shipping media than in mainstream media. (see Chapter 4).	Stage 1: Claims-Makers that state some condition exists, initiate diffusion. Stage 2: Information that something (piracy) is problematic is diffused via inter-governmental discussion.
HOSTILITY: Increased hostility by state and private moral entrepreneurs toward identifiable groups that are reportedly responsible for the threat of piracy.	Stage 3: Resultant widespread concern among shipping interests and defence specialists who initiate a form of specialist discourse.	Stage 3: People (various audiences) adopt claims. Accept that problem has specific characteristics.
CONSENSUS: Widespread agreement in designated section of society that the threat caused by labelled group is real and serious.	Stage 4: Reaction by Agencies of Social Control. ASEAN and US navies initiate maritime operations against pirates.	Stage 4: Networks via which diffusion occurs, agree that action should be taken.
DISPROPORTIONALITY: Response can be more intense compared to other more dangerous issues. Four Criteria: Figures Exaggerated. Figures Fabricated. Increased observation but no worse than others. Observation more intense than at other times.	Stage 5: Panic Diminishes as Policy Changes Implemented. Certain areas are coming under scrutiny – Southeast Asia and the Horn of Africa.	
VOLATILITY: May appear suddenly, or intermittently. May disappear. Spates of piracy can be short lived but can re-emerge.		

State responses to piracy have included implementing a form of maritime social control that has been unilateral, bilateral or multilateral. A number of observations made by Becker (1973) clarify maritime rule enforcement arrangements:

- 1) Enforcement of all naval rules is an enterprising activity. Some formalised body for each coastal state must take the initiative against those labelled pirates.

- 2) Enforcement of maritime rules by policing bodies occurs after some body (via the IMB, IMO and overt and covert intelligence networks) brings the rule violation to others' attention. It is difficult to disregard concerns once extensive transnational diffusions of claims have occurred.
- 3) Actors may promote maritime enforcement strategies, when they identify some advantage in doing so.
- 4) The kinds of naval and maritime enforcement vary depending on the complexity of the situation in different territorial waters.

Therefore, an interaction between elite interests, enterprise, public reaction and the situation's complexity produces both rule enforcement and any failures to enforce rules (Becker 1973, p.122). The groups who have been cleared to apply state sanctioned authority, and violence if necessary, remain in the best position to enforce rules (Becker 1973, p.16-18). Reports show that Asian states have initiated most unilateral state retaliation against piracy. Some European states and the US have also reacted against it. The unilateral responses vary in proportion to states' strategic capabilities and political will and are also influenced by security discourse.

As a result of US defence policy, the United States Coast Guard (USCG), patrols the US's EEZ and beyond (Stillman & Truver 2001, p.81). The USCG has a 'multimission portfolio' and has expressed concerns over piracy (Collins 2004, p.10; Lloyd's List 2000e, p.1). It can cooperate with 31 other nations, covertly if necessary, to deal with port security, search and rescue, environmental protection, illegal drug and migrant interception, yacht theft and piracy (Forando 1997, p.44; Giddens 2002; Lloyds List 2000e, p.1). The US navy's (USN) blue-water responsibility stretches to strategic projection and SLOC security. Its concerns now include assessing non-state actors, such as pirates that as reports indicate, pose threats by loitering in sensitive territorial waters (Bradford 2004, p.3). Reportedly, the USN deploys ships on regular patrols that sometimes have anti-piracy objectives. The US established an agreement with the

transitional government of Somalia, which allows US warships to patrol close to the Somali coast (Fairplay 2006, p.6; Fairplay 2006a, p.10). The US has justified this by citing examples of pirate action. In June 2005, Somali pirates were reported to have raided the UN food ship mv *Semlow*. They held the crew to ransom and used the ship to raid the mv *Ibnu Batuta* off Mogadishu (Lloyd's List 2005f, p.7; Tradewinds 2005a, p.46). Pirates reportedly hijacked the UN-chartered mv *Rozen*, which had delivered food aid to Puntland, Somalia in February of 2007 (British Broadcasting Corporation 2007).

In 2006, the US destroyers, USS *Winston Churchill* and USS *James E. Williams* were said to have conducted anti-piracy operations off Somalia, as part of extended maritime operations of the US 5th Fleet, operating in the Arabian Gulf, Red Sea and the Indian Ocean. The USS *Winston S. Churchill* allegedly seized a pirate vessel and captured 26 pirates who all subsequently faced charges in Kenya (Lloyd's List 2006, p.5; Lloyd's List 2006a, p.1). The USS *Cape St. George* and the USS *Gonzalez* also apparently exchanged gunfire with pirates off Somalia (Howell 2006, p.18; The New York Times 2006, p.1; Rhem 2006).

Coastal state agencies of social control, particularly those with naval power, have labelled pirate groups as deviant and criminal. However, rules created and perpetuated by labellers are, according to Becker (1973, p.18), not necessarily universal. US assertions concerning military interventionism, even in the post 9/11 environment are sometimes seen as cynical rhetoric by those who argue that pro-liberalisation policies serve US security interests and US nationalism (Harvey 2003, p.193; Peceny 1999). Reactions against US militarisation of the seas, sometimes seen as US naval expansionism (Sheldon 1991), have also received criticism in relation to the rhetoric of piracy. Some accusations appear legally baseless but they emerge nevertheless. For example, former Iraqi diplomatic representatives to the UN attempted to construct doubt about the legitimacy of US and allied forces' actions while inspecting ships in the Gulf, by accusing them of piracy (Al-Douri 2001a, 2001b, 2002a, 2002b; Al-Shahaf 1999). Syria also criticised the USN for 'an act of piracy', with respect to reported allegations concerning the USN's Sixth Fleet's actions against two Syrian vessels (Lloyd's List 2002, p.6). The People's

Republic of Korea also accused the US of ‘piracy’ after the USN intercepted the mv *Son San* in 2002 (Lloyd’s List 2002h, p.1). These accusations, however, did not appear to gain momentum in any discourse expanding the definition of piracy nor did they produce overt debate among Western powers.

As part of the social construction of its own operational legitimacy, the US employs advanced technology to identify pirates. Crystall and Knight (2006) for example, note that the US will soon be integrating satellite, intelligence, cargo, vessel, weather and business data with data algorithms, in multifaceted oceanic surveillance to interpret shipping movements. The algorithms, based on shipping patterns, could be used to isolate and identify (they have already collected volumes of maritime data) unpredicted shipping movements and possibly piracy.⁴

Multilateral reactions to piracy are complexly structured, and in these types of situations, there exists the possibility of varying interpretations of the situation and the nature of appropriate reaction (Becker 1973, p.122). The possibility of US anti-piracy intervention in Southeast Asia is controversial. Singapore has encouraged multilateral, anti-piracy solutions including US anti-piracy activity in the Straits of Malacca. It has undertaken joint naval exercises with the USN, as a result of recognising advantages in what Becker (1973, p.126) would have described as ‘balance of power and [strategic] interest’ (Chanda 2004).

Rule enforcers may not necessarily agree on the nature of enforcement because of the variation in cultural processes of rule enforcement between different states and social structures (Becker 1973, p.128, 129). The Malaysian government, while willing to cooperate with neighbouring states, initially rejected US involvement in anti piracy activity due to domestic political considerations.⁵ Malaysia, however, did agree to cooperate in anti-terrorist, intelligence sharing but a US presence raised questions about the USN performing anti-terrorist functions as well as anti-piracy policing. It did not identify a need for a US extra-regional presence (Permal 2004).

While diplomatic reactions toward the US intensifying activity in Southeast Asia have been mixed, so has the rhetoric from the US. US authorities have emphasised a heightened risk to regional shipping, using the reported *Al Qaeda* attack on the French tanker the mv *Limburg* in Yemen in 2002 as a prominent example and acknowledging the Malacca Straits is second only to the Strait of Hormuz as an oil shipping lane (Bradsher 2003, p.7). The US Pacific Command Commander in Chief, however, reportedly stated that US intelligence has no evidence of potential terrorists attacks against regional shipping or ports (Chanda 2004a).

Rule enforcers often manipulate values to create particular rules and labels in problematic circumstances. Ideally, rules should be unambiguous and result from careful assessment of labelling, threats and drafting of legislation (Becker 1973, p.131). Although some attacks, for example on chemical tankers have raised fears about the capability of terrorists (Lloyd's List 2003b, p.7), Valencia and Young (2003, p.269) note that the terms piracy and terrorism are often conflated 'in the mass media and government policy statements', particularly when coverage or discussions focus upon urgency. The IMB raised questions about connections between pirates and terrorists (Lloyd's List 2002b, p.1). Koknar (2004) later emphasised this. The same suggestion (presented as warning) about pirates becoming terrorists was reportedly made by Mr. Kim Beazley, the Australian Federal opposition leader (Wiese Bockmann 2005, p.6). Some sources show scepticism, however, about the connections the US makes between the potential threat of terrorism to piracy (Hand 2004, p.3). Contradicting this, actual terrorist attacks such as on the mv *Achille Lauro*, the USS *Cole* in Aden and the French tanker mt *Limburg* off Yemen have occurred (King 2005, p.235). Jenkins (IMB 2004) argues, however, that threat assessment should not be confused with assessments about the vulnerability of shipping and ports.

Many rule creations, however, are unambiguous (Becker 1973, p.132). The Japanese government, for example, developed a clear, securitised response to piracy. The Japanese navy is the most militarily capable in the Pacific region, second to the USN. Whether this naval capability represents military resurgence, US foreign policy or Japanese

government strategic objectives is debatable. Nevertheless, pirates have attacked Japanese ships (Wooley 2000). Several high profile attacks included the 1992 collision between the hijacked mv *Nagasaki Spirit* and the mv *Ocean Blessing*, which resulted in an explosion that burned 100,000 tons of Japanese petroleum. The hijackings of the mv *Tenryu* (1998), the Japanese operated mv *Alondra Rainbow*⁶ (1999) and the mv *Global Mars* (2000) were three of thirteen attacks that had affected Japanese commercial interests by the end of 2000, at an estimated cost of Y820m (Fairplay 2000c, pp.18-19; Lloyd's List 2000d, p.20; Lloyd's List 2000f, p.1; Lloyds List 2000m, p.5). In March 2004, a Japanese company reportedly paid US\$ 470,000 for the safe return of three crewmembers that were kidnapped while aboard the mv *Itaden*. According to Kvashny (2003, p.37), these led Masahara Ikuta, the president of the Japanese Shipowners Association to state:

‘In spite of efforts among parties concerned, pirates’ attacks, far from decreasing continue to increase. A major reason, it may be said, is that in almost all piratical crimes, including hijackings, perpetrators remain at large....a system has yet to be organised...To settle this issue, a cooperative system transcending national borders is needed between the security authorities of the countries involved.’
(Masahara Ikuta 2000).

These attacks were also central to the Japanese media ‘Japanizing’ piracy’s adverse impact. Japanese reports humanised victims, specifically Japanese victims, and attempted to intensify Japanese perceptions about the urgency of this social problem (Bradford 2004, p.484). Japanese insurers also accepted this threat to Japanese shipping by reportedly, raising premiums for hull war risk insurance cover for Japanese-owned vessels traversing the Malacca Straits (Lloyd's List 2006d, p.1).

According to Bradford (2004), the Japanese construction of security integrates physical security with economic welfare to produce a single concept. Japan recognises threats to shipping as a central element in comprehensive security considerations. The Japanese constitution, however, restricts Japanese Self-Defence Force (SDF) unilateral militarism. Even the Japanese Coast Guard (JCG) is restricted by antimilitarist regulation. Notions of

the Japanese contributing to SLOC security began in the 1960s (Wooley 2000). The Japanese nevertheless, reportedly developed plans to deploy the JCG in 2001 (Urquhart 2001, p.1) since they identified scope for Japanese naval forces to work alongside other states' navies, including the Indian Navy (Commercial Crime International 2000a, pp.1-2). They also considered offering technical aid to other states and using long- range reconnaissance aircraft to control or anticipate piracy (Fairplay 2000f, p.12; Lloyd's List Maritime Asia 2000a, p.60).

The Japanese response to piracy has also been politicised, reflecting the institutionalised power of agents of social control (Becker 1973, p.127). Rule enforcement may create conflict in groups or with outside interests (1973, p.132). Conflicts between JCG and North Korean ships have led to political and diplomatic confrontation. Following a gun battle between the JCG and a North Korean ship, the Korean Central News Agency, the news service of the Democratic People's Republic of Korea used inflammatory language to assert that it was

‘...nothing but the brutal piracy and unpardonable terrorism of a modern brand that could be committed only by samurais of Japan in defiance of international laws...The Japanese reactionaries are spreading sheer rumour that the unidentified ship might be a “spy ship from North Korea” describing their piracy as a measure of self-defense...This provides that their loudmouthed case of the unidentified ship is another trite charge and grave provocation...’
(Brooke 2001, p.A.9).

Multilateral rule creation may be politically and legally complex and technical but can be designed to regularise the interaction between transnational rule enforcing entities (Becker 1973, p.133). Kvashny (2003, p.5) asserted that there have been concerns about the reported ineffectiveness of ASEAN states against piracy. However, there is evidence of intra-regional cooperation. Japan, for example, demonstrating a ‘transnational moral authority’ (Hall 1997), aims to enlist all 10 ASEAN states in the Regional Cooperation Agreement on Combatting Piracy and Armed Robbery at Sea (Agence France Presse 2005), promoting the recognition that the sea is not an ‘independent locus of authority’

(Alexander 1968, p.179). The Koizumi Government of Japan promoted bilateral and multilateral anti-piracy initiatives among ASEAN nations (Jinks 2002a, p.1; Lloyd's List 2000g, p.22; Fairplay 2000d, p.7). These have had limited success, in that Malaysia, Singapore, Indonesia, Laos and Cambodia have signed agreements to cooperate with Japan (Moritaka 2005, p.826).

Rules may be enforced in a way that suits one interest yet other interests may disagree with plans of enforcement. In addition, enforcement may not automatically result from known violations. Enforcement can be selective and depend on the political and economic circumstances within different states, at different times (Becker 1973, pp.132, 133). Piracy, for example, remains a non-politicised issue in Indonesia. Unlike Japan, the Indonesian state does not act as a moral entrepreneur in this respect. Piracy is largely excluded from policy debates, despite most reported piracy occurring in its waters. Jakarta apparently appears to treat maritime affairs as a low priority, although sea territory features highly in nationalist ideology (Bradford 2004, p.493).

It is reported that pirates of the Free Aceh Movement (GAM) in Northern Sumatra, target shipping (Antara 2004, p.1). The Indonesian navy (TNI AU) has reportedly acted against pirates (World Sources Online 2004) but the frequency of pirate attacks off Aceh dropped immediately after the tsunami in 2005, causing speculation that the pirates could have been killed (Burton 2005, p.6). Personnel of the TNI AU reportedly shot dead three pirates, allegedly from the Free Aceh Movement, when they stormed the hijacked tanker mv *Pematang* in June 2004 (Lloyd's List 2004b, p.14). In addition, Indonesian coastal pirates elsewhere in the archipelago, easily attack loaded freighters sitting low in the water and traversing the Malacca Straits at relatively low speeds. It is thought that they then blend back into local communities, making a labelling process difficult. This indicates that a pirate gang's main concern is not necessarily piracy prohibition by the Indonesian state, but how effectively enforcement is undertaken (Kvashny 2003, pp.54, 83).

The Indonesian Government has been criticised for inaction or inadequate enforcement (Lloyd's List 2003c, p.20), with some pirates being released 'on the pretext of insufficient evidence' (Tempo 2003). Indonesia has also been under international pressure to prosecute alleged pirates (Commercial Crime International 2001e, p.10). This is consistent with Kvashny's (2003, p.9) assertion that some states may not press charges against repatriated pirates (which Indonesia has reportedly done). In response to reports of piracy in Indonesian waters, Arthur Bowring, Director of the Hong Kong Shipowners Association, suggested that states impose sanctions on Indonesia for failing to stop piracy (Jinks 2001a, p.1).

Kvashny (2003, p.13) highlighted that IMB data indicated that few or no Indonesian flagged ships had been attacked around the Indonesian archipelago, and that this raised the suspicion that Indonesian pirates were avoiding attacking Indonesian flagged vessels. Indonesia, did however; reportedly seek extradition of seven alleged pirates from the Philippines in 2000, accused of having pirated the mv *Inabukwa* owned by the Indonesian state-owned company Pelayaran Nasional Indonesia, which was found and held in the Philippines (Commercial Crime International 2001c, p.6; Jinks 2001b, p.1; Lloyd's List 2001c, p.4). The Philippine Coast Guard were reported to have discovered the ship in the Port of Salomague, renamed the mv *Chugsin*, with a crew that had insufficient documentation. Despite events like these, Indonesia has allegedly been the least responsive coastal state to Japanese suggestions of cooperation. It has not allowed Japanese vessels to patrol archipelagic waters and has been reluctant to engage in joint exercises, which it allegedly interprets as an expensive loss of sovereignty and prestige (Bradford 2004, p.493). It has also been reluctant to accept US attempts to monitor maritime security across the Indonesian archipelago (Fairplay 2006b, p.9). Indonesia had asserted that it would commit more patrol boats to anti-piracy operations (Lloyd's List 2000L, p.18). Kvashny (2003, p.81) noted that limited anti-piracy resources could restrict some maritime agents of social control. A report in the Jakarta Post (May 2000) stated that the Indonesian Navy conceded that it had insufficient resources to fight piracy throughout the archipelago. By 2002, however, it had reportedly established another anti-piracy centre close to Singapore (Commercial Crime International 2002, p.5).

Rule creators sometimes have to cooperate multilaterally and care is taken to evaluate their rule enforcement on a cost/benefit basis (Becker 1973). In Malaysia, piracy is politicised with discourse and resources devoted to assessing and implementing anti-piracy initiatives. The Malaysian Maritime Enforcement Agency (MMEA) overseas policing policies and the Royal Malaysia Maritime Police (RMMA) along with Special Action Forces and the 69 Commando Unit accompany the police (Ho 2006, p.566). The RMMA have undertaken unilateral action against pirates in the Malacca Straits (despite limited naval resources) and are aware of a reported militarised capability of some pirates (Fairplay 2001, p.12). Malay naval forces have reportedly repelled Filipinos raiding Malaysian settlements on the Sabah coast since 2001. Malaysia has been positive about bilateral talks, general cooperation and joint naval exercises with Japan. The Malaysian government, consistent with its reactions to possible US intervention, had opposed joint patrols with Japan and multilateral agreements, as, like Indonesia, it was sensitive to accords that may erode unilateral, localised control (Bradford 2004, p.496). It also avoided offering armed escort services to shipping to avoid any proliferation of arms in coastal waters (Bernama 2006, p.1).

Singapore politicised and securitised the piracy debate. The reports of piracy activity have resulted in increased security in and around its port, enforced by the Singaporean Police Coast Guard (SPCG) (Kvashny 2003, p.15). Singapore considered piracy an immediate threat to its role and prestige as owner and operator of a major transshipment port. It is aware that pirates can attack several ships within short periods - for example the mv *Cape York*, mv *Sinar Batam* and the mv *Mont Blanc* were reportedly attacked in a two-day period in 2002 (Lloyd's List 2002g, p.5). The Singaporean government and the Republic of Singapore Navy (RSN) have, however, long focused on 'transborder community security' (Dhume 2001, p.86) and consistent with its cooperation with the US, welcomes 'extra-regional' input. It agreed to bilateral cooperation with Japan and encouraged it to take on a regional leadership role (Fairplay 2001b, p.10). Singapore regards Japanese involvement as important, to protect maritime infrastructure from pirates (Bradford 2004, p.492). Singapore supported Japanese-Malaysian-Indonesian anti-piracy cooperation, as security in adjacent Malaysian and Indonesian waters, directly

affects Singapore. Singapore has acted unilaterally against piracy with success due to its military capability, which is stronger than the other two littoral states. This is exemplified by their rather postmodern deployment of advanced, unmanned remote-controlled vessels, which can be operated from warships against pirate boats (Agence France Presse 2005a; Lloyd's List 2005L, p.12). Consistent with Nadelmann's (1990) stage five of piracy prohibition, IMB reports indicate that few attacks now occur in Singaporean waters (Bradford 2004, p.493). However, pirates loitering just outside of Singaporean waters have apparently attacked VLCCs (Energy Compass 2005, p.1).

Table 5.2. Three States' Cost Analyses of Japanese Multilateral Anti-Piracy Cooperation-

State	[Constructs]	Costs	Response
Singapore	Regional Security (Securitised). Maritime Security (Securitised).	Resource Expenditure (low value). Erosion of Sovereignty (high value).	Generally Cooperative. Especially favourable to multilateral proposals.
Indonesia	Maritime Security (Non-politicised – maritime security not on the public political agenda).	Resource Expenditure (high value). Erosion of sovereignty (high value). Decline of state prestige (high value).	Little cooperation. Strong opposition to multilateral arrangements and joint patrols. Most receptive to aid with few associated obligations.
Malaysia	Maritime security (increasing politicisation toward securitisation – political decisions are becoming more oriented toward security solutions).	Resource Expenditure (medium value). Erosion of sovereignty (high value). Decline of state prestige (high value).	Increasing cooperation. Opposed to Sino joint patrols. Increasingly favouring multilateral arrangements and efforts that increase capabilities.

Source: Bradford 2004.

Singapore, Malaysia and Indonesia, however, have not restricted discussions about multilateral cooperation to those with Japan. As well as multilateral discussions at ASEAN regional forums (Go 2003) there have been bilateral and trilateral discussions and cooperation. The three states reached agreement about patrolling littoral waters, particularly the Malacca Straits (Bandoro 2004, p.6, Go 2003a) and intensified patrols (Jinks 2001c, p.1). They initially considered, then extended this cooperation to conduct aerial surveillance of the Malacca Straits in response to Lloyd's Market Association's Joint War Committee threatening to raise shipowners' insurance premiums (Fairplay 2005a, p.8; Raman 2005, p.10; Rhidian 2004). Additionally, Bangladesh, Brunei,

Cambodia, China, India, Indonesia, Japan, Laos, Malaysia, Myanmar, the Philippines, Sri Lanka, South Korean, Thailand and Vietnam have agreed, multilaterally, to share certain maritime intelligence (Agence France Presse 2004). Reportedly, Singapore may establish an ASEAN-backed piracy information- sharing centre designed to operate at a nation state and regional governance level (Lloyd's List 2006c, p.3).⁷

Rule creation and rule enforcement may not always be clarified because of different cultural interpretations of what should constitute institutionalised policing behaviour (Becker 1973, p.9). The extent to which piracy is politicised in China, for example, appears not to be entirely clear. However, Chinese naval abilities in technical and strategic terms have reportedly, steadily improved given China's expanding industrial military complex (Kvashny 2003, p.87; Lewis & Xue 1994). The Chinese state is reportedly ready to react against piracy (Mo 2002, p.349). For example, it prosecuted ten Indonesians and sentenced them to between ten and fifteen years imprisonment for their attack on the Thai-registered mv *Siam Xanxai* that was reportedly carrying US \$10M of gas oil (Fairplay 2003, p.11). Chinese ships have been attacked. According to Kvashny (2003, p.29), the Xiamen Shipping Company's mv *Rujia* and the Guangzhou Ocean Shipping Company's mv *Hiuyang* were attacked in 1999.

China, however, had been criticised over the handling of some piracy cases, including the case of the mv *Havkong*, which was detained by Chinese authorities, who later demanded money for its release. Elements in China have reportedly been suspected of having been involved in piracy (Kvashny 2003, pp.13, 22). China has also been rejecting plans for its involvement in anti-piracy naval exercises (Lloyd's List 2000k, p.5). Kvashny (2003, p.10) argued that the case of the mv *Petro Ranger* showed that Chinese authorities were involved in illegal activity. China also reportedly had diplomatic problems with Britain prior to 1997, when Chinese forces allegedly entered Hong Kong waters to chase pirates as a part of anti-smuggling operations.

Russia ordered its naval ships to protect Russian freighters after reports of attacks in the East China Sea by Chinese ships (Brauchli 1993, p.8). Korean fishermen have also staged

protests against Chinese piracy (Central News Agency Taipei 1998, p.1). China received criticism for repatriating those who pirated the mt *Petro Ranger* (Hand 1998), and those who hijacked the mv *Tenyu* after it had sailed into a Chinese port as the mv *Sanei-I*. According to a Chinese IMO representative, the Indonesian crew of the latter ship had joined the ship after the hijacking. The IMB, however, was certain that the second mate aboard had been the same one aboard the mv *Anna Sierra* that had been hijacked in 1995 (Hughes 1999). The Chinese Public Security Bureau had discovered the ship, then called the mv *Artic Sea*, and detained 14 pirates. They were released, however, by February 1997 (Hand 1999).

There is no definition of piracy in Chinese law. All behaviours that endanger security, or any that Chinese authorities are obliged to respond to under international treaty, can be prosecuted (Zou 2000). The arrests, trials and executions in China of 13 pirates in 1999, who allegedly murdered 23 seafarers aboard the Hong Kong registered mv *Cheung Son* demonstrate this, according to Fairplay 2000a, pp.4, 14 and Zou (2000). It limited its cooperation with other states and opposed joint patrols and multilateral responses during the Mumbai ASEAN regional forum in 2000 (Bradford 2004, p.489).

The Chinese Maritime Security Administration of the Public Security Department is responsible for conducting patrols at sea. It has reportedly hosted maritime security exercises in the South China Sea and forces from Japan, South Korea and other ASEAN states took part (Desheng 2005). Yet reportedly, piracy and associated smuggling remain rampant (Zou 2000, p.11; 2004). Up to the late 1990s, this was costing China approximately US\$ 12 billion or about 1% of GDP annually (O'Donnell 1998, p.29). Ships are allegedly sailed into southern Chinese ports and their cargos sold. There is evidence that some sectors, possibly Chinese organised criminal 'triad' gangs, may be benefiting covertly (The Economist 1999, p.40). The IMB had previously criticised China's response partly because of reports of people dressed in Chinese military uniform boarding ships and forcing crews to sail to southern Chinese ports (Zou 2000, p.10). China, however, now seemingly concerned with US naval involvement in the region, was apparently reassured that the USN will not be directly involved in policing the Malacca

Straits, through which 75% of its oil imports are transported. It has remained a proponent of Malaysian, Singaporean, Indonesian tri-lateral cooperation and has offered them military assistance (Richardson 2004).

Taiwanese forces have allegedly reacted against pirate activity in Taiwanese waters. Bandits, supposedly from Vietnam, have reportedly robbed Taiwanese fishermen and Taiwanese units have responded (IMB 2006). The Taiwanese Maritime Patrol Directorate General (MPDG), under the Taiwanese Coast Guard Administration (CGA), has employed 20 maritime units situated around the island's coast. It oversees patrols, anti-piracy operations, and also reacts against foreign fleets found fishing outside of agreements in Taiwanese waters. It has interacted with other regional forces such as the JCG (Taipei Times 2005; Chang 2006).

The Philippines has reportedly acted unilaterally and deployed the Philippines Navy (PN) and the Philippines Coast Guard (PCG) throughout its archipelago against pirates as part of a national plan against piracy (Lloyd's Ship Manager 2001, p.15; Lloyd's List 2003e, p.5). For example, the Philippine Coast Guard recently hunted for a Malaysian-owned barge off Mindanao thought hijacked by the Abu Sayyaf group (Lloyd's List 2001e, p.3). The Philippines' naval capability appears stretched by the sea area that it has to cover and by patrols of the contested Spratly Islands (Bradford 2004, p.482), severally claimed by Brunei, China, Malaysia, the Philippines, Taiwan, and Vietnam (Zou 2000, p.15). The Philippines agreed to regular defence dialogue with Japan concerning piracy (Jiji Press English News Service 2005). It has also, reportedly, formed trained paramilitary units, comprising of civilians, to protect fishing boats from pirates (Business World 2003, p.1). Nevertheless, competing territorial claims of islands, such as the Spratly Islands and the dispute between China and Japan over the Diaoyu Islands in the East China Sea (Zou 2000, p.15), as well as sea space boundaries make delineations of enforcement difficult and inhibit multi-centric naval cooperation (Fairplay 2001, pp.24-25; Lloyd's List 2001d, p.22).

The Thai government has acted unilaterally against pirates in the Gulf of Thailand and the Andaman Sea. Members of the Royal Thai Navy (RTN), for example, arrested a reportedly notorious pirate called ‘Roj 100 Corpses’ for pirating the fishing trawler mv *Thorae*, during which its crew were apparently set adrift (Singapore Shipping Times 2001, p.1). The Thai government’s Special Investigation Department and the Royal Thai Marine Police (RTMP) have established cooperation with the IMB to deal with Thai-related piracy (an example of state-private cooperation). This cooperation resulted in the discovery of the Belize-registered tanker, the mt *Han Wei* that had been hijacked off Thailand in 2002. The vessel was allegedly found anchored off a Thai port some 80 km from Bangkok after it had disappeared on a trip from Singapore to Yangon. Reports indicate that the mt *Han Wei* had been repainted a different colour, renamed the mt *Phae Tan* and sailed under the Honduran flag by pirates. Its original crew had been set adrift and were found in a small boat off Indonesia (Narkvichien 2003). The Thai government has also cooperated with Japan in joint anti-piracy exercises involving the RTN (Lloyd’s List 2001i, p.3).

The above overview centred on overt, state-centric reactions to piracy. There are also covert sides to state operations. State discourse can be covert and resultantly, agency can be exercised covertly or by proxy against pirates (Jamieson and McEvoy 2005, 504; Garland 2001, p.110). Relations between the state, consolidation and the physical protection of trade, and ‘the use of private force’ can be closely linked within the international political economy (Ortiz 2004, p.2).

Private Military Companies.

Non-state actors have contributed to the maintenance of stage five of Nadelmann’s (1990) piracy global prohibition. Private sector moral entrepreneurs may express dissatisfaction with the enforcement of existing rules and reactions and argue their moral point from an ‘absolute ethic’ (Becker 1973, pp.147, 148). For example, the moral entrepreneurs within the private maritime sector (such as the President of Petroships, the owner of the mt *Petro Ranger*) have argued for the deployment of neutrally flagged

patrols to end piracy in the Malacca Straits. He proposed that multinational crews under an IMO flag could patrol states' territorial waters, without perhaps the same political and diplomatic sensitivities that could result from states patrolling each other's seas. This appears to have been rejected by Southeast Asian states (Jinks 2001d, p.1; Lloyd's List 2002e, p.5).

There have been numerous cases where private actors have been used against pirates (Kvashny 2003, p.128). The IMO and Malaysian state officials, however, have reportedly rejected the use of privatised military guarding ships in the Malacca Straits, despite PMCs advertising their anti-piracy services (Tradewinds 2001a, p.2). The IMO's anti-piracy discourse reflects non-militarised, state-oriented approaches. It argues that the introduction of armed crews could intensify conflicts, as pirates may become prone to using guns in response to PMCs' presence. The IMB, however, was reported to have supported the PMC Sandline and its attempts to sell anti-piracy operations and the training of crew in ship security (Judah, & Reid 1998, p.19; Osler 2000a, p.7). However, recent IMB reports appear to contradict this, in stating that only littoral states should deal with piracy in the Malacca Straits (Tradewinds 2005, p.43). Many shipowners, however, are against the use of firearms despite the general advice emanating from PMCs. In one example, in the case of the hijacked mv *Panagia*, the shipowner remained against gun use even though he had reportedly paid a US\$400,000 ransom (Seatrends Web 2002, pp.1-2).

PMCs are often considered actors in international affairs when used by states (Shearer 1998, p.92) and can be interlinked with state politics. Some PMCs are partially owned by states and some establish contracts only with state approval. This is consistent with the argument that PMC significance will remain determined by the state. PMCs include Airscan, which provides aerial surveillance for US forces, Space Imaging and Digital Globe, which supplies high-definition, photographic analyses and Vinnell, which is reportedly deployed in Iraq, training Iraqi troops (Leander 2005a).

The resurgence of neoliberal ‘small’ state ideology in the postmodern, postfordist era has been marked by the outsourcing of public tasks to the private sector (Harvey 1989, pp.142, 164; Steinberg 2001, p.159).

‘The state in this postmodern constellation is in the process of exchanging traditional forms of authority for a new mode of control and organisation based on the principles of delegation and supervision’.
(Ortiz 2004, p.205).

Postmodern capital needs to defend all ‘flow-related activities’, including shipping (Steinberg 2001, p.160). Harvey asserts (1989, p.226) that in the postmodern era, money, time (central to political economic organisation] and space (heterotopic ocean-space traversed by shipping) are a substantial basis of power. Place is vitally important. Increasing volumes of freight and capital, moving around the world demonstrates ‘spatially entrenched networks’ with important nodes.

This creates opportunities for capital to create a market for militarization and sell it in the form of PMCs (Zarate 1998, p.76). Moral entrepreneurs often support a particular crusade if it is to their own material advantage (Becker 1973, p.149). Non-state actors, therefore, have had increasing input into security agendas, (including anti-piracy dialogue), as Cha (2000), Hudson (2004), Krahmann (2003) and Mandel (2001) demonstrate. PMCs have promoted themselves and have been accepted as ‘private experts...efficient and competent alternatives to heavy public administrations burdened by bureaucratic red tape’ (Leander 2005a, p.822).

PMCs have emerged from this normative shift toward globally oriented privatization of the public sphere. ‘The market-based approach toward military services is the ultimate representation of neoliberalism.’ (O’Brien 1998, p.89; Singer 2001, p.197). PMCs have promoted themselves using three values, identified by Becker (1973):

- Individuals (such as shipping owners) should exercise responsibility for their own actions and this may include seeking alternatives to state action.
- They disapprove of any behaviour that impedes the flow of capitalist trade and transactions.

- Humanitarianism provides a valid basis for action against pirates.

The accepted notion that strategic problems can be solved with a 'market based solution' of a private military (Singer 2001, p.197) has helped lessen stigma attached to these entities. With a readiness to accept the principles of neoliberalism, PMCs have a tendency to employ personnel on short term, contractual bases. They take advantage of the relative reduction in aggregate core-state military expenditure, in the post cold war period. Military personnel, particularly from Eastern Europe, are largely unemployed. Stocks of arms have become available on legal and illegal international markets (Singer 2001, p.192). See Table 5.3.

Table 5.3. Private Military Companies as Postmodern Organisations.

Modernity	Postmodernity	PMCs
Centralization of capital in regulated national markets.	Decentralisation. Increasing corporate power and internationalisation of capital.	International capital investment in PMCs, which influence state and private security agendas in the direction of decentralisation.
Growth of collective organizations and bargaining within regions and states.	Decline in collective bargaining.	Personnel of PMCs working in non-unionised, little-regulated industry.
State and large monopoly capital interests.	Independence of monopolies from state regulation. Diverse challenges to state power.	Private solutions presented as gaining credibility over public responses.
Expansion of economic empires and control of overseas production and markets.	Industrialization of periphery. De-industrialisation of the core. Specialization in services.	PMCs create market niche to protect private investment capital in the periphery.
Hegemony of technical-scientific rationality.	Cultural fragmentation and pluralism with undermining of traditional class or national identities.	Political instability in periphery basis for emergence of PMCs.
Concentration of capitalist relations within relatively few industries and regions.	Dispersal of capital across sectors and regions.	PMCs operate in dispersed transnational markets.
Strong regional concentration and specialization in extractive manufacturing sectors.	Dispersal, diversification of the territorial-spatial division of labour.	PMCs sell an array of military and non-military services.
Search for economies of scale through increasing plant [and ship size].	Geographical dispersal. Increased sub-contracting.	PMCs often subcontract different jobs. PMCs highly nebulous commercial entities.
Homogenisation of regional labour markets (spatially segmented labour markets).	Labour market diversification (in-place labour market segmentation). Multi-skilling.	PMC personnel often undertake wide variety of tasks.
Totality/Structural Reform	Specificity/adaptation.	PMCs flexibly adapted to specific tasks.
Socialisation.	Individualization.	Members of PMCs highly independent contractors.

Sources: Halal (1986), Harvey (1989), Lash and Urry (1987) and Swyngedouw (1986).

The training and security services from PMCs are now commodified. They are sold within a private, postmodern market. See Table 5.4.

Table 5.4 Commodification of Privatised Anti-Piracy Activities –

IMPETUS:	A rent-seeking function, with no contribution to shipping economy. Exploit threat of piracy.
MOTIVE:	Net profit accumulation.
(A) VALUE ADDING INPUTS:	
1) Labour Power:	Trained security guards (mostly former military). Legal and administrative functionaries (mostly civilian).
2) Training:	Law – familiarity with legitimised and illegal behaviour in various jurisdictions. State and private sector-sourced advice. Seamanship – probably, mostly unnecessary for ex-amphibious warfare personnel. Necessary for ex-Army. Merchant ship familiarisation. Navigation. Weapons and ammunition handling drills – necessary for all troops.
3) Equipment:	Boats. Safety equipment. Legal weaponry and arms management.
4) Licensing:	States that legally sanction operations within their state territorial waters. Does not overtly cover activities on high seas or in adjacent territories. Flag states may require notification.
5) Advertising:	Disseminate claims about capability throughout industrial sector through shipping literature and Internet.
(B) OUTPUT:	
Service Provision:	Protect against unauthorised entry to, and theft within, port areas. Possibly state sanctioned and state commissioned. Employed by shipping companies as ‘riding gangs’, to guard against unauthorised boarding or retaliate against violent boarding.

The moral crusader, according to Becker (1973, p, 150) is ‘more concerned with the ends rather than the means’. However, PMCs have to negotiate an array of political concerns as well as assess their own abilities. PMCs represent an extension to the emergence of transnational policing, a postmodern reaction of core states (Sheptycki 1995). PMCs, mostly organised from the core, consist of personnel familiar with contemporary warfare. They interact in informal networks of ex-military personnel from states with advanced military infrastructures. It appears many PMCs depend upon informal networks as well as formalised links with home state governments and capital (Zarate 1998, p.76).

PMCs, like all rule enforcers face the dilemma of having to justify their position, while demonstrating that their presence and use effectively eradicate the outlawed behaviour (Becker 1973, p.157). Shipping companies can contact personnel (working as internationalised business entities) who state that they possess access to and control of military hardware (Singer 2001, p.186). Advocates of PMCs argue that - 'Corporatization not only distinguishes PMCs from mercenaries and other past private military ventures, but offers certain advantages in both efficiency and effectiveness' (Singer 2001, p.191). Shipping companies helped legitimate the emerging norm of PMC use, while 'the start of the twenty-first century is witnessing the gradual breakdown of the Weberian monopoly by the state over the legitimate forms of violence' (Singer 2001, p.187; Weber 1964, p.154).

Private rule enforcers, like other commodity sellers in transnational markets, may increase in number and thus increase supply while international market conditions give the impression that there are demands for their services. Through this process, the privatised crusade can become institutionalised (Becker 1973, p.155). Reported PMC numbers have increased in the postmodern period. Between 1950 and 1989, there were apparently 15 companies involved in conflicts, but there were 80 companies known between 1990 and 2000 (Leander 2005, p.806). This sector's growth is evident by reported ratios of private contractors (PCs) to deployed troops in recent conflicts:

- 1:60 during the Gulf War I.
- 1:10 during the Bosnian Conflict.
- 1:2 in Kosovo.

(Leander 2005a, p.806)

These ratios are contested, as no central information body registers PMC deployment. The US Department of Defence, for example, cannot determine how many PMCs are employed by the US, as many companies subcontract jobs. This demonstrates the nature of the US as a bourgeoisie state (El Pais 2004, p.4; Harvey 2003; Singer 2005, p.128). Sector growth estimates range from US\$55.6 billion in 1990 to US\$100 billion in 2000, to possibly US\$210 billion in 2010 (2004, p.4). In 2003, the UK Foreign Office

apparently spent £20.2 million on private military companies (Hirst 2004, p.6), but how many are directly or indirectly involved in anti-piracy remains unclear because of covert dealings (Informant Six 2004).

The social construction of the term ‘PMC’ reveals disagreements about what should, and should not, be stigmatised. Lt. Col. Spicer (Spicer)⁸, a former British Army officer and founder of Sandline International (Sandline) (which ceased trading in 2004), appears to show characteristics of a moral entrepreneur, by being aware of the need to manage public labelling and stigma. He also appears conscious of several points that Becker (1973, pp.156, 157) states are necessary for moral crusaders to consider:

- They must justify their own professional existence using logical (increasingly economic rationalist) arguments (1973, p.157). Although studies of deviant groups are difficult and details of internal group dynamics may remain unknown because they are ‘outsiders’ and treat the rest of society as ‘outsiders’ (1973, p.168). Moral crusaders must express ‘a rather pessimistic view of human nature’ (1973, p.157). Crusaders must emphasise then, that whatever the make up of the deviant groups, their illicit activities can be suppressed.
- Crusaders must win the respect of national and international, state and private actors that they will have to deal with. A good deal of interaction with actors may be taken up with this (1973, p.156, 158).

Spicer coined the label PMC to counteract pejorative connotations of the label ‘mercenaries’, from his commercial enterprise. He argued that PMC use was legitimate to deter pirates. Spicer wanted Sandline to work only with democratically elected governments (Lashmar 2000, p.13; Singer 2001, p.191) and reputable shipping companies. However, Pretoria-based Executive Outcomes, connected to Sandline, consisting of ex-South African and British forces, drew media attention for its involvement in Angola and Sierra Leone and with the government of Papua New Guinea. The US, reluctant to label pro-US private firms in Iraq ‘mercenaries’, did label Executive Outcomes ‘mercenary’ after they were employed by the Marxist Angolan government to force US-sponsored UNITA to negotiate a ceasefire in the 1990s (Boyle 2004, p.13).

Transnational private rule enforcers may be able to exercise discretion in relation to contractual rule enforcement and in postmodern business interaction. Their resources, however, are limited by the investment choices of others. Therefore, they take action based on established priorities. These are often based on immediate cost-benefit analyses and can sometimes violate existing rules. They may need to manage stigma as part of this (Becker 1973, p.159). Problems with PMC legitimation and using them as agents of social control indicate an aspect of Nadelmann's (1990) stage five of global piracy prohibition. PMCs, for example, have been involved in scandal. The media highlighted bribes allegedly paid by Sandline to Papua New Guinea officials, securing a US\$36 million contract to suppress political uprisings on Bougainville. Reportedly, Sandline had received a down payment in a Hong Kong account but aimed to gain the balance of US\$18 million, plus US\$7 million through an international court of arbitration after the plan was discovered (Carr-Brown 2000). Spicer was allegedly involved in scandal concerning arms shipments to Sierra Leone,⁹ which affected the neighbouring FOC state of Liberia (O'Loughlin 2000, p.4). During a UK House of Commons foreign affairs select committee hearing, Sandline was described as 'shady' and it was argued that the company needed to be dealt with using 'a very long spoon' (Gilligan 1998, n.p).

According to Becker (1973, p.161) rule enforcers may sometimes develop their own private interpretation of the importance of particular rules and violations. They may enforce rules quite selectively. This may create some conflict with state rule creators and enforcers (in this case, coastal and possibly flag states). One can argue that the potential for a private/state conflict within anti-piracy enforcement demonstrates a potential weakness in Nadelmann's (1990) stage five. Regulation of PMCs has become an issue. It has been argued that PMCs and their use by shipping companies need to be governed better – through clarification of contracts, responsibility, which force is privatised and which must remain the domain of the flag state. But PMCs allegedly seek to influence governance as much as possible (Leander 2005a, 811). Some proponents, including those who sell anti-piracy initiatives, want increased regulation. They appear aware of the necessity to not just justify PMC action *per se* but also justify their position in the minds of socioeconomic elites.

Particular private rule enforcers, encouraged by the market opportunities a particular moral crusade may bring, may seek to use political influence to establish the ‘right’ legal conditions in which they can sell their rule enforcement (Becker 1973, p.160). When individual agency is scrutinised, we can see that a number of people involved in PMC activity seem aware of the need to manage stigma in order to legitimate their activities. Spicer (now in Aegis), Harry Legge-Bourke (brother of UK Royal nanny Tiggy in Olive Security) and Sir Malcolm Rifkind (former UK Conservative Thatcherite MP and Foreign Secretary, now Chairperson of Armor Group) have advocated increasing state regulation of PMCs, to eliminate ‘rogue’ elements. One argument was that the free market (of which Rifkind had been a proponent) had encouraged the formation of PMCs but had allowed ‘less scrupulous’ companies to emerge. An Olive Security representative noted that ‘There are a raft of reputable companies. But there is a cowboy end of the market. They are disregarding humanitarian laws and going around killing people’ (Hirst 2004, pp.6, 7). These British companies aimed to establish an overarching trade organisation, the British Association of Private Security Companies (BAPSC) (Almond 2005, p.11) as part of the social construction of their legitimacy. Despite being proponents of regulation in this context, all seem to identify with the neoconservative agenda and have a vested interest in legitimating (their own) PMCs in political discourse.

This subject of regulation had been raised at the UN General Assembly, showing, as Becker (1973) notes, that evaluating and legitimating the rule enforcer are central to the legitimisation of a moral crusade. PMCs had played determining roles in various conflicts. Capdevilla (2000) notes, however, that there has been concern over less reputable groups being responsible for human rights violations. Nevertheless, by March of 2000, only 19 of the necessary 22 states ratified the UN General Assembly-approved International Convention on the Recruitment, Use, Financing and Training of Mercenaries.

It is not clear to what extent flag and coastal states can control PMCs. Although their governments can influence the nature of PMCs through law, PMCs can influence the

nature of political and security discourse within governments. Therefore, they may be in the position to effectively promote militarised responses by exerting influence in debates concerning state applications of force (Leander 2005a, p.808). Potential problems for flag and coastal states include –

- PMCs are often given flexibility to make decisions affecting a securitised situation. States may have to pay much more than originally anticipated because of the uncertainty generated in any militarised circumstances.
- States or entities employing PMCs may not have them to depend on to maintain or stabilise a situation, if the PMC decides to break commercial contracts between them.
- There could be disagreement between PMCs, port authorities and shipping companies over the interpretation of contractual arrangements. This could compound the problem of PMCs' legal responsibilities remaining unclear. Shipping companies could potentially find themselves responsible for actions of PMCs.
- Hiring PMCs could create some degree of dependence on them for services, especially if the particular PMC has a certain monopoly on services (Leander 2005a, p.809).

Jamieson and McEnvoy (2005, pp.508, 510) note that troops of Spicer's background carry a self-image of elite professionalism and carry these self-images into institutions. Proponents have argued that it is important for PMCs to behave responsibly *prima facie*, as they sell services in politicised markets, implying a 'pro-state bias' (Leander 2005, p.609). In their view, there are many examples of responsible use, the US military has relied on PMCs during every operation of the post-Cold War era,¹⁰ they have completed contractual obligations and exited the security theatre responsibly. They also argue that critics of PMCs are too adversely influenced by belief in state control to acknowledge evidence of PMCs' successes in operations. Critics, while aware that the public image of the company is important, claim that their use by the state 'othering' responsibility for its actions (2005, p.510) leaves them potentially unregulated.

PMCs have positioned themselves as a source of authority to be consulted on implementation and interpretation of security policy such as the IMO's International Ship and Port Facility Security Code (ISPS Code). Companies such as Background Asia Risk Solutions offer direct tactical combat against pirates. The IMB, which distributes piracy data as discussed, is another private entity, which also offers intelligence gathering, analysis, and logistical and technical support. Companies such as US based Special Ops Associated Inc offer anti-piracy training to ship and yacht crews (Avant 2002, n.p; Singer 2001, p.186),

A source from Ghurkha International Manpower Services reportedly argued that seafarers were too busy to be defending ships (Evans 2000; Lloyd's List 2000a, p.4; Lloyd's List 2000c, p.5). Swiss-based Marine Risk Management (MRM) was reportedly involved in anti-piracy operations to repel pirates off the coast of East Africa (Ballantine 1998, p.1; Brewer 1998, p.1; Judah & Reid 1998, p.19; Xinhua News Agency 1998). Its Rapid Response Service was launched in 1998. MRM has an office in Kuala Lumpur. It does not have shipowners as clients but insurers, underwriters and mortgagees' (Hand 1999). Reportedly, a Dutch enterprise called Satellites Protection Services discussed an operational facility in the Philippines with a number of shipping sources (Redfern 1999), including state officials, port officials and shipping companies. Anglo Marine Overseas Services reportedly has ex-Ghurkha soldiers from the British Army on its payroll ready to engage pirates (O'Donnell 2000, p.27; Osler 2000, p.3). Some Gurkhas have reportedly been used on cruise ships for anti-piracy duties (Lloyds List 2000j, p.24). British security company HART has been contracted by the President of Puntland (Northern Somalia) to 'train and manage a maritime force' against pirates (African Business 2000, p.18; Scudder 2000, p.17) off the Horn of Africa, who are reportedly using dangerous armament (Lloyd's List 2002f, p.2). As indicated, there have been now a number of reported incidents involving armed pirates off Somalia including the raid on the Cypriot-registered bulk carrier *Tim Buck* (Lloyd's List 2005, p.3). The US PMC Topcat Marine Security also reportedly established agreement with the Somali government to provide marine security off Somalia (Lloyd's List 2005j, pp.1-2).

The postmodern characteristics of private rule enforcers have emerged. One argues that the interactionist perspective, raised by Becker (1973), is suited to identifying and explaining these points in criminological terms. Some PMCs use the ‘time-space’, compressive aspect of the Internet to advertise, and emphasise the severity and unpredictability of threats that they can allegedly respond to. US based – Special Ops Associated Inc. advertises its services via <http://www.specialopsassociates.com/main.html> and its maritime services via <http://www.maritimesecurity.com>. These include stolen vessel recovery; security of port and waterfront facilities and evaluations of vessel security. It provides plain clothed and uniformed security personnel for functions and armed escorts (riding crews), and advertises specialised legal knowledge that can be used to justify their deployment in territorial seas.

Securewest International advertises via <http://www.securewest.com> that its personnel consist of former British, Ghurkha and US forces who remain available for variable-term maritime duties as riding gangs or to protect ships in port. Singaporean-based Background Asia Risk Solutions (as mentioned) advertises an array of services on its website at <http://www.piracysuppression.com>. Their services include armed escorts within the Asia-Pacific region, including during the towing of Singaporean-built oil platforms through the Malacca Straits to Middle Eastern customers (Dale 2005; *Energy Compass* 2005a). London-based Lighthouse Security also advertises counter-piracy services via www.lighthousems.com.

PMCs and their supporters argue that state monopoly over violence does not *necessarily* produce greater public stability. PMC forces in several peripheral states, for example, have been sources of instability (Leander 2005, p.606). Brooks (2000) advocates regulated PMC use in various conflicts as peacekeepers. Shawcross suggests that the UN should sometimes hire mercenaries to replace state forces in unsuccessful UN peacekeeping missions (*The Age* 2000, p.18; *The Guardian* 2000, p.20; Hildebrand 2000). In this favourable view, PMCs could enhance maritime security because they use ex-military personnel and have strict recruitment policies (Leander 2005, p.609).

State outsourcing of violence, however, raises unanswered questions about accountability. Taillon (2001) notes that they continue to be subject to less legal oversight than state armies or police. Problems could become exacerbated within military environments. The apparent lack of operational and legal oversights with which PMCs operate, could create dilemmas concerning the monitoring of performance and communication, which are complicated in strategic environments (Singer 2001, p.201).

The PMCs as commercial entities have to remain aware of problems that can stigmatise their operations and legitimacy. Efforts to sell private solutions are affected by management of stigma, but the frequency of their use helps consolidate legitimacy (Informant Six 2004). The social constructions of power depend on the ‘agenda setting capacity’ of actors during decision-making processes. Leander (2005a, p.804) noted that PMCs have gained increased influence within security discourses, which ultimately determines what and how social problems are to be securitised. An example of this is Spicer’s mainstream press exposure, such as being interviewed on UK national television by the BBC TV and writing the articles ‘Why We Can Help Where Governments Fear To Tread’, released by The Sunday Times, 24th May in 1998, and ‘Privatise the Fighting’ for Scotland on Sunday in May of 2000. He has also received some coverage in the shipping press for example in Lloyd’s List ‘Spicer Launched New Assault on Piracy’ (2001, p.1) and Tradewinds ‘Mercenary Itching to Fight Pirates’ (2001, p.22).

PMCs consolidate their position, therefore, in ‘specialised security’, by constructing militarised understandings and solutions of social problems. As corporate entities, they remain committed to following ‘market logic’ within a ‘private market for force’ (Leander 2005a, pp.807, 808). The power of PMCs to make decisions demonstrates that consolidation. This raises questions about how they hold employees accountable, the accountability of states that use them, and how chains of command are justified to prevent unacceptable distortion of the public/private sphere (Leander 2005a, p.810).

Uses of PMCs against piracy need to be considered within the context of their ability to influence actors' understanding of securitised situations. Leander (2005a, p.811) identifies this as epistemic power, gained from influencing the knowledge base of actors by interacting in discourse in certain ways. As PMCs they enjoy influence by collecting and analysing intelligence, and thereby produce knowledge. They exert influence when they act as lobbyists, consultants who emphasise securitised solutions. In this way, they contribute to the social construction of piracy as a social problem.

Furthermore, PMCs are often given power to define concerns and thereby set actors' agendas. While most PMCs do not supply combat services, many supply non-core functions as consultants and intelligence specialists, which are central to their systemic power. The private intelligence sector (which includes the IMB) is growing as states have outsourced much of their intelligence capability. Over 90% of intelligence comes from overt sources (Singer 2001, p. 148). Private analysts, who can be involved in marine insurance and marine finance sectors assess threats, risks and determine what should be done through constructing prognoses, scenarios and securitised responses. In doing so, they often promote their own services as solutions (Leander 2005a, p.813).

‘They provide a growing share of the information that forms the basis of decisions on whether or not something is a security concern. The information is structured and selected by the firm that provides it. Through this firms have a significant impact on the routine boxing of information which is in itself a way of creating threats and security concerns that might not previously have existed.’ (Leander 2005a, pp.813).

When PMCs collate, select and evaluate data they produce an overall, tangible understanding. This process has seen security expertise become increasingly militarist. The ‘privatisation of security’ has triggered a remilitarisation and depoliticisation of security (Leander 2005a, p.819).

One can argue that the introduction of private entities in anti piracy operations will remain controversial (Informant Six 2004). Some coastal states have shown reluctance to allow armed merchant ships into their waters. At the 2005 Lima International Maritime Conference, it was reported that some PMCs, based in Singapore, employed former

military personnel to guard some ships transiting the Malacca Straits. Malaysia and Indonesia remained overtly ignorant of this. Malaysia's Chief Armed Forces Admiral Tan Sru Mohd was reportedly unaware that they operated in the Straits. Malaysia had not given permission for any PMCs to act in Malaysian waters. However, later Malaysia's director of internal security directed its maritime police to arrest and detain private armed escort vessels that were in Malaysian waters (Lloyd's List 2005a, p.3). They must now seek permission from Malaysia before accessing any Malaysian territory (Fairplay 2005, p.23). Reportedly, Singapore had issued licences to these PMCs, legitimating them as agents of social control. This, however, raised concerns about Malaysia's sovereign control of its own maritime territory.

The possibility of arming merchant seafarers, for example, is controversial. It can be argued that seafarers using weaponry would spread the responsibility of rule enforcement to a wider section of the maritime community. It has been argued that seafarers should be immune from prosecution if they kill pirates (Redfern 1999). However, key questions concern the use of weaponry and the definitions of self-defence and offence in jurisdictions (Journal of the Honourable Company of Master Mariners 2001, pp.577-582). Representatives from the Australian Maritime Safety Authority (AMSA) argued against arming seafarers, but mentioned evidence existed that some vessels had small arms aboard to deter pirates.¹¹ AMSA argued that contemporary seafarers should not be prepared to risk their lives to defend capitalist assets, especially given the rate of exploitation at sea (Osler 1998; Radio National 1999). Captains claim that questions about crew loyalty indicate that they should not be given guns (Kvashny 2003, p.55).

The British Merchant Marine Officers Association (NUMAST) also expressed concern over the implementation of private anti-piracy measures, arguing that their deployment could intensify sporadic, military-type conflict, which could expose seafarers to more dangers (Insurance Day 1998; Sandline International 28th March 1998; The Telegraph NUMAST 1998, p.8; The Telegraph NUMAST 2000, p.3). Informant Two, asked about the IMB's view on using anti-piracy PMCs and arming seafarers, expressed concern with the lack of legal accountability of private entities in the international system. This opinion

seems to contradict other sources, quoted above, that state the IMB remained supportive of PMC involvement.

The diffusion of claims throughout the media about private military company involvement in ‘anti-piracy’ markets has received mixed responses. Some reports consider private militarist involvement in anti-piracy initiatives as problematic. Others recognised that it formed an example of the private sector using unfortunate situations for profit-making ventures.

Some shipping companies proposing private sector solutions, therefore, enter a realm that could produce adverse public stigma (Mo 2002, p.354). Accusations advanced by state military personnel and concerned groups that PMCs take advantage of human conflict (Zarate 1998, p.77) do not help their case.

The private rule enforcers need to create a balance between selling their private militarist enforcement, and maintaining what they would see as sufficient operational independence (Becker 1973). There are, however, reported risks associated with PMCs’ desire to retain autonomy. External monitoring by either a nation state authority or an international body appears to occur in only an *ad hoc* manner (Singer 2001, p.202). PMCs operate to maximise profit and therefore may be prone to cost cutting, minimising effort and not fulfilling obligations as agreed. Conversely, PMCs may try to prolong contractual arrangements, or avoid taking possibly dangerous risks during conflict to protect their assets. This may result in a prolonged conflict or in shipping companies being exposed to preventable, longer terms risks, which would be prevented by coastal and flag states acting against threats. Malaysian Prime Minister, Datuk Seri Abdullah Ahmad Badawi, stressed the risks associated with incompletely regulated PMCs when he argued that the responsibility for the Malacca Straits’ maritime security rested with Malaysia, Singapore and Indonesia and not private companies. ‘If we entrust the monitoring of security to civilian parties, something may happen that may set off reactions or incidents that are difficult to control.’ (BBC 2005a).

It has also been argued that there is a danger that ports and shipping companies could become dependent on PMC intervention if flag and coastal states distance themselves from anti-piracy responsibilities. This dependence has occurred on the state level, whereby a UK Commons Foreign Affairs Committee in 2002 identified the UK dependence on PMCs, which can operate under spurious regulation (Hirst 2004, p.7). Shipping companies using PMCs may have problems with a PMC that fails to complete contractual obligations. Long term operational relationships between the client and the PMC are not guaranteed. In the case of defending FOC vessels, due to their often-mysterious ownership and lack of accountability in the international system, a PMC might not face punishment if it violated 'contractual obligations' (Singer 1992, pp.204, 205), particularly if the PMC were registered in an OFC, as a lightly capitalised shell company, as many are. PMCs could abandon ships if they felt that risks in the security environment were too great. Sierra Leone faced such a situation in 1994. A firm that had hired ex-Gurkha soldiers lost its commander in conflict. The firm decided to nullify its contract. Employees fled Sierra Leone, leaving its client without support (Singer, 2001, p.205).

Failures could also result from shipping companies not meeting contractual obligations. Companies could find themselves in conflict with the PMC. Singer (2001, p.206) states that

'early termination of a contract, dissatisfaction with the terms of payment, or disagreements over specific orders could lead to unpleasant repercussions for a weak client [either PMC or shipowners]. Indeed the corporate term "hostile takeover" may well take on new meaning when speaking of the privatized military industry.'

Political leaders who are clients could find themselves in a similar position. Reportedly, Executive Outcomes helped to oust the leader of Sierra Leone, its initial primary client, on behalf of a competitor with whom the company had formed a relationship more beneficial to its objectives.

PMCs are independent and operate in the international arena and potentially threaten the principle of nation state authority. The means of applying force is relatively inexpensive

as small arms can be procured at low cost. This questions the neoliberal assumption that free trade tends to reduce motivation to engage in violent conflicts. PMCs depend upon conflict for monetary gain and ply their trade in a deregulated environment (Singer 2001, pp.208, 209).

Some PMCs work for reputable governments, although PMC contracts are formed with an array of clients (Informant Six 2004). Singer (2001, pp.110) notes that violent groups that had found competitive operations difficult, have hired PMCs. South American drug lords in this situation reportedly hired PMCs.¹² Given the nature of their business, PMCs may face a need to ‘achieve operational objectives’, and override moral concerns (Singer 2001, p.213). These questions may be compounded at sea away from agencies of social control.

Apportioning responsibility to PMCs could be difficult as they have ‘ambiguous legal status’ and do not come under the ICC. It is difficult to prosecute PMCs through domestic courts for illegal action. Their intermittent relationships with clients and subcontractors give them a ‘fluid multinational presence’. PMC ‘tend not to have a continuous corporate existence’ as they have few assets or permanent personnel (Jamieson and McEvoy 2005, p.514). They move between different jurisdictions, and often change their commercial identity. This enables flag states or shipping companies to distance themselves from any illegal action that PMCs may undertake while in their employ.

Rule enforcers may apply laws in a selective manner or ‘interpret rules differently’ (Becker 1973, p.124), PMCs may employ agents with dubious pasts despite attempting to operate under a guise of respectability. Uncertainty over supervision of PMCs exacerbates this concern. Many PMCs are known to operate via Offshore Financial Centres (OFCs), which compounds the problem. Even if PMCs violated the law of some OFCs, it is unlikely that the state possesses the political will or capability to initiate and oversee judicial action (Singer 2001, p.215). OFCs allow secretive and largely unaccountable companies to be registered and some (such as the Cook Islands) offer extraordinary protection against litigation by foreigners (van Fossen 2002). There is little public debate concerning shipping and maritime security issues in OFC-FOC

jurisdictions. The use of PMCs could have negative repercussions if, for example, agents use unnecessary force to meet objectives to protect assets, or if they are involved in conflict to protect client shipping without discussions occurring publicly.

Rules of engagement under international humanitarian law include the obligation of state actors to distinguish themselves from civilians, openly display weaponry and avoid perfidious acts (such as entrapment); to comply with these rules any state-PMC affiliation should be clear (Jamieson and McEvoy 2005, p.506). In contrast to this international law, PMCs have scope to obscure their role and to evade accountability. If violent or perfidious practices are unpunished and become institutionalised, abuses could become routine.

These problems of unregulated PMCs as noted by advocates of regulation such as Holmqvist (2005), are aggravated by the secrecy and inadequate reporting of their activities. I propose that the following recommendations about PMC anti-piracy operations be considered -

- Accreditation: All relevant flag and coastal states, including those with OFCs that provide FOCs, should establish administrative procedures for the licensing and thereby the provision of official approval of PMCs to protect registered ships in specified ways on the high seas and territorial waters
- Registration: All flag states should maintain a database detailing the PMCs and activities undertaken aboard registered ships.
- Notification: Flag states should require that all shipping companies deploying PMCs and the PMCs themselves, should inform their administrations if they intend to make contractual arrangements to be deployed and in what capacity.
- Contract Approval: Flag states should have the capacity to either reject or approve agreements between PMCs and shipping companies.

- Monitoring: PMCs and shipping companies working as a result of contractual agreement should submit periodic reports to flag states about anti-piracy and security related activities. Flag states should clarify state prohibitions of particular activities, such as PMC use in internationally recognised conflict areas.

Conclusion

Legitimate violence is state sanctioned. Non-state sanctioned violence may be labelled terrorism or piracy if it involves theft at sea. This raises questions about the labelling of violence used by PMCs hired by shipping companies, without flag or coastal state knowledge and approval. PMCs' anti-piracy activities currently operate in a context of extremely ambiguous definitions, regulations and social constructions. State and private interaction pertaining to anti-piracy initiatives should not be seen as a static situation (Krahmann 2003, p.19) as it will evolve as state and capitalist entities interact.

Chapter Five

¹ According to Leander (2005, p.804) 'Private Military Company' is more widely used than Private Security Firm, which has been used in the security literature.

² 1950s: The political uncertainty resulting from the Korean War triggered a stockbuilding boom in Western states, although the US Ready Reserve Fleet mostly transported cargo associated with the war.
1956: The Egyptian nationalisation of the Suez Canal resulted in oil tankers being sailed around Southern Africa. This created increases in capacity demand.
1967: The Six Day War between Israel and Egypt resulted in the Suez Canal's closure and tankers were again forced to sail around Southern Africa.
1970: The Tap Line pipeline between Saudi Arabia and the Mediterranean was closed. Oil once transported via the pipe was pumped aboard ships that again sailed around the Cape of Good Hope.
1973: Yom Kippur War and OPEC 'production cut-back' collapsed the tanker market. The resultant oil price increase had adverse effect on global economy and shipping markets.
1979: Iranian Revolution. The interim termination of Iranian oil exports caused another increase in oil with another adverse impact for shipping.
1982: The Iran-Iraq war had impact on tanker demand.
1982: Falklands war – localised impact on UK shipping.

³ Zarate (1998) recognised the change from a bipolar to a unipolar world-system in which the US became the geostrategic hegemon after the cold war. The fall of Eastern European Communist regimes and command economies influenced intra-regional ethnic conflicts, changes in relationships between nations of equal sovereignty but differing strategic power, and developments within international law. Low intensity peripheral conflicts and transnational maritime crimes formed new geo-strategic considerations.

⁴ The US Defence Advance Research Project Agency (DARPA) is developing PANDA – Predictive Analysis for Naval Deployment Activities (Crystall and Knight 2006).

⁵ Despite US-Malaysian trade volumes, Malaysian Defence Minister Najib argued that a US presence could intensify domestic anti-Western sentiment among the Malay-Muslim population. It could also contradict ASEAN's aim of creating a regional Zone of Peace, Freedom and Neutrality (ZOPRAN) (Netto 2004).

⁶ Kvashny (2003, p.25) noted that allegedly, the *Alondra Rainbow* (registered in Panama) sailed from Kuala Tanjong, Indonesia and was en-route to Miike, Japan when pirates had intercepted it. They boarded the ship, took control and later set the crew adrift. Thai fishermen later rescued these seafarers who had been reportedly abandoned to their fate. The IMB released several warnings about the incident and a ship matching the description of the mv *Alondra Rainbow's* topsides was seen in the Indian Ocean. The Indian navy chased and captured this vessel, which was found to have been the pirated ship. The pirates had renamed it the mv *Maga Rama* and falsely flew the Belize flag. The pirates, who had been trying to scuttle the ship when the Indians boarded, were arrested. One had been involved in the pirating of the mv *Tenyu*. The 14 Indonesia attackers of this ship were reportedly sentenced to seven years imprisonment in India (Lloyd's List 2003a, p.1).

⁷ This centre may become known as the Information Sharing Centre of the Regional Co-operation Agreement on Combatting Piracy and Armed Robbery Against Ships in Asia (ReCaap). Reportedly, the IMB has stated, however, that the 'primary reporting role should remain with an independent body' (Lloyds List 2006c, p.3). It is unclear what relationship the IMB would have with the new state-oriented centre or whether ReCaap's operations would result in duplication of IMB and IMO reporting data.

⁸ Lt. Col. Spicer is on the board of directors of AEGIS – a UK based security firm. Its board contains prominent people: Field Marshal the Lord Inge KG GCB DL (non-executive Chairman); Brigadier James Ellery CBE; General Roger Wheeler GCB, CBE, former Chief of the General Staff, British Army

(Director); The Hon Nicholas Soames, Conservative Party MP, UK (non-executive Director) and the Honorable Robert McFarlane (non-executive Director) former national security advisor to the Reagan Administration (<http://www.aegisworld.com/management.html>).

⁹ Sandline International reportedly flew weapons into Sierra Leone for the exiled Kabbah regime that was fighting rebellious army units. It emerged, however, that the British Foreign Office had reportedly known about Sandline's role in arms shipments that contravened a UN arms embargo.

¹⁰ Singer (2001, p.187) noted that before the Kosovo conflict, PMCs personnel were hired as military observers by the US. When the NATO air war began, PMCs were involved in logistics supply, management of warfare data and built and operated Kosovan refugee camps. In subsequent KFOR peacekeeping, the US military employed PMCs to operate communications from where US nuclear forces are controlled.

¹¹ Some ships carry small arms. Four Ukrainian crew of the *MC Ruby* were tried under French law and sentenced for shooting dead African stowaways.

¹² One PMC reportedly trained Colombians implicated in the assassination of Colombian politicians (Singer 2001, p.210).

CHAPTER SIX

STRUCTURAL PIRACY: FLAGS OF CONVENIENCE IN THE CAPITALIST WORLD-SYSTEM: CAVEAT NAUTA.

‘The whole basis under which the shipping industry is regulated...is based upon a lie...that the country whose flag is on the ship is in control of what happens aboard that ship...A large...growing number of countries, including...small [peripheral] ones, have rented out their sovereignty to the highest bidder – and ship owners...take advantage of this system to decide whether or not they will obey laws, and what kind of laws they will obey.’

(Cockroft 1998).

This chapter analyses two distinct issues. It examines the emergence and influence of Open Ship Registration on the quest by nation states to repel piracy (narrowly defined). Then it evaluates the ways in which radical Labourite interests have attempted to expand the definition of the term ‘piracy’ to encompass and be synonymous with the FOC institution. I consider this attempt, despite questions concerning legal accuracy under domestic and international law, to be part of a sixth, postmodern stage of Nadelmann’s (1990) global piracy prohibition. Aspects of social constructionism are used to analyse these attempts to connect piracy and FOCs.

Firstly, critics of FOCs contend that organised pirates anticipate that the countries which in effect, rent their sovereignty via shipping registration, lack ability to respond to pirate attacks against ships on their registers. They claim that increases in the number of states providing FOCs, and ships flying them, exacerbate the vulnerability of ships, which facilitate, to a degree, the continuation of attacks (Informant Ten 2002; ITF 2006; Lloyd’s List 2003, p.7). This represents a limitation to stage five of Nadelmann’s (1990) global prohibition regime.

Secondly, the reported connections between labour exploitation and FOCs have led to some radical unionists to attempt to expand the definition of piracy to encompass theft of labour at sea which, they assert, harms seafarers at least as much as ‘traditional’ piracy

adversely affects shipping. They refer to FOCs as ‘pirate flags’. This attempted expansion of the piracy definition has occurred within the postmodern period and in what I consider as Stage Six of Nadelmann’s (1990) GPPR, within heterotopic ocean space (Steinberg 2001). Radical unionists’ ‘piracy’ definition, however, obviously extends beyond conventional international legal definitions. Therefore, this chapter analyses this expansion of the definition, applied to industrial activities considered deviant and ‘piratical’ in claims disseminated by the aforementioned radical unionists. Radical labour union members consider theft at sea to include breaches in aspects of labour regulation and maritime safety that threaten the lives and well being of seafarers. They are adapting or reconstructing the term ‘piracy’ as part of their moral crusade to further their distinct agendas within a labour-oriented social movement against FOCs. This section of the chapter, therefore, contributes to the overarching arguments of this dissertation concerning the socially constructed nature of piracy definitions.

The modernist period, emerging in parallel with Nadelmann’s stage five of prohibition, saw the rise of many core, industrialised sectors subject to Fordist rationalisation (Harvey 1989, p.132). Core seafarers worked aboard ships whose owners were entrenched in Fordism, enjoying a ‘long post war boom’ (1989, p.136). The core labour movement became a bureaucratised social movement with modernist and Fordist characteristics and strengthened. But Fordism after World War II was an internationalised process, dependent on expansions of world trade and capital investment (1989, p.136).

Shipping, however, remained sensitive to changes in the international political economy (Carlisle 1981) and the labour movement had to respond accordingly. FOCs emerged within the capitalist system, at the vanguard of the transition to postfordism and postmodernity. The early growth of FOCs occurred in the fordist-modernist period as one of the first manifestations of the future transition to postmodernity. The rise of postmodernity, facilitated by the various changes in the political economy and production in the core (Harvey 1989, p.141) also facilitated the growth of FOCs and consolidated their use (Alderton & Winchester 2002, p.36; van Fossen 1992). The union movement came under increased attack in the postmodern period, from the rise of flexible

accumulation and deregulation (Blome & Bonanno 2001, p.365) (the bases of FOCs), which according to Kвашny (2003, p.80), provided an environment suited to ‘transnational criminality’.

FOCs, a term often used by detractors of the open ship registry system, are offered by states that tender lenient operational, fiscal and technical conditions under which enlisted ships operate. This definition is noted in the Rochdale Report (1970), accepted by Carlisle (1981), Metaxas (1985), the United Nations Convention on Trade and Development (UNCTAD) and by labour movement institutions, such as the International Transport Workers Federation (ITF). The tri-partite International Labour Organisation (ILO) also acknowledged this definition. FOC states frequently have little or no maritime history, or maritime infrastructure. The revenue they earn from registration can have a positive effect upon their balance of payments. FOC states vary in the freedoms and leniency of their registration regulation (Alderton & Winchester 2002, p.36; Informant Seven 2002; Informant Ten 2002). Alderton and Winchester (2002 & 2003) demonstrate this in their comprehensive, systematic analysis of flag state performance that resulted in them developing the Flag State Conformance Index (FLASCI).

The Law of the Sea (UNCLOS) grants all nations’ shipping total freedom of the sea under the principles of *mare liberum* and *mare totum navigabilis*. The state of registration, not the owner’s nationality, determines a merchant ship’s ‘nationality’. Only its ‘flag’ state has direct legal authority over a vessel. No other nation has access to direct legal control over it, although coastal states often stipulate conditions of entry into territorial waters and ports.¹ The Permanent Court of Arbitration at The Hague established this in international law in 1905 (Carlisle 1981). The UNCLOS (1982) convention consolidated the principle of flag state authority. Articles 90 to 97 underline the centrality of the flag state. Article 91 stipulates that:

‘Every State shall fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory, and for the right to fly its flag. Ships have the nationality of the State whose flag they are entitled to fly. There must exist a genuine link between the State and the ship.’
(United Nations 2001).

Those flag states labelled as FOCs by the ITF and whose regulatory capacity were analysed by Alderton and Winchester (2002, 2003), are listed in Table 6.1 along with secondary registers (which van Fossen (1992) termed ‘quasi FOCs’) and non-FOC national registers. The vast majority of these states are also tax and secrecy havens with offshore financial centres (OFCs):

Table 6.1: Regulatory Capacity of flag states in general terms.

Regulatory Capacity	Flags of Convenience Register	Secondary Register	Non-FOC National Register
High		DIS (Danish Second Register), GIS (German Second Register), Kerguelen Islands (French Second Register), NIS (Norwegian Second Register)	Netherlands, Norway, Philippines, United Kingdom
Good	Bermuda*, Canary Islands, Cayman Islands*, Cyprus*, Hong Kong*, Madeira*, Netherlands Antilles.*	Isle of Man	Estonia, Latvia, Russia, Singapore, Turkey, Ukraine
Modest	Antigua & Barbuda*, Bahamas*, Barbados*, Belize*, Bolivia, Equatorial Guinea, Honduras*, Lebanon*, Liberia*, Malta*, Marshall Islands*, Panama*, Vanuatu*.		
Poor	Cambodia, St. Vincent & the Grenadines*		

* Represents a tax and secrecy haven.

(Source: Alderton and Winchester (2003) and ITF (2005) classification of flag states).

The ITF also designates the following (Table 6.2) states as FOCs, although Alderton and Winchester (2003) did not them include in their list.

Table 6.2: Additional Flag states labelled FOCs.

Burma/Myanmar	Cook Islands*	Comoros	Georgia
Gibraltar (UK)*	Jamaica*	Mauritius*	Mongolia
North Korea	Sao Tomé & Príncipe*	Sri Lanka	Tonga*

* Represents a tax and secrecy haven.

Source: van Fossen (1992).

Alderton & Winchester (2003, pp.35-43) designed a flag state index, which allows them to rank flag state performance (FLASCI) numerically (See Table 6.3). This index is based on

1. The Nature of the Maritime Administration:

- a) The legitimacy, efficiency, responsibility of the maritime administration and whether it is a national, secondary or FOC.
- b) Geographical distance between administration location and true ownership of the register.
- c) Crewing and certification restrictions.
- d) Flag States' registration fees and taxation structure.

2. The Characteristics of its Fleet:

- a) The examination of the fleet of vessels enlisted on register.
- b) PSC detention rates.
- c) Ship casualty and pollution statistics.

3. Seafarer Welfare Issues:

- a) Provision of safety for seafarers.
- b) Provision of welfare facilities (ITF and Missions to Seafarers).

4. Flag State Labour Law:

- a) Provision for seafarers to join labour unions.
- b) Provision of unions to bargain on seafarers' behalf.
- c) Provision of independent arbitration.
- d) Analysis of whether rights are provided to non-indigenous seafarers.

5. Status of Company Law:

- a) Cost/benefit fiscal analysis of registering with Flag.

- b) Taxation advantages.
- c) Limited liability through restricting company assets to minimised levels and prevention of arrest of sister ships in lieu of maritime liens.

6. Structure of Governance:

- a) Level of political, economic and strategic risk.
- b) Levels of reported and or indicated corruption.
- c) Extent to which government will meet demands of capital.

One could argue that the sixth area of concern could also focus on the capability to respond to pirate attacks on ships enlisted on their registers. Nadelmann (1990) did not consider flag state performance in terms of individual state's ability to respond to piracy.

Table 6.3. Regulatory Performance as expressed by the FLASCI Index.

FLASCI RANK	Flag State	N/Sec/ or FOC	FLASCI SCORE*	FLASCI RANK	Flag State	N/Sec/ or FOC	FLASCI SCORE
1	Norway	N	84	19	Nether. Antilles	FOC	48
2	UK**	N	80	20	Russia	N	48
3	DIS	SEC	77	21	Philippines	N	46
4	NIS	SEC	77	22	Vanuatu	FOC	44
5	Nether	N	76	23	Bahamas	FOC	43
6	GIS	SEC	75	24	Liberia	FOC	43
7	Kerguelen Islands	SEC	72	25	Anti. & Barbuda	FOC	42
8	Hong Kong	FOC	64	26	Barbados	FOC	42
9	Isle of Man	SEC	64	27	Panama	FOC	41
10	Madeira	FOC	64	28	Turkey	N	41
11	Bermuda	FOC	63	29	Marshall Islands	FOC	36
12	Cayman Is.	FOC	62	30	Ukraine	N	36
13	Canary Is.	FOC	60	31	Honduras	FOC	35
14	Latvia	N	60	32	Lebanon	FOC	35
15	Estonia	N	58	33	Bolivia	FOC	30
16	Singapore	N	58	34	St. Vinc. & the Gren.	FOC	30
17	Cyprus	FOC	50	35	Belize	FOC	27
18	Malta	FOC	49	36	Equatorial Guinea	FOC	24
				37	Cambodia	FOC	19

Source: Alderton & Winchester (2002).

*Alderton & Winchester (2002, p.39) categorise these scores as:

High (72-84): TMCs and centrally controlled secondary registers.

Medium High (58-64): Secondary Registers with some autonomy.

Medium (41-50): The older FOCs. FOC flag states that are seeking entry into the EU tend to score higher in this category. There are some national registers in this category.

Low-Medium (35-36): Some of the younger FOCs are in this category.

Low (19-30): The newest FOCs (which are all peripheral states with low national economic performance.

** Shipowners registering in the UK are reportedly exempt from certain provisions within the UK *Race Relations Act* (1976), which allows them to recruit foreign nationals and pay them far less than UK citizens. However, according to the UK's National Union of Rail, Maritime and Transport Workers (RMT) (2006), UK national minimum pay rates do not apply to seafarers on UK ships while they sail in UK territorial waters. The legislation only applies to ships while they are in UK ports and in UK internal waters.

Early ITF definitions of flags of convenience acknowledged that the genuine link between flag state and the ship was often doubtful. This was recognised by the ILO.²

‘Where the beneficial ownership and control of a vessel is found to lie elsewhere than in the country of the flag that the vessel is flying, the vessel is considered as sailing under a flag of convenience.’
(ITF 1998, p.73; ITF 1999, p.13).

The ITF, a modernist centralised peak body of transportation unions worldwide, has acted as a primary claims maker (Best 2001) and has expressed heightened concern over the FOC system, which it regards as a social problem and instrumental in the alienation of seafarers (Goode & Ben Yehuda 1994). Drawing its legitimacy from its extensive membership and affiliation with national unions, it labels flag states as FOCs according to whether foreign beneficially owned ships predominate on their particular registry. If the majority of ships' beneficial owners are foreign with no ‘genuine link’ between the ship-owner and flag state, then it automatically labels the registry as an FOC. The ITF has continued to focus on the ‘genuine link’ between shipowner and flag. The ITF also remains aware of what it sees as the importance of flag states having maritime infrastructure and political will to uphold their own legislation and capability to retaliate against piracy or to protect flagged ships that are targeted. The ITF continues to monitor flag state performance in terms of ship register composition and performance against established criteria (ITF 1999a; 2002; 2005b).

FOCs compete in a global market alongside the traditional national registers. This is a ‘dualistic characterisation’ (Alderton & Winchester 2002, p.1).³ Three broad trends are identifiable –

- Shipping tonnage has moved to a large extent to FOCs.
- Some attempts have been made by national registers to retain ships on their registries.
- Amongst the FOCs there is a degree of competition in that some FOCs have attempted to lure ships away from other FOC jurisdictions to their own.

Lower registration costs and requirements give companies using FOC facilities commercial advantages over core nationally registered shipping. Rate cartels came under increasing pressure from carriers not a part of the established liner conferences willing to offer lower freight rates (being in a position to do so by having flagged out). Moving offshore and re-registering ships from metropolitan flags to FOCs has become a central characteristic of shipping (Metaxas 1985).

Capital however, has fought back in the debate about the legitimacy of FOCs and has often justified the above points in neoliberal terms. It argued that the challenge for national shipping was to compete against companies in the various shipping markets, gaining advantages by using the emerging array of FOCs (Carlisle 1981; Metaxas 1985). Rather than call them 'FOCs' it has been asserted by capital that they should have been referred to as 'Flags of Necessity' (Will 1963, pp.81-88; The Yale Law Journal 1960, pp.498-530).

The raising of economic justifications about FOCs represents a process of capitalist legitimisation and the reproduction of 'capitalist ideation' (Lewandowski 1999). This is in essence, a social endeavour, which has also occurred in a politicised context. The normalisation of neoliberal values, the consolidation of FOCs and the preferences of capital 'define the range of what is possible' (Duina 2006, p.3). This raises question about the control of labelling. One can argue that by raising the term 'Flags of Necessity', capital is indicating some concern about public image and its attempt to neutralise stigma associated with FOCs.

The ITF's criticisms represent their attempt to evoke a corporate shaming process and create support for sanctions (Skeel 2001). Capital has a vested interest in seeing that the neoliberal consensus is maintained. Becker's (1973) argument that some labellers are in control of the process of stigmatisation is consistent with the strength of shipping capital and the pro-FOC consensus among international business (van Fossen 1992). In this postmodern environment, they are so consolidated that it appears that capital does not have to engage in justifications over labelling and stigmatisation.

Core states, despite losing out to FOCs, have in part validated the FOC system. Their ship registration revenues have been reduced by FOC use. In response, they have constructed quasi-FOCs, which they call secondary registers. At least seven countries Denmark, France, Germany, Norway, Portugal, Spain and the United Kingdom (Isle of Man) operate these registers. These registers' regulations are more complete than FOCs but they allow foreign registration. They offer concessions to beneficial owners such as the hiring of foreign seafarers and offer more lenient fiscal regulations. Unlike FOCs, however, these states possess the necessary administrative infrastructure to impose all necessary flag state regulations and have ratified international laws on shipping (Couper 1999, p.14). These states all have the capacity to respond against pirates.

The anti-FOC lobby has reported that some secondary registers are showing lenience toward some shipping companies to gain business back from 'full' FOC states. This shows that labelling is in a state of flux and depends on the influences and the goals of labellers (Becker 1973, p.9). Thus the ITF labels the French and the German secondary registers as FOCs (*Seafarers' Bulletin* 2006, p.29). At one time it labelled the Canary Islands as an FOC while Spain argued it was a secondary register. It bases this classification on what it considers unacceptable lenience favouring foreign capital. This suggests that some degree of competition exists between 'secondary registers' and FOCs as well as among FOCs themselves.

The ITF, however, is trying to stigmatise and label a system that, in essence, may not be seen as breaking any rule. It is trying to construct new rules, that is, to become a rule creator (Becker 1973, p.9). Whether FOCs represent deviant, negative behaviour depends on how it is reacted to. Even if FOCs did break some rule, the successful labelling would depend on some maritime policing authority accepting that label. Additionally, some authorities may not react to it as if a rule had actually been broken (1973, p.11).

Shipowners have swapped flag registration and therefore, nationality of their ships for political and economic convenience since the 1700s. This mobility and flag swapping

increased dramatically, which is consistent with postmodern flexibility. However, with the emergence of the open ship registers designed to attract foreign shipping for financial gain (and subsequently labelled as FOCs by the emerging anti-FOC lobby) in the 20th Century.⁴ The number of peripheral states providing FOCs increased, as did the percentage of world tonnage under FOCs. FOCs, then, were at the forefront of pushing capitalism into postmodern flexible accumulation (van Fossen 1992) even before the general transition to postmodernity after 1968 accelerated the growth of FOC registrations as shown in Table 6.4.

Table 6.4. FOCs of World Fleet (in tonnage).

Year	Flag of Convenience TOTAL Mil GRT	World TOTAL Mil GRT	FOCs as Percentage of World Tonnage.
1948	3.04	80.29	3.8
1958	15.27	188.03	12.9
1968	32.17	195.15	16.5
1978	111.52	406.00	27.5

Source: Metaxas 1985, p.17.

By the early 1970s, merchant shipping had become the most *laissez faire* of industries and reoriented its operational activities to exploit the regulatory loopholes offered by peripheral FOCs. The international business community, in both core and peripheral states, encouraged FOCs to emerge as a structural characteristic of international shipping.⁵ In the postfordist period, the global shipping environment, even more sharply emphasised cost differences between core flags and FOCs. National fleets of the core were reduced drastically and institutionally entrenched forms of co-operation, such as liner conferences, were challenged (Thanopoulou 2000, pp.2, 3).

By 1990, most ships were enlisted on FOC registers (Brennan 1999, pp.34, 47; Brennan 2000, p.13; Seafarers' Bulletin 1997, p.3; Thanopoulou, 2000). In 2006, according to the ITF (2006, p.28), of the tonnage enlisted on the top fifty flag states, 52.8% was enlisted on FOCs (58.01% if secondary registers are included). The top three flag states, Panama, Liberia and the Bahamas are FOCs and they carried 37% of total gross tonnage of the top fifty flag states for ships 100 GT. and above.

Core state shipowners therefore have moved ships' registration from strong states to weaker states, prepared to rent sovereignty. Although as nation states they have equal status with other nations, FOC states are relatively powerless, politically, economically and strategically (van Fossen 1998, p.10; Chase Dunn 1989; Wallerstein 1997a). Unequal relationships between core and peripheral states (with semi-peripheral states in between) are part of the overarching structure, which incorporates the nation states within the stratified global world-system (Wallerstein 1997a, p.1). Most FOC states are in the periphery and these peripheral states remain subservient, in many respects, to core state shipping interests, which use peripheral state FOCs to avoid the legal and fiscal responsibilities and disadvantages imposed by core state regulations. This has become standard business practice within international shipping.

The benefits of FOC registration have become a postmodern bonanza incorporating financial flexibility and mobility for capitalists. FOC states allow registration on their merchant shipping register of ships owned and operated by non-residents and non-citizens. Access to registration can be quick and easy. A ship can often be registered at an FOC state's Consular Office in any part of the world. It is now possible to access all necessary documentation to register a ship in some FOC states online (which appears to have annoyed the ITF) (Fairplay 2000g, p.12). FOC states do not impose taxation fees and may guarantee that shipping companies will remain exempt from all future taxation. It is easy to transfer registry from one FOC state to another.

Shipping companies registering under an FOC maximise profits and gain advantages by avoiding

- a) The employment, health and safety and shipboard operational conditions imposed by more stringent flag states (which usually require minimum rates of pay and employment conditions) and regulations concerning seafarer nationality. FOC states rarely impose conditions on the nationality of seafarers.

- b) The fiscal and taxation regulations maintained by metropolitan flag states. The labour costs savings are greater than any other benefit for most owners (Metaxas 1985, pp.13-16).

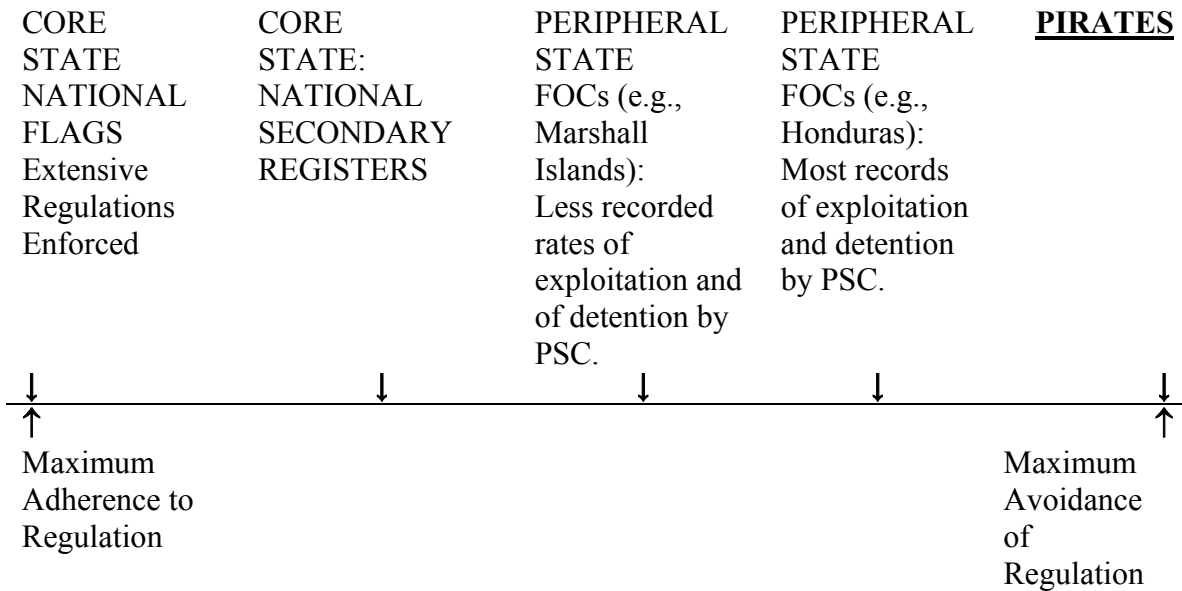
The ITF labelling of FOCs involves applying a label to weak states. Becker (1973) notes that weakened entities are usually more prone to labelling than the strong. It is within this context that the ITF highlights that the FOC system represents a structural limitation to the anti-piracy regime in several ways. I argue that weak FOC states do very little to uphold the GPPR irrespective of whether it remains in a modern or postmodern stage. This extends the argument raised by the IMB in 1990 that FOC registers were unable to exercise effective control in international shipping and were essentially contributing to maritime crime (Grey 1990, p.2). FOC administrations often stigmatised as having insufficient political will to uphold legislation (Beckman 2001, p.1). ‘In reality it [the FOC nation’s maritime authority] may just be two guys who’ve gone to an IMO course’ (Beckman 2001, p.1). At one extreme, Bolivia is a land-locked country, as is Luxemburg that at one time was labelled an FOC by the ITF. Some FOC states have limited or no inshore naval capability, let alone any long-range, blue-water capability. Their lack of ability as agents of social control is explained by their position in the world-system (Becker 1973; Harvey 1989). These points demonstrate limitations in respect to their control and regulation of piracy. This brings in to question, Nadelmann’s fifth stage in respect to the ships and maritime territory that they regulate.

By ‘flagging-out’, core state shipowners therefore take a strategic risk. They may gain financially, but they potentially lose the protection of core state naval forces and possibly diplomatic protection. Ships enlisted on secondary registers do not lose these protections. US naval protection, however, may be extended to all US beneficially owned ships registered in the Marshall Islands, Panama, Liberia, Honduras and the Bahamas (van Fossen 1992, p.30). This indicates then neoliberal ideology becoming dominant among US Government elites (Harvey 2003) who are making aspects of US policy consistent with US shipping interests.

Despite this possibility, even US protected FOCs are seen as structural limitations to the regime of piracy prevention. The Singapore Shipping Times (1999a) highlighted arguments that FOCs were unable to react against piracy, and made the crime easier. The relationship between maritime crime and open registration is frequently suggested in the shipping literature (e.g. ‘Flags Must Hoist a Different Standard’ in Commercial Crime International 2003, pp.4-5). Although the IMO has created an array of regulations, questions have been raised by the ITF about the willingness and ability of FOC flag states to implement sufficient measures to administer fleets. The IMO’s Flag State Implementation Committee has been criticised for allowing flag states to undertake a self assessment of their implementation of IMO Conventions (Lloyd’s List 2003, p.7; Singapore Shipping Times 2001a, p.2).

Substandard shipping becomes an easy target for pirate attacks because it tends to become concentrated in piracy-prone areas. This can be considered within a core-periphery context (see Figure 6.1). The ITF has argued that despite port state control, designed to make up for the deficiencies of flag (mostly FOC) states, the worse tonnage still ends up operating by simply avoiding ports known for undertaking inspections. Beckman (2001, p.1) argues however, this limits certain unsound and vulnerable ships to particular areas, such as Asian regional shipping routes that experience high rates of piracy.

Figure 6.1 Core and Peripheral Flag State Regulation.



Kvashny (2003, p.57) noted that industrial relations conditions and not piracy are the seafarers' greatest problem. The ITF and maritime labour unions, taking a moral entrepreneurial stance (Becker 1973) in their role of protecting seafarers, address this issue. Pirates may well take advantage of structural problems, by attacking ships whose crews are reportedly less likely to retaliate because of poor morale, or whose owners or authorities are continually debating responsibility concerning ship safety (The Seafarer 2000, p.14-15). The ITF has publicly expressed concern about the adverse effects of piratical behaviour (as defined by the IMO and IMB) against seafarers (Linington 2003). NUMAST has protested against piracy to the British Government (The Telegraph 2000, p.3; The Telegraph 2001, p.3).

Some pirates have reportedly enlisted as crew to facilitate attacks on ships. Shipowners and ship managers have been warned to check the credentials of crew as a result of some suspicions that some crew have taken part in attacks. For example, the mv *Al Hufoof 1*, registered in Georgia was suspected of having been hijacked, but was discovered with its original crew aboard, thousands of miles from its destined port (Commercial Crime International 2001a, pp.1, 4). The Belize FOC-registered tanker *Arabian Victory* was

reportedly denied entry to two Indian ports after the shipowner accused the crew (that had been owed several months wages and had no drinking water aboard) of having hijacked the ship (Lloyd's List 2002c, p.3; Lloyd's List 2002d, p.16).

Connections are being made between FOCs and international criminal activity. Drawing an analogy between FOCs and piracy, Watt (2002, pp.288, 289) noted that

‘It has long been possible for internationally active criminals, or those who feel national laws to be inhibiting to their desire for profit, to find analogies to the havens which the Barbary Coast and the smaller islands in the West Indies provided for...pirates. ‘Flag of convenience’ states enabled vast fortunes to be made by shipping entrepreneurs able to register the ships...with countries that made no effort to match the shipping legislation of...the states, which acted as homes for the bulk of... international shipping. Offshore banking spread from...Europe to the...Third World, which...provided anonymity, low taxation and freedom of capital movement to all, irrespective of whether their income was crime or reputable commerce. From substandard shipping and unqualified crews to illegal drug monies and the profits of tax evasion, the steps were easy and unrestricted.’

Postmodernism emphasises the fragmentation of identity (Harvey 1989) and this is apparent in the use of FOCs to hide beneficial ownership. FOCs are issued by secrecy havens and do not require the revelation of beneficial owners of a single ship entity (van Fossen 1992). Each ship of an entire fleet, beneficially owned by one individual may be each enlisted under a separate shipping company name, in different FOC administrations, therefore making it difficult to track the total commercial shipping assets of an individual. This structure weakens transparency and accountability within merchant shipping (Alderton & Winchester 2002, pp.3, 4; Brennan 2000a, p.12; Informant Five 2002; International Transport Workers’ Federation 2003, p.1). It is within this context that Couper (2000) noted the piratical characteristics of some owners by arguing that

‘More responsible mortgagees may meet the cost of repatriating the crews of these vessels, but others refuse even to acknowledge that they are the mortgagees. Some do not even repossess the ships, as the associated costs of doing so are more than the value of the vessel.’
Couper (2000, p.1).

Members of the anti-FOC lobby have emphasised the connections between FOC use and piracy as part of their campaign. As part of this, they have claimed that the ease with which shipowners can register ships in FOC jurisdictions has limited the GPPR. Consistent with the relative ‘invisibility’ of capital in the postmodern period (Harvey 1989), pirates have allegedly taken advantage of the ease of enlistment and confidentiality facilities on some registers to reregister hi-jacked vessels with seemingly with few or no questions asked (Seafarers’ Bulletin 2001, p.19). Some ship registration, to the reported dismay of the ITF, can now occur online (Fairplay 2000g, p.5). The perpetrators reportedly hijack or buy vessels and change these ships’ identities (see for example Chapter 4 and the case of the *Petro Ranger*). They are allowed to load legitimate cargo but then disappear with it, selling it elsewhere. Some reportedly use a different identity for each voyage (Nitya Kalyani 1996; Shipping and Trade Law 2001, p.1).

These vessels constitute a ‘phantom ship fleet’. The postmodern flexibility of this fleet encourages ‘creativity’ among groups and individuals wishing to evade the legal consequence of their enterprising actions. According to the above accounts, many FOCs are not adequately verifying ship’s documents. Crews working aboard them may also have false papers (Kvashny 2003, 53). As the IMB noted, a number of ships during the 1990s disappeared but then re-emerged repainted and re-enlisted in FOCs. The IMB has asserted, as expressed in Lloyd’s List (2005k, p.1), that ‘flags of convenience are aiding criminal entities by simply not making sufficient checks, allowing re-registering of ships within 72 hours, registering over the Internet makes resale of stolen ships easier.’ They subsequently made another recommendation that ship registries should be more alert against phantom shipping (Commercial Crime International 2005, p.1).

There are many examples of phantom shipping. In 1998, there were reportedly seven of these incidents (The Economist 1999, p.40). In one report, the Cypriot- registered mv *Marta* sailed from Bangkok to Busan where it was boarded. The crew were handcuffed and put below decks while the pirates repainted her funnel, changed the ship’s name to the mv *V Tai* and hoisted the Honduran flag. The ship reportedly rendezvoused with a

barge at sea and unloaded 2000 tonnes of tin-plating using heavy lifting equipment. Pirates then allegedly sailed the ship to the Northeast coast of Peninsular Malaysia where they left it and took the captain as hostage. The remaining crew sailed the ship back to Bangkok (Cooke 1995, p.31; Kvashny 2003, p.28; Redmond 1995, pp.292-298). In another account, the crew of the Panamanian-registered mv *Chrysanti* (6,000 GT) reportedly stole a bulk sugar cargo at Bangkok, which was bound for Colombo. The ship allegedly stopped at Singapore where its crew were discharged. It later emerged in Beihai, Southern China as the Honduran flagged *Asoka II*, discharging palletised rubber. Investigations allege that this cargo had been loaded at Penang, where the ship had been named the *Windsor III* (Cooke 1995, p.31; Redmond 1995, pp.292-298;). In a third reported case, the Cypriot-flagged mv *Anna Sierra* was sailing toward Manila in 1995 when 32 armed pirates boarded it. The crew were allegedly forced into rafts and left in rough seas without provisions, which validates union claims about pirates harming seafarers. The ship was later found in China (Beihai) as the Honduran flagged mv *Arctic Sea*. The documentation aboard was alleged to be false and the crew were arrested, according to reports (The Middle East 1996, p.29).

A more recent account of Phantom shipping involved the mv *Paulijing*. The Belize – registered ship was captured arrested after a long chase by Malaysian authorities in 2005. Malaysian authorities had identified it as the former mv *Natris*. This ship had been hijacked during November 2002 while reportedly undergoing repairs in Indonesia. As the *Paulijing*, it had been trading using the same IMO number as the *Natris*. The Belize registration authority claimed that it followed all necessary international laws when its had registered the *Paulijing* (Lloyd's List 2005e, p.3).

Allegations that many of these ships and large volumes of stolen cargo have appeared in Southern China have raised questions about official corruption in its ports. There have been reports of ships being intercepted at sea by Chinese authorities and escorted into Chinese ports. There, crews were allegedly paid-off and the cargoes put into 'storage' and later sold (The Economist 1999, p.40; Redmond 1995, p.294). Blyth's account of the

Petro Ranger is an example raised in Chapter 4, of a crew being eventually released but the cargo of oil being retained in China.

It has been argued that the identities of all beneficial owners and the personnel of all charterers, flag states and classification societies should be widely available. Those responsible for maintaining registration systems and those operating substandard shipping would be brought to account more readily because of this transparency, labelling and stigma (Porter 1996).

The anti-FOC lobby has been using the threats of international terrorism to stigmatise FOCs. It has noted connections between terrorist groups and their use of FOCs. The Maritime Union of Australia (MUA) has emphasised this threat in its Maritime Workers Journal (MUA 2004). Reports that several terrorist groups possess merchant ships give credence to this threat. Ghosh (2004, p.5) contended that the Liberation Tigers of Tamil Eelam (LTTE) have several merchant vessels engaged in suspect activity while registered under FOCs. They have apparently been difficult to track due to them reportedly changing the ships' registration a number of times.

The LTTE has allegedly used its phantom ships to facilitate its involvement in illicit drug trafficking from Burma to Turkey and to European destinations. It has been noted that there is a close relationship between illegal gunrunning and drug trafficking. The LTTE has also taken seafarers hostage (Fairplay 2000e, p.12). It also allegedly transported weaponry between regions by sea. Arms are thought to be transferred from ship to ship, mid-ocean during shipment to Sri Lanka (Ghosh 2004, p.6).

Governments have also apparently used the 'flag hopping' opportunities provided by the FOC system. It was reported that Iraq changed the flag of the 6,953 dwt supply ship mv *Al-Bahar Al-Arabi* to the Honduran flagged mv *Seabank* during the 1991 Gulf crisis to circumvent UN sanctions. The IMB reported 11 other Iraqi ships were re-flagged (Reuters News Service 1991). The Panamanian registered mv *Samra* was found to be flying a UAE flag when the USS *Peterson* intercepted it in the Middle East Gulf in 2001.

It was supposedly smuggling oil out of Iraq in contravention of UN sanctions (The Sea 2002, p.8).

FOCs exercise ever-greater influence over the IMO. The IMO is funded by member states, with the annual amount each state contributes determined by each state's gross registered tonnage. The two biggest contributors are the FOC states of Panama and Liberia (25.97% of funds in 2000). According to the IMO (2000, p.3), its approved budget for 2000-2001 was £36,612,200. This puts some of the FOC states in a very strong position, within this UN body. Table 6.5 shows the financial contribution from the top ten contributors:

Table 6.5. The Top Ten Flag State Contributions to the IMO Budget (2000).

Member State	Amount Payable (Million Pounds Sterling)	Percentage of Total IMO Budget
Panama (FOC)	2.90	15.8 %
Liberia (FOC)	1.86	10.17 %
Japan	0.96	5.23 %
Bahamas (FOC)	0.81	4.36 %
Greece	0.80	4.32 %
United States	0.76	4.12 %
Malta (FOC)	0.73	3.96 %
Cyprus (FOC)	0.72	3.91 %
Norway (NIS)	0.71	3.86 %
Singapore	0.61	3.31 %
Total for FOCs	7.02	38.2%
Total for National Flags	3.13	17.0%
TOTAL	10.86	59.04

Source: IMO (2000, p.3).

FOC states sign conventions, but do not appear to be penalised for their non-compliance. Beckman (2001, p.1) argued that 'the IMO was making the rules based on the assumption that every nation had a maritime authority of the standard of European nations or

Singapore.’ As mentioned above, this is not the case. This raises questions about whether non-compliance is intentional or whether it results from failing despite their best efforts to enforce legislation. It is apparent that flag state motivation may vary. The Liberian government, for example, was literally non-existent during the civil war that raged there during the 1990s (ITF/Global Witness 2001; Young Pelton 2002).⁶

A Modernist Union in a Postmodern Environment.

The maritime unions’ fight against FOCs is part of a sixth stage, which I have added to Nadelmann’s (1990) five piracy prohibition stages. The ITF and other unions, which are sympathetic with an array of leftist concerns, are essentially social movements with predominantly industrial relations concerns. The conceptual model raised by d’Anjou (1996, p.230, 231) indicated that social movements have the potential to bring about political and industrial policy changes and produce social and cultural transformation if a number of societal preconditions exist.

One of these preconditions is that the campaign actors need to succeed in establishing ‘interpretive packages’, i.e. effective language and action in the ‘social struggle that every discourse is’ (d’Anjou 1996, p.231). Effective use of language and action can result in political and cultural power. However, this may depend on:

- a) The empirical, rhetorical and cultural credibility of their language use and
- b) The ‘emotionality’ of the language and action. The language and action used by the movement entrepreneurs must be capable of convincing the public that their concerns are valid and be capable of offsetting counter arguments by opposing social forces.

Moral entrepreneurs often identify more than one problem. They deal with these by assigning priority to these problems and structuring responses accordingly (Becker 1973). In their actions against FOCs, these social movements construct language for their own use. In this way, they attempt to redefine piracy. In its expansion of the definition of piracy to refer to the FOC institutions, radical unionists see this regulatory inadequacy as

leading to the theft of labour power. The central critique of the FOC institution by the ITF-dominated anti-FOC lobby is that many states show no desire to enforce established and ratified legislation. Consequently, the ITF targets FOC states for their deficiencies in their flag state responsibilities, such as

- Inability to enforce international minimum social standards.
- Inability to deal with shipowners who have shown a lack of respect for human rights.
- Reluctance to cooperate with trade unions.
- Reluctance to tolerate freedom of association.

The ITF and militant maritime labour unions have also complained about what they consider to be piracy as the theft of labour power from workers aboard ships. Reported abuses include:

- Not allowing union representation aboard.
- Seafarers working for extended periods in return for substandard wages below and sometimes less than half of the current ILO recommendations.
- Seafarers not being paid at all.
- Intimidation of seafarers and their families.
- Employers abandoning seafarers in foreign ports.

Additionally, the ITF has claimed that FOC administrations have been involved in the production of fraudulent maritime certification. Although these problems can also be found aboard non-FOC registered ships, a disproportionate number of problems allegedly occur aboard FOCs (International Transport Workers' Federation 2001, p.1).

Radical unionists' labelling of labour exploitation as theft at sea and therefore as piracy, although not generally accepted among legal or conservative elements, broadens the use of the term and may contribute to its etymological evolution. They have used 'piracy' or related terms in media releases (Informant Seven 2002; Informant Eight 2002), such as 'Rogue "Shipowner" made to walk the plank in Sydney' (MUA 2002). The MUA website carries an invitation to readers to download a 'Shame file' to learn more about 'FOC abuse'. The article 'Pirate Ships Pillage Our Oceans' (MUA 2005), links FOCs with 'slavery, organised crime, drug running, crew exploitation and pollution' and in

relating recognised criminal activities to crew exploitation contributes toward forming radical unionists' construction of substandard shipping and the theft of seafarers' labour as piracy. Direct language is used to construct their argument that

‘This is big business and the corporate heads hiding behind flags of convenience should be brought to justice... They are not just a threat to our marine environment, they have blood on their hands. Seafarers are being lost at sea, starved, overworked, abandoned and in once recent case locked in a cabin to die.’
(MUA 2005).

The coverage entitled ‘Piracy at Port Pirie Hits Shipping Reform’ in The Australian 6th May 2002 showed a difference in approach between mainstream and union media. The article was supportive of capital by suggesting that those aboard the mv *CSL Yarra* involved in industrial dispute at Port Pirie were piratical as their action impeded ‘shipping [neoliberal] reform’ (which involved the sacking of Australian seafarers and their replacement with Ukrainian seafarers). The MUA, however, constructed the strikers as ‘heroes’ and responded with its own terms demonstrating the focus of their crusade:

‘Piracy at Port Pirie? We agree. But it is not the Australian[s]...defending their jobs...who are the villains. It is the Flag of Convenience shipowners- cut throat rogues who plunder our oceans, polluting our coastlines, bullying and robbing the destitute and desperate from the most impoverished corners of the globe, shanghaied into signing contracts that more often than not, they can not even read, imprisoned at sea on floating sweatshops for months, even years without leave or contact with their families.’
(MUA 2002).

This industrialised extension of the piracy definition by unionists has occurred during the postmodern period. This extension of the piracy definition is, therefore, primarily a reaction to the ‘condition of postmodernity’ but arguably, it stems from a deregulation of language itself during this period (Harvey 1989). The mainstream media, however, often treat this as a matter of industrial relations, as a separate issue from piracy, unless it suits them. For example, in 2005 they referred to striking seafarers aboard a French ferry who reportedly sailed the ship to Corsica as part of radical industrial action, as having initiated ‘mutiny’ (Lloyd’s List 2005g, p.7). Previously, a striking crew aboard a car carrier had

been accused of ‘piracy’ (Fairplay 2001e, p.14). The media, whilst sensationalising aspects of piracy and emphasising the threat it poses to shipping and capitalist interests, rarely relates this word to flag-state underperformance, which results in ships having no nation-state protection (Informant Eight 2004) and a general situation of sub-standard shipping, or the adverse exploitation of seafarers by employing them under sometimes draconian working conditions (Laurie 1999, pp.37-43).

Radical unionists’ attempts to label substandard FOC shipping as piratical, however, have had limited success. Their attempts as moral entrepreneurs leading a moral crusade have failed somewhat in that they have not generated broad public awareness. This can be related to the moral panic stages raised by Goode and Ben Yehuda (1994) and Thompson (1998) and Best’s stages of claims diffusion in Table 6.6.

Table 6.6. Stage Theories Showing the Advancement of Radical Unionist Claims.

Goode & Ben Yehuda's (1994) Moral Panic Stages:	Thompson's (1998) Moral Panic Stages:	Best's (2001) Claims-Diffusion Stages:
CONCERN: ITF and radical unionists expressed concern about the behaviour of FOCs and the adverse consequences for seafarers.	Stage 1: ITF and radical unionists define FOCs as Threat. Stage 2: FOCs Portrayed simplistically by mainstream media.* Coverage a little more extensive in shipping media.	Stage 1: Unionists as 'Claims-Makers' state that some adverse conditions exist at sea & initiate a shore-based claims diffusion. Stage 2: Information that something is problematic (FOCs) is diffused, primarily among left social movements, unionist media flag and coastal states and the IMO.
HOSTILITY: Increased hostility toward clearly identifiable FOCs reportedly engaging in adverse behaviour.	Stage 3: Resultant widespread concern (among the left). Capital somewhat indifferent toward argument of offshore capital in this postmodern period.	Stage 3: People (various Labourite audiences among the left) adopt claims. Accept that problem has specific characteristics.
CONSENSUS: Widespread agreement among the left that the threat caused by labelled group (FOCs and shipowners) is significant.	Stage 4: Reaction by Agencies of Social Control. Some flag states initiate PSC procedures. IMO fairly ineffective, according to unionists.	Stage 4: Labourite Networks via which diffusion occurs, agree that action should be taken.
DISPROPORTIONALITY: Response can be more intense compared to other more dangerous issues. Four Criteria: Figures Exaggerated. Figures Fabricated. Increased observation but no worse than others. Observation more intense than at other times.	Stage 5: Panic Diminishes as Policy Changes Implemented. Some are implemented but constrained by capital.	
VOLATILITY: May appear suddenly, or intermittently. May disappear. Can be short lived but can re-emerge.		

* See Endnote 7.

Media interests determine the extent of the ITF's and MUA's access to mainstream coverage. The electronic claims diffusion of Labourite concerns via their own websites appears limited to sympathetic audiences and other modernist, Labourite institutions. In this respect, maritime union websites are acting as information clearing-houses. They provide data to their transnational membership to facilitate understanding of events in global shipping and transnational union cooperation. This is essential to their international effectiveness and to inter-union cooperation (Gumbrell-McCormick 2004,

p.179). Helping national maritime unions to be informed may strengthen bargaining positions with capital (Craver 1993, p.123). Knowing that the problem of improving seafarers' industrial conditions was one of overcoming communication, expense, spatiality, and capital control of the labour process (Herod 2001) the ITF seems to have embraced postmodern communication, with its notion of time-space compression. It cannot, however, see this means of communication as the solution to industrial concerns – it needs to be combined with militancy, radical action and the introduction of adequate labour laws, where they do not exist (Shostak 1999, p.6).

The neo-liberalism that has resulted in FOCs has resulted in social movement unions. It can be argued that unions such as the ITF and MUA have a broad sympathy with an array of social issues (such as the poor state of Liberia (FOC) during and after the civil war). In this respect, neoliberalism may be ironically consolidating the 'hardcore' element within unionism as they fight against a bourgeoisie anti-working class culture (Robinson 2002, p.183; Nissen 2002, p.16).

In some ways, however, their efforts can be compared with an unsuccessful moral crusade. According to Becker (1973, pp.153, 154), an unsuccessful crusade may follow one of two courses. The crusaders may give up their mission and concentrate on preserving what remains of the organisation that has been built up, or they may retain an increasingly unpopular mission as 'moralizers in retreat'. The ITF has not yet followed either pattern. Despite not having been entirely successful, in that labour exploitation is not recognised as piracy, it has not acknowledged defeat. In fact, its use of the term piracy (IMO defined) to emphasise that it is one of the myriad of concerns of the seafarer; helps consolidate and justify its position as a seafarer advocate. Yet, its definition of the FOC institution as piracy activities in this respect has not impacted significantly on the GPPR.

Worker protection legislation, for example, is passed by some FOC states but this has frequently been found to be non-existent in real terms. FOC administrations assert no regulations about crew nationality, giving the shipowner complete freedom to determine

the nationality of labour. This determination to perpetuate *laissez-faire* labour hire is a central characteristic of FOCs (Alderton & Winchester, 2002, p.3; Couper 2000, p.3). Some newer FOCs have operated with the main aim of avoiding regulation to attract tonnage, embarking on 'a race to the bottom' (Alderton & Winchester 2002, p.5; Informant Five 2002). FOC states could lose their competitive status by imposing too many regulations (2002, p.5).

There are international regulations intended to protect seafarers against 'piratical' exploitation. The ILO has adopted thirty-six international conventions and 26 recommendations since 1920, for this specific purpose. However, there are problems. Not all flag states have ratified these conventions. Although agreements are often being drafted so that they allow broad interpretation, some states consider that ratification would be against their interests. Some signatory states therefore have passed selective, diluted interpretations of conventions. They take advantage of the fact that supranational organisations often lack legal authority to impose sanctions (Simmons 1998, pp.78, 79).

The aggregate effect of Port State Control has been to slowly improve standards in some of the older FOCs - although many of these have not yet risen to equal those of many TMC registries. This limited increase in standards has produced a disparity among the FOCs. Newer registers have established themselves at the 'lower end' of the flag market, and compete with other new flags. These newer FOCs have apparently expressed resentment toward increasing regulation as these impose costs and limit chances of yielding income (Alderton & Winchester 2002, pp.1-5). Given that FOC administrations operate with a minimum of regulations, they are powerless to adopt measures to prevent pirates from attacking many, or even all ships listed on their registers.

The labelling process and the management of stigma is central to any crusade. Labelling often gets diffused from the initial claims making entrepreneur to others (Becker 1973, Best 2001, Loseke 2003). Labelling processes operate in relation to FOCs. The emergence and consolidation of state operated Port State Control (PSC), mostly in core states, and developing maritime states such as Singapore, has allowed PSC authorities to

compile data about flag state performance and the quality of registered ships. They have used these data to identify several statistical trends to determine the overall reported quality of flag state operations. Thus the PSC operators can rank the worst to best flags and focus more public attention upon the poorest ships and label them accordingly.

All FOC administrations share a 'spoiled identity' to some degree. I argue that FOC states can be treated as individual entities. Each state has its own agenda and priorities. Extrapolating Goffman's (1968) argument, which he applies to individuals, I argue that FOCs have attempted to manage stigma by trying to offset condemnation. FOCs have attempted to establish an image of respectability as a form of 'defensive response' to criticism (Goffman 1968, p.16). FOCs, even those as troubled as the Liberian registry (ITF/Global Witness 2001; Young Pelton 2002)⁷ are bolstered however, by shipping elites' widespread acceptance of them. Through this, Goffman's notion of the 'sympathetic others' becomes evident (1968, p.31). Their position is also consolidated because the 'visibility' (1968, p.64) of the FOC system as a stigmatised entity, is limited. The failings of various FOC administrations and of the system itself are not a 'social factor that is readily visible' (1968, p.65).⁸

The FOC states, however, do not present a united front. They tend to respond individually to specific comments directed at them. When fundamental structural questions about the FOC system are raised, they tend not to respond to them and leave this to shipowners who use economic rationalist arguments, particularly of efficiency, to justify their use.

The effectiveness of maritime unions' constructions of substandard shipping as piracy appears to have been limited. It does demonstrate how the definitions of words rest on social decision and usage. Although the media have used this term in this context for effect at times, it seems audiences are less receptive in this age of postfordism and deunionisation that affects a wide array of industries. The media, which have a number of issues competing for the attention, have not taken this up with intensity. Unions as primary claims makers, have had less means of amplification to disseminate their claims.

It appears that the exploitation occurring in shipping is nothing exceptional in the capitalist world-system – especially in ‘invisible’ industries such as shipping or in peripheral states that do not have traditions of worker protection.

Conclusion.

Labour unions have contended that FOC states have a lack of political will and insufficient ability to respond to pirate attacks on their ships. More radical unionists have also expanded the definition of the term piracy to describe the FOC institution, which they see as systematically stealing the labour power of seafarers. This form of etymological expansion of the definition has occurred as part of radical unionists’ moral entrepreneurial stance. Labour unions are modernist and are fighting against the trends in a postmodernising world-system. Their lack of success in attaching the label piracy to FOC activities contrasts with the success of postmodern environmentalist movements analysed in the next chapter.

Chapter Six

¹ 'The law of the flag, which enables identify the State and hence the political authority responsible, negotiating partner or party to international treaties, is the underlying principle of any international or regional legal framework. Each State must ensure compliance with its own national legislation and with international conventions it has signed.' (Alderton & Winchester 2000; ILO 2001, p.106).

² The International Labour Organisation (ILO) is concerned with working standards aboard merchant ships and has established conventions that concern employment conditions. Crewing conditions influence total operating costs of ships. The number of ILO Conventions has steadily increased and over thirty ILO Conventions now influence crew overall conditions, although the number of states which ratified and have adhered to Conventions vary greatly (Admiralty Law Guide 1987a; 1987b, 1996; Stopford 1997, pp.448, 449).

³ Distinction is frequently made between core state maritime nations and FOC registers and their different regulatory regimes. It is argued by Alderton and Winchester 2002, that characterising flags between national and FOC in terms of flag market analysis restricts 'understanding of the fundamental dynamism that is inherent in this market'. They identified a tendency to conceptualise FOCs as an 'undifferentiated mass'. This conceptualisation was sufficient when FOC jurisdictions started to emerge. However, differences FOCs in terms of performances, meant that further conceptualisation was necessary (Alderton & Winchester 2002, pp.1-6).

⁴ In the 1930s several US passenger ships were flagged out to Panama to avoid prohibition and exempted profits from fiscal conditions and this, primarily provided the impetus for US shipping to flag out to Panama. Some Spanish ships flagged out under Panama when some Spanish owners used this to avoid fiscal and social responsibility stipulated by the Spanish government (Alderton & Winchester 2000, p.1).

⁵ The US Ship Sales Act of 1946 resulted in the sale of 1,113 US 'Liberty' ships to companies flagged under Panama (Carlisle, 1981). Liberia became an FOC in 1948 when Liberian Maritime Law was drafted, primarily to record mortgages (Alderton & Winchester 2000, p.1).

⁶ The Liberian International Ship and Corporate Registry (LISCR) has managed the Liberian registry since 1st January 2000. Before this date, The Liberian Shipping Registry of International Registries Incorporated of Reston, Virginia operated it (International Transport Workers' Federation/Global Witness 2001). The successful operation of the Liberian registry during Liberia's civil war demonstrates the capacity for FOCs to be operated even while their own technically overseeing governments are practically non-existent or in a state of chaos.

⁷ Reportedly, not all companies have wanted to remain associated with the Liberian registry. According to Urquhart (2001a, p.1) Shell Ship Management Ltd, reflagged five of its vessels from Liberia to the Isle of Man during 2001. Royal Caribbean Cruises, a major cruise liner operator, quit the registry and moved under the Bahamian flag at this time. But this move represented a small number of ships reregistered to other flags. By mid 2001, Liberia remained the world's second-largest shipping register consisting of 1730 ships or 55.8 million gross tons (Urquhart 2001b, p.1). But by the end of 2001 the register had actually grown by including another 134 ships on its register (Jinks 2001, p.2).

⁸ In 1996 two journalists from the U.S newspaper the *Houston Chronicle*, Kevin Moran (1996a; 1996b; 1996c; 1996d; and Jim Morris (1996a; 1996b; 1996c; 1996d; 1996e; 1996f; 1996g; 1996h; 1996i; 1996j; 1996k; 1996l; 1996m; 1996n) and Moran & Morris (1996a; 1996b) provided rare coverage of the plight of merchant seafarers worldwide, particularly in relation to FOCs. The series of articles covered crew abandonment, the hazards of working at sea, FOCs and the decline of metropolitan shipping fleets, deregulation of shipping, poor operational and safety conditions aboard some FOC ships and seafarer welfare issues.

CHAPTER SEVEN

ENVIRONMENTAL PIRACY

This chapter analyses another postmodern, expansion of the term piracy, applied to activities considered marine eco-deviant. It contextualises claims disseminated by the charismatic environmental groups Greenpeace and The Sea Shepherds' Conservation Society (SSCS) within what I consider is part of a sixth, postmodern stage, which I have added to Nadelmann's (1990) GPPR.¹ Both organisations' reports construct social problems associated with vessels (often flying FOCs) undertaking illegal and unsustainable fishing as well as whaling, sealing and waste dumping at sea. They argue that such practices represent the theft of marine resources. The oceanographer Cousteau (1988, p.8) for example, described whaling as 'nothing more than plunder'.

Consequently, they extend the term 'piracy' to encompass these activities, which, they assert, harm the marine environment in the same way that 'traditional' piracy harms shipping. They have attempted to convert a rhetorical analogy to a logical analogy because, as they interpret it, both traditional piracy and illegal fishing and whaling involve 'theft'. Their 'piracy' statistics concerning illegal fishing and whaling but not raiding ships, however, extend beyond accepted national and international legal definitions (Menefee 1989, p.73).

Greenpeace and the SSCS, both charismatic, environmental movement organisations (EMOs), are products of the 1970s social movement organisations (SMOs), which formed part of a widespread, international counterculture. Their creation reflected the reorientation of values within a new generation born during the period of modernist, material prosperity, which undertook collective searches for 'alternative' forms of social organisation (Inglehart 1990; Touraine 1985, p.749). Some within this generation in core states adopted postmaterialist values, expressive freedoms and new forms of political participation, which frequently had a new left, and more postmodern orientation. The SMOs had their roots in early interest groups with nebulous boundaries, which were 'segmented', 'polysepalous', 'reticular', and 'loosely structured' (Della Porta and Diani 2003, pp.14, 141; Oberschall 1973).

The environmentalist groups resulted from the social conflict concerning environmental depletion that emerged for the first time during this era. Collective environmental interests were identified and pursued, which resulted in the new environmental groups constructing new social and political identities. They gained organisational status and became political forces intent on defending their status as ‘environmentalists’ and exerting a moral militancy with an ethical certainty (Touraine 1985, pp.749-755).

Environmentalism has modernist characteristics in that some arguments within it are based on scientifically evaluated concerns about eco-depletion (Informant Eleven 2006). EMOs, however, are mostly postmodernist in cultural and ideological orientation. A myriad of groups that have embraced environmentalism, loosely support a hybrid of new left ideals. The groups tend to have participative, moral entrepreneurial leaderships that oversee their multiple environmental objectives and causes. The personnel are largely a diverse range of ideologically motivated volunteers who sympathise with a multiplicity of environmental goals. They use the comparatively cheap technology of the Internet to disseminate claims, taking advantage of its time-space compression while making extensive use of imagery and text (Harvey 1989).

EMOs have been in Becker’s (1973) terms, both ‘outsiders’ and ‘insiders’. Their radical action categorises them as actors outside mainstream political processes. Yet, their interaction with political institutions means that they have taken part in formalised political development. These EMOs have crafted language to emphasise their arguments and thereby extended the piracy definition to strengthen their moral crusade against whaling and illegal, unregulated and unreported (IUU) fishing. The use of the term piracy in this marine-ecological context, spread to other environmental groups, some government agencies and even to the scientific community. Popular and institutional media sources, such as the Australian Broadcasting Corporation (ABC), British Broadcasting Corporation (BBC), The Independent, The New York Times and Lloyd’s List now also use the term piracy in reports concerning illegal fishing and whaling. This is part of what I argue is the sixth stage extension of Nadelmann’s global prohibition.

Greenpeace and the SSCS as EMOs have not accepted the use of mainstream rules and definitions as part of conventional social regulation. They have developed their own dialogue, the characteristics of which have formed more easily within organisational settings through consensus (Becker 1973, p.4). Their discourse has given the term piracy as an expanding, connotative meaning, defined in sociolinguistics as ‘rhetorical analogy’. However, the term piracy to describe IUU fishing and whaling has been used increasingly as a denotative meaning, or in sociolinguistics, a ‘logical analogy’, to refer to, what EMOs regard as theft in the maritime environment. This has occurred in the postmodern period during which time the definition of ‘security’ has also expanded from being used to refer to just scientific, military and political contexts to include environmental problems and sustainability (Græger 1996, p.109). These demonstrate that attempted reconstructions of definitions and laws illustrate areas in which legal definitions may not yet reflect a growing moral and political consensus (Goode & Ben-Yehuda 1994).

EMOs are concerned with maintaining a moral persuasiveness, which reflects ‘an absolutist dimension of their world-view’ (Mathieu 2005, p.3). Their use of language is central to this aim. The attempted expansion of the definition of piracy is not new in historic terms. As stated, assumptions of social consensus allowed the IMO and the IMB to establish rigid piracy definitions. Different behaviours at sea, however, violate legal or moral codes and have been labelled piracy. The range of acts or events illustrates the potentially elastic nature of piracy definitions. These include the torpedoing of the ss. *Lusitania* by a German submarine in 1915 (Bailey and Ryan 1975); the allied and axis powers’ attacks on merchant shipping during the Second World War, about which the question of whether it was piracy was raised at the Nuremberg Trials (Doenitz 2002); the French admitting legal responsibility for sinking the mv *Rainbow Warrior* in 1985 (Pugh 1987); which Greenpeace labelled ‘piracy’; the hijacking of the mv *Achille Lauro* in the same year² (Cassese 1989; Constantinople 1986; Halberstam 1988); some aspects of wreck salvage, which can be interpreted as theft (Dromgoole 2004) have been labelled ‘piracy’ by some at different times, but with limited success, demonstrating that the overall adherence to the label depends on acceptance by audiences. These labelling

actions, however, have been far less successful than those of environmental groups, which have been increasingly successful in sticking the label of ‘piracy’ on actions that they consider to involve the theft of marine resources.

The Social Construction of Legitimised Whaling and Fishing.

The battles to create and enforce social rules by specific groups established for that purpose, reflect class, occupational, gender and increasingly, environmentally based social division. Often social groupings do not share the same opinions and allegiances to particular laws. The categorisations of what is either functional or dysfunctional remain dependent on groups’ motives and actions (Becker 1973, pp.7, 15). Ethical and social constructions of historical transnational and intergenerational marine resource exploitation are raised within eco-political groups, contentious and high profile internationalised actors, which attempt to shape how this issue is addressed (Dalton et al 2003, p.743; Mandel 1980; Stoett 1997; Wapner 1995, p.311). These groups demonstrate the adverse impact of marine resource extraction on oceanic ecological processes as well as social reactions and justifications (Hughes 2002, p.1). This eco-discourse shows that how we conceptualise whales and fish will influence whether whaling and certain fishing is accepted as piracy (Lawrence & Philips 2004, p.689). Greenpeace’s and the SSCS’s uses of the term piracy to describe whalers and those fishing illegally, represent an important example of conservationist attempts to persuade audiences to accept environmentalist arguments. Mandel (1980, p.100) notes that EMOs may, under some circumstances, be more effective in getting audiences to support their marine conservationist objectives and drawing attention to transnational marine resource conflict than state governments, as governments have been in a position whereby they have *reacted* to populist environmental campaigns.

The overviews of whaling literature by Cousteau (1988) and Steinberg (2001) demonstrate that discursively, whaling was constructed as an essential activity undertaken by sailors who were semi-social outcasts who plied their trade in the rough, remote oceanic environment. Texts such as Strabo’s *Geography* (1st Century AD), Pliny

the Elder's *Naturalis Historia* (1st Century AD) and the work detailing the explorations of Lacépède (1804) drew attention to the aboriginal whaling of coastal communities. Literature emerged that expressed the human drama of whaling in forms of romantic poetry and empirical prose (Dakin 1963), though Cousteau (1988, p.13) described much of this as 'dignifying cruelty'. This literature shows that each state that became either a maritime hegemon in the world system able to establish and maintain a rule structure, or known for having a large population of seafarers, played a role in whaling (Cousteau 1988, pp.19 – 37). The use of whale parts reflected the increasing complexity of the division of labour and advances in technology within these states' economies (1988, pp.43 – 46).

The existence of the EMOs and their 'anti-piracy' campaigns show the disagreement in domestic and international society about what behaviour is relevant and 'proper in any given situation' (Becker 1973, p.19). As recently as the 1970s, whaling and extensive fishing to commercial extinction were not necessarily considered unusual or criminal, but rationalised instead as a normal resource extraction. The term 'harvesting of whales' (that environmentalists later labelled the 'slaughter of whales') was often used to describe the exploitation of a resource considered plentiful and *res nullius*. Between 1929 and 1979, whales were reportedly caught at an annual rate of 40,000, which brought the total caught in that period to 2 million. The activity of harpooning and dragging whales from the sea was constructed as a natural, ethically neutral, agricultural-like activity. As well as maritime terms, whalers used industrial terms, such as 'processing', 'harvesting' and 'factory ship' extensively (Cousteau 1988, p.7).

Although EMOs have essentially accepted a number of left-wing ideas, they have also in part, rejected a form of moral pluralism by campaigning against certain maritime practices in heterotopic ocean-space (Becker 1973, p.15; Steinberg 2001). Only in the West did whales have other cultural connotations of being intelligent, sentient species within an inherent right to exist, whose value should not just be determined by exchange-value (Cousteau 1991; D'Amato and Chopra 1991). In fact, Lawrence and Phillips' (2004, p.697) study of the whale in popular macro-cultural discourse showed how it had

been constructed in society and how these constructions changed as a result of anti-whaling discourse.

Informant Nine, for example, had worked on whaling ships and noted

‘I was on deck and worked off the Falklands. I don’t think everyone gave it much thought... We were getting on with day-to-day jobs, and dealing with things like the bad weather. We weren’t treated as if we were pirates or vagabonds or anyone like that. But personally, I didn’t like it. It was after when the whaling protests started with people like Greenpeace and this was shown on TV that I think people [collective opinions] changed.’

Rule creation and enforcement change over time and between states and depend on circumstances (Becker 1973, p.121). The multitudes of maritime laws applied to regulate behaviour within the marine environment are no exception. In the 20th Century, developments in harpooning technology, navigation, sonar and factory ships expanded whaling capacity. Therefore, it became clear, as Cousteau (1991) noted, that its ‘continued existence rest[ed] on the quality of social decision.’ Conflict emerged between politico-economic objectives and scientific advice. The intensification of debates about whaling resulted from new data about the depletion of whale numbers. The International Whaling Commission (IWC), established in 1946 from the International Convention for the Regulation of Whaling (ICRW), began to apply internationally agreed regulations to commercial whaling as a result of reports about their finite numbers. For thirty years, the member states had reportedly ignored recommendations from the IWC’s scientific advisory board and adhered to unsustainable quotas of large whales (Palazzo 1999, p.69). The pro-whaling lobby’s justification to continue was, in part, constructed by some scientific uncertainty about known whale populations and reproductive patterns (Heazle 2006) as well as having ideological and cultural bases (Caron 1995).

The Tangalooma whaling station, for example, situated on the Southeast Queensland coast of Australia, opened in 1952 but closed in 1962 after it had reportedly ‘processed’ 6,277 humpback whales (*Megaptera novaengliae*). As a result of reports that showed whale numbers had decreased way below commercial viability in this ten-year period, the

IWC eventually banned commercial whaling in 1982 (effective by 1986). More anti-whaling states, that both generated and were influenced by pro-conservation rhetoric, joined the IWC and supported this stance. The states of Chile and Peru, however, were considered ‘pirate whalers’ as they refused to join the IWC and operated outside of its charter (Carter and Thornton 1985; Dakin 1963; Orams and Forestell 1995, p.667; Palazzo 1999, pp.69, 70).

Despite certain rules and laws being established, social groups or states may simply not accept them. This non-acceptance can create conflict between groups. As a result, enforcement may become difficult or completely ineffective. Rule enforcement does not automatically result from a violation of a particular rule (Becker 1973, pp.132, 133). Since the IWC bans, Japan, the Soviet Union (Russia) and Norway have continued to pursue whaling, reportedly for IWC-sanctioned scientific purposes. The coastal communities of these states have a long cultural history of inshore and offshore whaling (Kalland & Moeran 1992). As a reaction, the term ‘piracy’ was increasingly applied to their activities. Stacey, Brenner and Gray (1983) defined ‘pirate whaling’ as ‘all whaling that takes place outside of the regulatory scope of the International Whaling Commission.’ The label followed those attempting to avoid it. Barrett (1998, p.329) noted that some ‘pirate whaling was non-compliance by another name’ as Japanese whalers circumvented IWC restrictions by re-registering vessels under the flags of non-party states.

Recently, Japanese representatives argued that the IWC majority anti-whaling consensus resulted from the organisation having been ‘hijacked’ by environmentalists. They called for some ‘normalisation’ of the whaling body, which is another term for continuation of whaling. They also used the terms ‘managed’ and ‘sustainable’ whaling but it was unclear as to what extent management or sustainability principles would be adopted. The Japanese reportedly plan to hunt 1000 whales under its ‘scientific whaling’ programme in 2007. Additionally, they will seek ‘support’ at the IWC from African, Caribbean and Pacific member states that are in receipt of extensive Japanese development aid (McNeill 2007). Watson (2006) argued that these nations were sycophantic ‘puppet nations’.

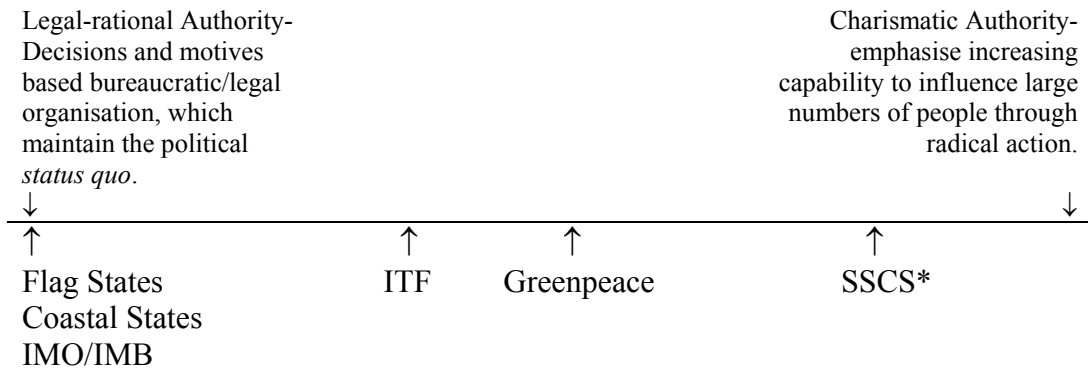
The use of ‘piracy’ in relation to other marine resources must be considered in a larger political economic context. Arguments about the legitimacy of fishing and its construction as a battle against poverty have a long history (Corbin 1994, p. 215). Like whaling, the history of fish commodification demonstrates the importance of this industry to the capitalist world-system, in which ocean space is considered a source of living and non-living commodified resources (Steinberg 2001, pp.8-14). Rates of fishing increased markedly during the period of industrial capitalism as emergent technologies produced the capability to reach further and deeper with increasing accuracy (Roberts 2002, p.242). Since 1945, the reported total of fish extracted from the seas has risen annually at a rate of 3.6%. In 1948, 17.3 million metric tonnes were harvested globally but this had risen to 91.9 million tonnes by 1995 (Steinberg 2001, pp.11, 129). Increasing awareness of the pressure on finite marine living resources, which is heavily dependent on EMOs highlighting oceanographic data to mainstream audiences, has led to a bioeconomic definition of overfishing.

Once the oceans’ resources had been exploited due to intense investment, the oceans could no longer not be considered asocial spaces and regulation-free. Considerable diplomatic energy has gone into the creation of conventions concerning the preservation of fish or the conservation of oceanic living resources (UNCLOS 1994, for example, contains several articles referring to fish extraction). Coastal governments have become sensitised to the securitisation of waters, particularly when ecologically threatened species are known to inhabit them (Knecht 2006; Steinberg 2001, pp.138, 148).

‘[As] each actor pursues strategies, the result [is] a set of social institutions, attitudes, and norms that...reproduce the construction of the ocean as unclaimable transport surface, claimable resource space, *and* a field for [militarisation]. The balance between these contradictory constructions...shift...as the power of the actors vary and as the need for ocean uses [wax and wane], but the overall competition among actors...serve to reproduce the ocean as uniquely constructed space with a complex regime designed to serve a multiplicity of functions.’ (Steinberg 2001, p.4).

Actors within the debate about IUU fishing and whaling range from rigidly structured, bureaucratised institutions (employing full-time staff with defined roles), to charismatically led, radical groups (see Figure 7.1). SMOs may either become more ‘mainstream’, and ‘moderate their aims’ as they increasingly bureaucratised, or become more radical (Della Porta and Diani 2003, p.147; Jackson and Morgan 1978). In Figure 7.1, Greenpeace is less radical and charismatic than the SSCS. It began as a radical collective of individuals in the 1970s but became more bureaucratised as it increased its size and global reach (Watson 1994, p.xiv).

Figure 7.1 Range of Actions Highlighted in anti-IUU Debates.



*The SSCS is not at the extreme part of this scale. It partakes in radical action and argues that it attempts to uphold existing environmental laws, and interact with mainstream institutions despite being sometimes critical of their policies or perceived inaction.

EMOs such as Greenpeace and the SSCS have played an increasing self-defined role in raising awareness about living marine resources and what they call piracy. Like other moral crusaders who have shown discontentment with existing regulations (Becker 1973, p.147), these organisations have demonstrated complete dissatisfaction with an array of state and international regulations that have allowed the destructive extraction of marine living resources. They have publicly highlighted scientific cetacean data, showed films of actual whaling (Orams and Forestell 1995, p.667) and highlighted the non-sustainability of some commercial fishing to trigger adverse public reaction (Della Porta and Diani 2003, pp.24, 138). They became ‘rule creators’ who argued that ‘existing rules’ did not address what they labelled as the maltreatment of marine species (Becker 1973, pp.147,

148). These assertions led them into conflicts with mainstream institutions (Della Porta and Diani 2003, p.24).

The capacity of moral entrepreneurs to fight for their moral reformism is dependent on their access to relevant finance, knowledge and equipment resources (Becker 1973, p.152). The evolution of both Greenpeace and the SSCS was determined by their varied access to resources, i. e. their material base (Della Porta and Diani 2003, p.139).

Nevertheless, the development of both organisations conforms to the third and fourth stage of Blumer's (1951 in 2003, p.147) social movement cycle³ as they

- Defined aims.
- Collected money, non-financial resources and recruited volunteers.
- Gained support from the public and some political elites (Della Porta and Diani 2003, p.140).
- Maintained awareness and control of internal solidarity.
- Used fairly charismatic leadership to maintain collective ideological motivation.
- Developed operational procedures.

These organisations share *some* institutional similarities, but differ in terms of their degree of bureaucratic organisation and commitment, and the levels of commitment expected from key organisers. Neither is so exclusive, however, that it disallows membership of other organisations (2003, p.144).

Greenpeace and SSCS evolved into 'professional SMOs' (Della Porta and Diani 2003, p.145). Their leadership is concerned with meeting organisational demands. They remain aware that effective, moral entrepreneurial leadership depends largely on their use of communications media and producing quality claims disseminations that present images of 'speaking for a constituency' (McCarthy and Zald 1987, pp.374, 375). They need the media to convey their central messages and therefore, enjoy a symbiotic relationship - environmental activists provide a good source of material for media agencies to cover, and environmentalists need the media to disseminate claims (Hutchins and Lester 2006, pp.434, 445). Both organisations, as well as the media, have adopted postmodern

practices in their use of the Internet and exploit time-space compression, to promote ideologies, aims, and activities.

To justify their assertion that whalers and IUU fishers are pirates, these organisations employ or interact with scientific experts and show scientific data demonstrating depletions of marine stocks and the degradation of oceanic ecosystems. The use of scientific data helps them gain credibility, validate rhetoric and justify radical moral action against what they refer to as ‘ecocide’ in the world-system. Often scientific examples are presented as incontestable. This is somewhat contradictory because many environmentalists appear to fear and distrust aspects of science and scientific technology (Della Porta and Diani 2003, 142; Greenpeace 1998; Yearley 1992).

This uses of scientific constructs help validate the use of the term ‘piracy’ to describe violations of marine ecosystems. In contrast to the bureaucratic IMB and IMO, Greenpeace and the SSCS are expressive and relatively decentralised (Della Porta and Diani 2003, p.152). Both, however, have established a fairly ‘routinised pattern of deviant behaviour’ (Becker 1973, p.38). They have ‘relaunched campaigns’, previously suspended due to a lack of resources, when they have regained sufficient funds and equipment (Della Porta and Diani 2003, p.150). The presence of Greenpeace and the SSCS in the Southern Ocean in 2004 after some absence, demonstrated this. Nevertheless, their opposition to environmental ‘piracy’ appears to have been consistent.

As rule enforcers (Becker 1973, p.122) against environmental piracy, they have ‘securitised environmentalism’ (Græger 1996, p.109) and have

- taken the initiative to draw attention to what they see as legal or moral rule violators and attempted to hinder their fishing and whaling operations to get them to cease.
- filmed their attempts to bring the labelled violators to the attention of the public on the premise that once they have been exposed, this will be defined as a social problem and will not be ignored by coastal states, flag states the IMO and the IWC.

- played a part in validating their roles as rule enforcers, which also consolidate their position as some form of moral environmental authority.

Greenpeace.

This EMO was founded in Canada in the early 1970s, at a time when environmental movement activities were considered radical. Their moral militancy became typical of a politicised subculture, which was primarily concerned with eco-politics, moral regulation and labelling (Becker 1973, p.178). When Greenpeace first started its environmentalist actions, they were considered revolutionary. Since its inception, it has continued to grow and its branches in many parts of the world have helped it achieve considerable acclaim. It justified its array of anti-whaling and anti-fishing actions (Mandel 1980, p.110), using moral arguments pertaining to natural law about environmental protection and attempted to further validate its moral certainty by supporting established environmental conventions and laws concerning marine legislation and the conservation of fish stocks and whales (Greenpeace 2001a, pp.4-10).⁴ However, the organisation's commitment to non-violent action, results in passive civil disobedience in contrast to some of the reported actions of the SSCS.

Greenpeace widely distributes information reports as part of its role as a primary claims maker in its moral crusade. Its supportive audience appears aware of its moral authority as an internationalised organisation. Greenpeace reports have extended the piracy definition, as it applies the label piracy to IUU fishing, and other behaviours causing damage to oceans such as whaling (Greenpeace International et al 1999, p.5; Islands Business 2004, p.8), as in 'Who are the pirates?' 'Pirates fishing in the Pacific steal valuable resources.' (Greenpeace 2006a). Furthermore, it emphasises UN reports that pirate fishing steals about US\$4 billion per annum (Greenpeace 2006a). It estimates that Somalia loses US\$300 million, and Guinea loses approximately US\$100 million per year. Additionally, it has compiled a list of what it labels a 'Pirate Hall of Fame', which identifies a number of vessels known for violating fishing agreements. It also estimates that there are 1,300 pirate-fishing vessels (2006b).

Moral crusaders (such as Greenpeace), despite their focussed devotion to particular causes, frequently support other crusades and receive support from them (Becker 1973, p.148). Greenpeace making its claims about IUU fishing in a joint report with the ITF, the Commission on Sustainable Development (CSD), the Trade Union Advisory Committee to the OECD (TUAC) and the International Confederation of Free Trade Unions (ICFTU) (Greenpeace International et al 1999, p.5) demonstrates this.

As part of what could be described as a multifaceted moral crusade, Greenpeace reports make connections between IUU fishing vessels and the use of FOCs to obscure their identity and beneficial ownership. Greenpeace (2001a; 2001b) uses the term 'pirate fishing' and 'pirate fishing fleets' to describe fleets that have *re*-registered vessels from regulated flags to FOCs, that according to those such as the ITF, do not adequately uphold fishing regulations (Erceg 2006, p.177). It labels the consequence of granting FOCs as criminal (Greenpeace 2001a, p.6). These 'pirate ships are called 'chameleon ships' in some parts of the Pacific' (*Islands Business* 2004, p.8). It labels the 'structural piracy' of FOCs 'a weakness in the international regulatory regime' (Greenpeace 1999, p.5; *Islands Business* 2004, p.8) and argues that agents of social control should reorganise any system that allows this flaw. In doing so, Greenpeace calls on Article 94 (UNCLOS), concerning the duty of flag states to govern responsibly.⁵ Greenpeace et al (1999) argues that it is not 'an unfettered right of a sovereign state to possess a shipping register'. Flag states should be qualified in upholding their own and international law especially enforcing safety and environmental laws. This is a principle stipulated in Article 217 of UNCLOS for flag states to enforce the signed international agreements (Greenpeace et al 1999, p.18). Article 17 (part 4) of the Agreement Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks provides that

'a state which is not a member of a regional fisheries management organisation ... shall not authorise vessels flying its flag to engage in fishing operations for the straddling stocks or highly migratory fish stocks which are subject to the conservation and management measures established by such organisation'.

Its moral crusade, which is highlighted by documents such as ‘Make Piracy History’ (2006c) and ‘Plundering the Pacific’ (2006d), have included the following points –

- Ports should refuse to launder fish or service boats it labels as pirate boats.
- All supermarkets should prove that they are not handling stolen goods and are able to demonstrate the goods’ history.
- All fishing vessels should be controlled through electronic surveillance and flag states should be responsible for this.
- Some illegal boats never come into port but transfer their catch at sea. Greenpeace argues that this should be made illegal, presumably through international convention.
- Boats and companies that are caught should be named (negatively labelled and stigmatised) on a publically available list.
- International assistance should be provided to peripheral coastal states to help develop sustainable fishing practices.

Crusading reformers often appear to embark on campaigns with moral certainty, particularly if the fights involve humanitarian objectives or the vital prevention of ecological destruction (Becker 1973, pp.148, 149). Greenpeace has not labelled its own interventionist activities at sea as piratical, although some critics, such as some individual, Japanese pro-whaling advocates have. It has undertaken obstructive but passive action, as part of several successful marine environmental campaigns. These include using rigid-hull inflatable boats in attempts to stop long-line fishing, whaling or ships dumping toxic material.

In his respect, Greenpeace has acted as a rule enforcer as well as moral entrepreneur. As a moral entrepreneur, however, it has taken the initiative to heighten awareness of marine environmental problems. It reports that severe problems exist at sea and therefore, its actions are relevant and valid. It has sought to claim that their actions are making a difference yet has had to emphasise that more campaigning is necessary (Becker 1973, pp.122, 157).

Greenpeace's actions in the marine environment and its labelling of IUU fishing and whaling as piracy are a part of a moral panic concerning the depletion of marine resources, occurring within the context of what I have determined to be a Stage Six to be added to Nadelmann's Global Prohibition Regime. Table 7.1 Considers moral panic and claims diffusion within the context of Goode & Ben Yehuda (1994), Thompson (1998) and Best (2001).

Table 7.1. The stages within discourse about pirate fishing and whaling.

Goode & Ben Yehuda's (1994) Moral Panic Stages:	Thompson's (1998) Moral Panic Stages:	Best's (2001) Claims-Diffusion Stages:
CONCERN: Heightened concerns about the behaviour of pirate fishing fleets and whalers and possible consequences for international society have been reflected by the actions of Greenpeace, the SSCS and some core flag and coastal states.	Stage 1: Behaviours of pirate fishing fleets and whalers defined as a threat by EMOs. Stage 2: Portrayed simplistically by media. The media provide overview of the situation but do not highlight complexity of flag state law.	Stage 1: Claims-Makers that state some condition exists, initiate diffusion. Both Greenpeace and SSCS initiate claims via media and their own means. Stage 2: Information that something is problematic is diffused. These EMOs make extensive use of electronic media.
HOSTILITY: Increased hostility toward the clearly identifiable ships reportedly engaging in piratical fishing and whaling. EMOs emphasise that other FOC pirate fishing ships and beneficial owners remain 'invisible'.	Stage 3: Resultant widespread concern. Trepidation occurs throughout the environmental movement and legalised fishing industry. Coastal States dependent on fishing may be concerned.	Stage 3: People (various audiences) other environmental activists adopt claims. Accept that problem has specific characteristics and intermittently lobby flag and coastal state governments for action.
CONSENSUS: Widespread agreement in designated section of society (flag states, coastal states, IMO, EMOs), that the threat caused by labelled group (pirate fishers and whalers) is serious.	Stage 4: Reaction by Agencies of Social Control. Greenpeace and SSCS go on anti-pirate fishing and anti-whaling campaigns. Some core flag and coastal states, such as Australia, identify, chase and apprehend pirate-fishing vessels in the Southern Ocean.	Stage 4: Networks via which diffusion occurs, agree that action should be taken (to avoid complete collapse of ecologically vulnerable fish stocks).
DISPROPORTIONALITY: Response can be more intense compared to other more dangerous issues. Four Criteria: Figures Exaggerated. Figures Fabricated. Increased observation but no worse than others. Observation more intense than at other times. EMOs and now coastal states use scientific data to verify depletion and justify intensity of concern and reaction.	Stage 5: Panic Diminishes as Policy Changes Implemented. Flag state policy impeded by FOC system, according to EMOs and the ITF. Regional fishing agreements are established. Whaling nations still debating via the IWC.	
VOLATILITY: May appear suddenly, intermittently or disappear. Can be short lived but can re-emerge. EMOs undertake intermittent campaigns at sea due to limited funds. Core flag states fishery authorities are vigilant in their EEZ and in ports.		

Like the aforementioned Labourite attempts to expand the definition of piracy, Greenpeace's use of this term has two aspects. Its expansion of the piracy label or 'lexical change' demonstrates that postmodern ocean space is a heterotopia in which various actors exercise competing interests. As Steinberg (2001, p.205) notes:

'As a heterotopia, the ocean is a space of ordering and limits, but, as those orders and limits themselves stretch the bounds of social norms and systems, it is also a space for imagining and actualizing social change.'

There are resultant conflicts. In the case of Greenpeace, this was apparent when agents of the Direction Générale de la Sécurité Extérieure, the French Government's General Directorate for External Security (DGSE), sank Greenpeace's *Rainbow Warrior* in Auckland Harbour in 1985 as part of its *Operation Satanice* (Pugh 1987, p.655). They had anticipated that the *Rainbow Warrior* crew were going to interfere with the subterranean test detonation of a nuclear warhead by the French government's Commissariat à l'Energie Atomique in Moruroa Atoll, French Polynesia. Maritime trespassers should have been subject to violent intervention, only if engaged in military attack, piracy or arming rebellious groups. The French action against Greenpeace's 'piracy' was questionable especially since, as Pugh (1987, p.659) argues, Greenpeace, as a non-violent group could not be compared to pirates or a hostile navy. Greenpeace accused the French saboteurs of 'piracy'.

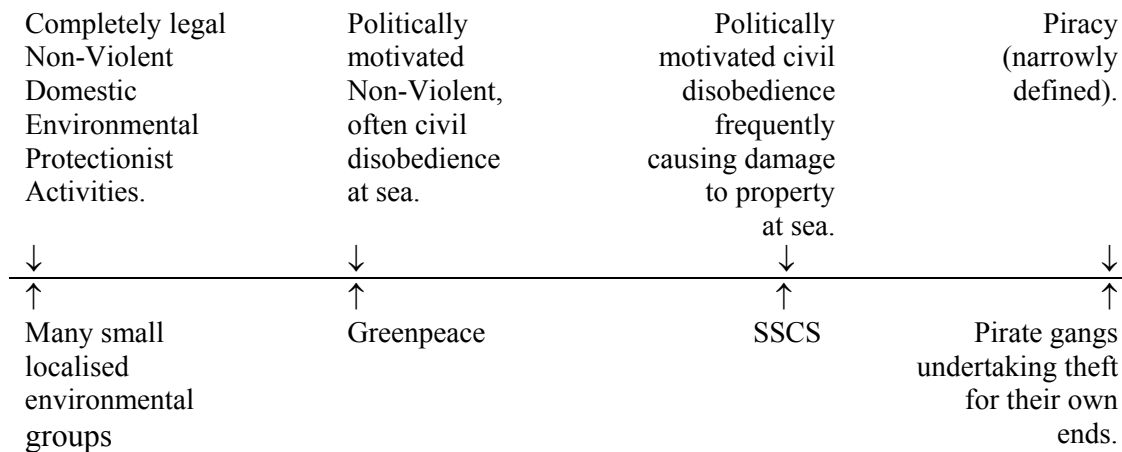
The moral crusaders may be in a position where they themselves violate pre-existing rules (Becker 1973). Some counterculture groups have undertaken violent action as part of their moral assertions. Not all environmentalists remain committed to a stance of non-violence and this makes the definition of piracy even more problematical. The SSCS is more militantly opposed to what it sees as environmental piracy than Greenpeace and yet this militancy has led to accusations of piracy against its leader Watson, who reflected

'To some, I am a hero. To others, I am a pirate, a villain, even a terrorist. The qualities that make me appear heroic to some, make me appear piratical to others.'
Watson (1994, p.xiv).

The SSCS.

Watson founded the SSCS in 1977, after leaving Greenpeace, claiming it had become a large, bureaucratic lobby group, increasingly interacting within international political opportunity structures to influence environmental discourse (Brown & Ellis 1994; Van Der Heijden 2006, p.28). The SSCS is entirely dedicated to marine environmental protectionism and to a more radical (often violent) approach than Greenpeace (SSCS 2004; 2004a). It has, therefore, appointed itself as an international agent of social control through Watson's transformational leadership. His leadership and his justifications for radical activism against what he has labelled postmodern piracy, is based on his ethical concerns for the marine environment and his desire to persuade audiences to expand their moral horizons to include consideration of marine creatures and ecosystems (Bass and Steidlmeier 1999, p.181; Brown & Ellis 1994; Watson 1998, p.26). The SSCS has labelled as 'piracy' marine activities that have adverse environmental impact. In line with Watson's comments above, Menefee (1989, p.73) notes however, that acts motivated by environmental protectionism, could be categorised somewhere between 'political activism' and piracy. See Figure 7.2.

Figure 7.2. A Range of Marine Environmental Protest.



As a moral entrepreneur keen to consolidate its position in an environmental moral crusade, the SSCS leadership has proclaimed a need to

- Criticise those it labels pirates

- Justify this criticism.
- Justify its own position using the term ‘piracy’.
- Justify its radical action as an attempt to become an agent of social control.

Like Greenpeace, the SSCS distributes its own information to supporters. In its material, the SSCS has highlighted incidents, to position itself as a moral entrepreneurial group and help it expand the definition of what is known as piracy. To have any chance in expanding this definition so that relevant audiences accept it, it has needed to demonstrate some credibility. Audiences of moral crusaders often want evidence of the crusaders’ integrity. The crusaders, by supplying evidence, can demonstrate commitment to their chosen causes (Becker 1973). The SSCS often presents the physical confrontations it has had with different actors as evidence of this credibility. By doing so, it has hoped to generate acceptance of its terms and definitions among an audience of followers and potential supporters.

Its activities show that the SSCS’s use of the label piracy has not occurred in isolation but against, or as a result of, incidents involving Watson and the organisation. Radical environmentalists attempt to gain credibility among potential followers by highlighting dissenting views and radical action, unlike lawyers whose credibility stem from the possession of recognised legal qualifications or elected politicians who have a democratic mandate or a perceived history of ‘sound’ decision making.

Violent Anti-Whaling and Fishnet Protests as Piracy?

Greenpeace has taken part in anti-whaling action whereby protesters have passively positioned themselves between the harpoon, mostly situated on the bow of the whaling ship, and the targeted whale. They have also raised protests about the destruction of long-line and drift net fishing, referring to the perpetrators’ action as piracy. Although they have drawn criticism from the pro-whaling lobby, they have only rarely been accused of piratical behaviour due to their passive-resistance stance.

The SSCS, however, appears to have drawn more criticism from mainstream institutions, as moralising radical ‘outsiders’ often do, for its violent actions (Becker 1973) that appear less standardised than Greenpeace’s protests. It has a fleet of craft it uses to actively intercept and ram vessels that it accuses of unauthorised fishing in territorial waters, using illegal methods (such as drift netting) and whaling to draw attention to, and halt these activities (Brown & Ellis 1994, Watson 1994, 1998, 2005, 2006). Its multi-national crew of environmentalists converted a fishing trawler, the mv *Sea Shepherd*, which included reinforcing its bow with concrete, for environmental protests.

The SSCS also aims to act as a self-appointed rule-enforcer and agency of social control by supporting its actions with claims that it is upholding existing national and international legislation. Watson constructs their position with the words

‘It is a pity we have to be out here enforcing these regulations to protect the oceans against these pirates...’
(Brown & Ellis 1994).

In this respect, we see an example of a radical moral crusader being prepared to accept certain already established rules if it is strategically necessary.

Its internet homepage lists the international laws and charters, which it claims justify its actions, without specifying which clauses and articles provide what they claim is a legal basis for action. These charters are:

- The World Charter for Nature UN Doc A/37/51 (1981).
- The International Whaling Commission (IWC) Charters.
- The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) (1973).
- UNCLOS (1994).
- The Convention for the Protection of the World Cultural and Natural Heritage (1972).
- The Convention of Antarctic Marine Living Resources (CAMLR).
- The Northwest Atlantic Fisheries Convention (NAFO).

- International Convention for Conservation of Atlantic Tuna (ICCAT).
- The Declaration of the United Nations Conference on the Human Environment (1972).
- ASEAN Agreement on the Conservation of Nature and Natural Resources.
- The Berne Convention.
- The Convention on the Conservation of Migratory Species.

To further stress its role as a moral entrepreneur and role enforcer, it also established what it termed an ‘Eco-Crime Watch’ and reportedly offers the facility for people to report eco-crimes to the SSCS with the enticement of financial rewards to encourage reportage (SSCS 2006b). Although the SSCS has never been officially authorised to intercept IUU fishers and whalers, or label people pirates, Watson does so anyway, claiming on moral grounds that

‘It is our right as human beings to protect the planet that we live upon, especially in the face of this kind of criminal activity which happens to have no regard or respect for life at all.’
(Brown & Ellis 1994).

Once moral crusaders and their supporters get involved with a cause, they can undertake their action with an emotional and intellectual intensity (Becker 1973, p.148). An overview of SSCS activities between 1979 and 2006 indicate that its six vessels have made a total of 215 voyages covering all oceans and many seas. These voyages have been undertaken as part of several campaigns listed in Table 7.2 below.

Table 7.2: The Voyages of the Sea Shepherds.

SSCS Environmental Campaigns	Approximate Number of Related Voyages*	SSCS Ships	Years
Antarctica Campaign.	3	<i>Farley Mowat</i>	2002, 2003
Anti-sealing Campaign (including Harp Seals)	22	<i>Sea Shepherd</i> <i>Sea Shepherd II</i> <i>Sea Shepherd III</i>	1979, 1982, 1988, 2005
Band Aid Campaign	2	<i>Sea Shepherd II</i>	1986
Brazil Anti-Poaching Campaign	4	<i>Farley Mowat</i>	2004
Campaign to sink the mv <i>Sierra</i>	3	<i>Sea Shepherd</i>	1979
Clayoquot Campaign	3	<i>Sirenian</i>	1993
Cocos Islands Support Campaign	18	<i>Sea Shepherd II</i> <i>Edward Abbey</i> <i>Sea Shepherd III</i> <i>Ocean Warrior</i> <i>Farley Mowat</i>	1992, 1998, 2001, 2002
Columbus Campaign	4	<i>Sea Shepherd II</i>	1991
Curacao Dolphins Campaign	1	<i>Farley Mowat</i>	2004
Drag Trawling Protest	1	<i>Farley Mowat</i>	2005
Driftnet Campaign	20	<i>Divine Wind</i> <i>Sea Shepherd II</i> <i>Edward Abbey</i>	1987, 1990, 1991, 1992
Galapagos Islands Support Campaign	17	<i>Ocean Warrior</i> <i>Farley Mowat</i>	2000, 2001, 2005
Grey & Pilot Whale, Norwegian whaling, IWC Campaigns (Pacific, Atlantic, Southern and Antarctic Oceans. Caribbean Sea)	43	<i>Sea Shepherd II</i> <i>Whales Forever</i> <i>Ocean Warrior</i> <i>Farley Mowat</i>	1981, 1985, 1986, 1994, 1997, 2000, 2001, 2005, 2006
Iki Island Campaign	1	<i>Sea Shepherd II</i>	1982
Longline Campaign	8	<i>Ocean Warrior</i> <i>Farley Mowat</i>	2001, 2003
Low Frequency Active Sonar Campaign (LFA)	3	<i>Ocean Warrior</i>	2000
Makah Campaign	10	<i>Sirenian</i> <i>Sea Shepherd III</i>	1996, 1998, 1999
Malpelo Island Campaign	1	<i>Farley Mowat</i>	2004
Salmon Campaign	5	<i>Sirenian</i>	1995
Sea Turtle Campaign	2	<i>Ocean Warrior</i>	2001
Shark Campaign	1	<i>Ocean Warrior</i>	2000
Tuna/Dolphin Campaign	6	<i>Sea Shepherd</i>	1989, 1990

*Although they made a total of 215 voyages, some were delivery voyages to and from shipyards. Watson reportedly commanded 195 of these voyages.

Source: www.seashepherd.org.

Table 7.3. SSCS Reports of Result of its Actions:

Crew Injuries between 1979 and 2006:	0
Rammings of Illegal whalers and poachers:	7
Illegal Whaling ships Scuttled:	8
Naval Confrontations:	7
Number of Times Under Attack by Fire Arms:	3
Long Driftnets destroyed or confiscated:	4
Miles of Longline destroyed or confiscated:	180 miles.
Volunteer crew that have participated in action:	Approx. 2200

Source: www.seashepherd.org.

Anti-Whaling as Piracy?

Moral entrepreneurs and crusaders can come into direct conflict with mainstream, nation state law authorities (Becker 1973). Watson claims legal justification for the periodic interception of sealers, whalers and ships dumping waste at sea despite dramatic conflict with state navies (SSCS 2004b). In 1979, the organisation rammed the allegedly illegal whaling ship the mv *Sierra* in the Atlantic.⁶ In 1981, the SSCS used the whaling ban under UN resolution and the US Packwood-Magneson Act, to justify pursuing whalers off the Soviet East Coast (Brown & Ellis 1994; Watson 1994, p.40).⁷ It entered Soviet Pacific waters to confirm that the Soviets had violated Clause 13B of the International Whaling Commission (IWC) Regulations concerning aboriginal whaling (Watson 1994, p.39). It had believed that the USSR ignored whaling bans to supply agriculture with fertilizer (Cousteau 1988, pp.43-45).

Watson claimed that whaling nations' violations of IWC regulations justified the label 'pirate whalers' (Cousteau 1988, p.40; Watson 1994, p.9). The SSCS' own illegal activities, however, drew official criticism. In 1986, the Faeroe Islands authorities judged the SSCS's protests against Pilot whaling as illegal.⁸ The *Sea Shepherd* crew defended their ship against arrest by using fire hoses and flare guns and outran a Faeroe naval vessel (Watson 1994, p.135, 146). Again in 1986, two SSCS-connected individuals reportedly sank the *Hvalur 6* and *Hvalur 7*, in Reykjavik harbour to inhibit Icelandic whaling. Watson claimed that Iceland had caught 300 whales under the guise of scientific research and sold whale meat to Japan. Icelandic authorities were intensely critical,

labelling this as piratical (Brown & Ellis 1994, Watson 1994; Menefee 1989, p.73; Watson 1994, pp.144-152, 164). Their actions in sinking these vessels would seem to come within the parameters of the UNCLOS piracy definition but like those of the DGSE, they were never prosecuted for piracy.

In 1989 and 1990, the mv *Sea Shepherd* patrolled the Barents Sea and the Pacific to search for whalers and drift netters. It encountered Russian naval destroyers whose commanders expressed curiosity contrary to the hostility they had shown during previous SSCS incursions into Soviet territory (Brown & Ellis 1994). In one action the SSCS intercepted and sank six drift nets.⁹

Watson (2005) noted the Greenpeace ships *Esperanza* and the *Arctic Sunrise* and the SSCS's *Farley Mowat* (registered in Belize) chased Japanese whalers, including the *Nisshin Maru*, along the Antarctic coast. Watson indicates that their presence influenced the behaviour of the Japanese whalers who appeared to reduce whaling activity. It is worth noting here that Watson made use of an FOC in the registration of his own ship.

However, then Australian Environment Minister Ian Campbell (Campbell) accused the Sea Shepherds of endangering the *Nisshin Maru* on Christmas Day 2005. Watson reported that the *Farley Mowat* had right of way but the *Nisshin Maru* attempted to ram it. He argued

‘Despite the evidence, when the Japanese complain, Campbell goes running to appease Tokyo. Is there no limit to how low these politicians will go to kow [sic] to Japan over trade agreements?’
(Watson 2005, p.x).

Moral entrepreneurs, to consolidate their position, can adopt the use of emotive and radicalised language in an effort to gain and hold public attention (Becker 1973). Watson (2006) is prepared to use extremely strongly worded media releases to justify his organisation's activities and to argue the legitimacy of his moral position. Watson (2006), drawing an analogy between tragic historic events and the contemporary era, said:

‘What Japan needs is an economic equivalent of the Hiroshima bomb. Their last insane lust for power and control ended in near suicidal horror as they attempted to loot, plunder, slaughter and rape their way through Asia. Today, they are looting, plundering, slaughtering and raping their way through the world’s oceans...’

He also noted:

‘The sheer audacity of it is mind numbing. One hundred million sushi-eating Japanese have the gall to accuse [cetaceans] of eating too many fish. The nation that developed racism into a cultural pillar of their society where non-Japanese are considered inferior now...accuse conservationists defending whales as being racist. This incredibly wealthy nation has the arrogance to state that whales must be killed to appease poverty by shipping the whale meat to the Tokyo fish market to be sold at high prices to affluent Japanese citizens...Japan will toss a few used cars onto remote islands and construct a fish plant or two to help locals plunder more fish to send to Japan.’

Some rule enforcers may attempt to gain legitimacy by persuading established authorities to implement rules, if they have not enforced a rule successfully themselves (Becker 1973). The SSCS officially requested that the Australian navy monitor activities in the Southern Ocean. Campbell reportedly refused to send vessels on the grounds that Japan did not recognise Australian Antarctic Territory. Watson (2005) asked ‘Does Australia claim the Australian Antarctic Territory or not? If not then the name should be taken off the maps and charts and the area surrendered to Japanese exploitation.’

Mainstream institutions, if found to be violating rules, may find themselves in the position of having to justify their behaviour by citing laws and other existing rules to moral crusaders and public audiences (Becker 1973). The Japanese Institute of Cetacean Research (ICR) publicly accused the Greenpeace Foundation and the SSCS of ‘piracy’ and ‘ecoterrorism’. If Japan asserts the accusation that piracy has been committed against its vessels, it can use this to seize the accused ships, according to UNCLOS. Japan may present justifications for intervention. Hiroshi Hatanaka, the Director General of the Institute of Cetacean Research, cited Articles 101 and 103 of UNCLOS (see appendices).

Campbell reportedly dismissed claims of the Japanese Whaling Association that he had supported ‘eco-terrorism’ (a fairly new term in environmental activist discourse) by offering the SSCS the use of Australian Antarctic Territory bases in the event of an emergency while its two ships the mv *Farley Mowat* and the mv *Leviathan* chased Japanese whalers. Campbell himself reportedly labelled Watson as ‘deranged’ and reminded him prior to his departure on the latest whale campaign of the necessity to adhere to all maritime laws (Perpitch 2006, p.19).

The Japanese have to assert that Greenpeace and the SSCS violated Article 101 of UNCLOS to justify intervention. However, Article 105 permits seizures on the high seas (see Appendix One). The Japanese were operating on the high seas but in Australian Antarctic Territory. However, Japan, which does not recognise this territory, may regard military intervention in Australian waters as a challenge to their sovereign right to freedom of the seas. Resultantly, Japan deployed a warship to protect whalers from interference by conservationists according to information that the SSCS received from Japan.

Fishnet Protests as Piracy?

Irrespective of the definition of piracy under UNCLOS, Watson labelled drift netters as ‘pirates’ and argued that they were

‘...operating as outlaws. They are pirates, bandits. They have no right to be out here strip mining the oceans, raping the oceans and unfortunately there is really no law enforcement body that has the jurisdiction to bring them into line. We, as a non-profit, international organisation [have] taken it upon ourselves to do just that and that is what we’re attempting to do here.’
(Brown & Ellis 1994).

Watson has justified his actions as a rule enforcer on the basis that enforcement of UN Resolution 46-215 outlaws drift netting. Although the SSCS acted a ‘self-appointed law enforcement body’ its actions frequently crossed boundaries between ‘legal’ and ‘illegal’.

In fact, it is possible to consider that the SSCS's treatment of drift netters and their property falls within the rubric of piracy under the UNCLOS definition.

In 1990 the *Sea Shepherd* rammed the Japanese mv *Shimiyung Maru No.8* that it caught paying out net worth an estimated US\$ 1 million (Brown & Ellis 1994; Watson 1994, p.200). The group admitted responsibility for the attack, and informed the Japanese embassy that it was prepared to answer charges at the International Court or in Japan. Watson stated

‘There is... speculation [about] why the Japanese...noted for...long-term economic planning, are methodically destroying...populations of fish and... breeding grounds...They have invested so much in...equipment to catch the dwindling [stocks] they are so in debt...that they have to catch more and more fish to pay off this debt. [This]...vicious circle...is leading to the extinction of...fish at the hands of the drift net and long liner fleet. (Brown & Ellis1994).

Japanese diplomatic representatives were reportedly unaware of the incidents. Watson was unconcerned about Japanese public opinion or legal action and again, justified his actions by citing his expanded piracy definition (Brown & Ellis 1994; Watson 1994, p.204).

‘The pirates are still out there...in force and as long as they continue to damage the oceans...then we will continue to damage them....to be effective...we have to escalate [the campaign]...I fully expect to be killed by one of our own species... but I will have made a difference.’ (Brown & Ellis 1994).

Moral entrepreneurs often cite the occasions when they have made a difference to a social problem or when they have gained acceptance by mainstream authorities (Becker (1973). The SSCS have been eager to highlight incidences when it has cooperated with mainstream institutions. For example, Watson (1994) claimed that the Guatemalan government had thanked the SSCS for an action in 1991. The mv *Sea Shepherd II* rammed the Mexican fishing vessel, mv *Tengui* after it was reportedly fishing without authority and using a seine net in the Guatemalan EEZ. The Mexican government

charged the SSCS but later withdrew this after realising that the Mexican ship had fished illegally (Watson 1994, p.206-210).

During a moral crusade, the crusader can face physical dangers when campaigning against those in materially advantageous, commercial or political positions and who are prepared to violate rules themselves to maintain them (Becker 1973). The SSCS adopted a different approach to the state-subsidised Taiwanese fishing fleets, which they constructed as being potentially dangerous. The mv *Sea Shepherd II* encountered the mv *Jim Ye Shang* (from Kaoshiung, Taiwan) in the Caribbean, contravening Barbadian fishing restrictions. Barbados has imposed limitations upon its trawlers to slow stock depletion. The *Jim Ye Shang* attempted to ram the mv *Sea Shepherd II* as soon as the crew recognised the ecological action group, showing that some Taiwanese vessels act radically to offset interference (Brown & Ellis 1994; Watson 1994, p.213, 214).

‘The Taiwanese are more dangerous [than the Japanese] because they don’t give a damn. They have been very aggressive, they’ve threatened us and so we have to be much more careful dealing with the Taiwanese.’
(Brown & Ellis 1994).

As part of their crusade, the crusaders often have to continue with a determined behaviour and often repeat their concerns and protests publicly (Becker 1973). In 1992, the mv *Sea Shepherd II* and the mv *Edward Abbey* set sail again, this time to enforce UN Resolution 46-215, outlawing drift netting. In July, they intercepted the mv *Jenwan Maru* #76 that tried to sail away, leaving its net in position. The *Sea Shepherd II* winched aboard this 35 nm long net (Brown & Ellis 1994; Watson 1994, p.230, 231). The USCG intercepted the mv *Sea Shepherd* and interrogated Watson after this episode. Reportedly, the USCG crew was frustrated with the laws it was working under, which prevented them from taking aggressive measures against drift netters (Brown & Ellis 1994).

Active, radical moral crusaders operate in a fairly unpredictable political environment and their support base can fluctuate depending on the concerns of their audiences

(Becker 1973). At one time, the Canadians were somewhat ambivalent towards the Sea Shepherds. In 1984, the SSCS confronted Canadian sealers, making Watson unpopular there. He was stigmatised and labelled a troublemaker (Brown & Ellis 1994; Watson 1994, p.105). In 1993, Watson positioned the *Sea Shepherd* to ram a foreign vessel in Newfoundland's Grand Banks under the observation of the Canadian Coast Guard. Canadian authorities dealt with the mv *Sea Shepherd* differently. He was arrested, taken to St. Johns, charged with dangerously operating a ship (Brown & Ellis 1994).

Ironically, Canadian authorities, which had prevented Canadian vessels from trawling the Grand Banks, because oceanographic data indicated its near exhaustion, could not prevent foreign fleets seizing the opportunity to fish. This was extremely unpopular with Newfoundland's fishing-dependent population, who this time, reportedly regarded Watson as a hero, further strengthening his image as a charismatic leader. Watson gained further leverage when claiming he was performing tasks that the Canadian navy should have been undertaking (Brown & Ellis 1994).

In 1994 a Norwegian warship intercepted the *Sea Shepherd* in the North Sea. The Norwegians fired shots, detonated high explosives against its hull, and then rammed it, which badly damaged the ship. But Watson felt justified not to cooperate. This attracted considerable international publicity at the time. The Norwegians claimed that they were justified in arresting the *Sea Shepherd*. Several international journalists, however, were aboard the *Sea Shepherd* who transmitted these events globally, including to the US State Department. The Norwegian warship left the scene, possibly realising through signals intelligence that the situation was being monitored. The Norwegian Commander could have been uncertain about the legality of action (Brown & Ellis 1994). The SSCS labelled this as a moral, rather than a legal conflict, claiming moral justification for its own operations that some, such as the Japanese, claimed are illegal (Perpitch 2006, p.19).

The SSCS has learned to use media coverage to its advantage against those it labels 'environmental pirates'. It has been important to Watson to justify his actions and

motivation on film to disseminate his claims, his motivations and highlight dramatic examples of conflicts-

‘...we’re hoping to publicise this and make people aware...and hopefully put political pressure on these countries to bring them about so they’ll no longer do it but also every ship that you get and disable is a vessel that is no longer wreaking havoc upon the oceans. What we’re looking at is a sterile ocean, a biological wasteland unless people stand up and say ‘No, we’re not going to take this anymore’ and then drive this scum from the ocean.’

(Brown & Ellis 1994).

Watson referred the use of purse and drift nets,¹⁰ and fishing companies that violated fishing agreements as pirates, and collected evidence against companies. He argued:

‘Drift netting is an extremely destructive exploitation of marine ecosystems...they take incredible amounts of fish...[and] the incidental kill...include nearly half a million marine mammals and over one million seabirds every year... it is an easy way of making a profit strip-mining the oceans, there is very few marine resources left and the only way to extract them is through these massive technological investments.

... the drift-netting industry has been out of sight out of mind out here in the middle of the ocean and...99% of people, never make it [here]. This is part of the globe which belongs to the wild animals of the ocean...and the people have been oblivious to the fact that these Japanese are out here literally strip mining....’

(Brown & Ellis 1994).

Interview journalists have highlighted Watson’s justifications and his argument that destructive fleets should be branded pirates:

Watson: ‘The [SSCS] has been around since 1977 and...we...enforce international regulations on the high seas.’

Press Representative: ‘You may have had a specific impact upon this one situation, [referring to their time in the Pacific confronting drift netters] do you think you can have any long term impact on...drift netting...?’

Watson: ‘...we are trying to encourage...American and Canadian fishermen [who] can destroy these nets on their own.’

Press Representative: ‘You’re taking the law into your own hands by doing this?’

Watson: ‘Well it’s about time somebody did something about it...We are vigilantes but that is only because the US Government and the Canadian

Government don't seem to have the courage to go out there and uphold these treaties and laws and regulations and we are not going sit by and watch the North Pacific be turned into a biological wasteland while these governments and organisations continue to debate this issue for a further decade.'
(Brown & Ellis 1994).

Moral entrepreneurs often highlight a sense of outrage and base their concerns on commonly held, 'common sense' viewpoints (Becker 1973). Watson's moral legitimacy for his actions and his use of the label pirate to describe IUU fishers are partly consistent with natural law - concerning a universality of higher ideals and moral justice. Watson also justifies radical activism by appointing himself as a quasi-naval enforcer upholding codified law against this fishing.¹¹ The SSCS claims to intervene against illegal activities in territorial waters with permission and cooperation from relevant coastal states, except when coastal states are supporting the contested activity (Brown & Ellis 1994; SSCS 2004c).

Fishing companies, governments and some other environmental groups, however, have labelled the SSCS, pirates. Ramming other ships deliberately violates UNCLOS 1982, and the SOLAS Conventions. The SSCS violated freedom of navigation. Yet, consistent with social legitimation theory, their actions can be seen to have been legitimated to the degree that they have been successful finding acceptance among radical activists. Without specifying who started the ramming, Watson has argued that many shipping trawlers are prepared to ram if intercepted by his organisation.

Sometimes moral entrepreneurs can clash with others with divergent views about the strategic direction of a particular crusade (Becker 1973). There is debate among environmental activists. According to Watson (1994) there was a rift between the SSCS and Greenpeace. Certain members of Greenpeace reportedly called the radical action of Watson 'violent' and 'terroristic'. Watson argues that the radical actions of SSCS are an effective way to protect the ocean against pirates and that his actions reveal the relative inaction of Greenpeace and its 'corporate mentality' (Watson 1994, p.45, 115, 227, 228).

The assertions of claims makers serve their rhetorical purpose in the environmental discourse. Watson labels IUU fishing ships and whalers as pirates. But the extent to which states will tolerate this, as Norway and Canada demonstrated, may well be limited particularly in this post 9/11 world where already, the label ‘terrorist’ has been used by mainstream political groups wanting to stigmatise radical environmental elements on the US mainland (Vanderheiden 2005, pp.425, 426).

Despite the best efforts of crusaders, some crusades simply fail to gain sufficient public or political support (Becker 1973). Greenpeace and SSCS, however, have had successes. These ‘transnational activists’ are political actors transmitting discourse across societies and therefore, ‘shape the conditions which influence how their particular cause is addressed’ (Wapner 1995, pp.311, 312). Greenpeace campaign against the Brent Spar Oil Storage Buoy changed corporate constructions of the sea as being a ‘limitless waste repository’ (Rootes 2004, p.633), which resulted in the UK government extending its existing protocol against dumping (Kirk 1997, pp.957-964). This is because Greenpeace’s actions, such as transmitting images of them physically occupying it, and using the term ‘dumping’ stigmatised the loading buoy and kept this issue on ‘the public agenda in a uniquely dramatic fashion’ (Bennie 1998, p.397).

The Social Construction of Marine Resource Securitisation.

The environmentalist expansion of the definition of piracy is achieving some institutional acceptance, unlike the radical unionists’ Labourite attempts. The use of the term piracy has spread beyond radical environmental groups and the media to state and quasi-state authorities. There appears to be a distinct relationship between the acceptance of the expanded definition and state economic interests concerning marine living resources. This relates to growing concerns about fish stock depletion and limited access to marine living resources at the state level, apparent in state policy responses. This validates my argument about a potential sixth stage to be added to Nadelmann’s prohibition regime.

Moral crusaders attempt to bring influential attention to their concerns. Governments and other authorities may identify validity in their arguments and may start their own policy-oriented reactions (Becker 1973). In parallel with EMOs using the term piracy to describe behaviour defined as marine eco-deviant, nation states have continued to seek agreement over heterotopic ocean space resource use and the securitisation of territorial waters and living resources. This is because marine environmental degradation is one of the most important issues in the modern world system (Jorgenson 2003). The Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR), for example, was created from an international convention devised to implement active international cooperation in the management of the Southern Ocean resources, such as the Patagonian Toothfish. EMOs and nation states have used scientific data to justify the implementation of conservation policies and to justify retaliatory militarised action. It appears that scientific data are verifying EMO claims concerning depletions of marine resources, which many populations depend on. Steinberg (2001, pp.8, 9) notes:

‘...while the decline of sea travel and diminished dependence on self-supplied food sources has removed the maritime world from the realm of most landlubbers’ everyday experiences, the sea remains a crucial domain for the resources and processes that sustain contemporary life.’

Tibbetts (2004) notes that coastal populations have always increased where fish consumption has been high. There is also a correlation between rising net incomes and marine stock consumption. New markets therefore have emerged and global demand for seafood has expanded markedly since the 1970s and some fish populations have collapsed (Jacquet & Pauly 2007, p.308). Seafood stocks increasingly under threat remain a major source of nutrition for many coastal poor. According to oceanographic data however, 47% of commercial fish stocks are ‘considered fully exploited’, about 25% ‘moderately exploited’ and approximately 28% ‘collapsed’ (2004, p.282). Fishing for Guinea-Bissau, for example, provides approximately one-third of its national income but its biggest threat is, according to Wise (2006, p.1), ‘pirate fishing’.

Maxwell and Reuveny (2001, p.719; 2001a) and Tibbetts (2004) arguing from a Malthusian perspective, suggest that the depletion of marine socks may become a major

source of future conflict and that actors may increasingly see militarised retaliation as a rational, realist act. Governments will seek to validate political claims on resources and possibly use the term piracy to invoke negative stigma and invalidate actions of competitor actors. This may become more prominent as proponents of sustainable catches within the fishing industry embark on ‘social marketing’ techniques, such as ‘eco-labelling’ to tell their customers which fish have been caught from sustainable sources (Jacquet & Pauly 2007, p.309).

The acceptance of the expanded definition of piracy is emerging in media reports, other than those relating the Greenpeace, the SSCS and other EMOs. This may become urgent as popular media claims disseminations about fish stock depletion reach larger audiences (Broad and Revkin 2003, p.F.1). Daley’s (2003, p.A.1) article in the Boston Globe states ‘Fish piracy is on the rise all over the world’. This article, with its use of the expanded definition, notes the construction of the problem as an international one. The French Navy captured a ‘pirate ship’ that had been fishing illegally off Crozet Island. It was impounded but its flag state (Panama) had the bond reduced (to US\$1.2 million). The shipowner paid the bond and left to continue fishing. He reportedly falsified claims to US authorities that his vessel had fished only in CCAMLR allotted areas and 33 tons of fish were seized in Boston. ‘Fish Pirates’ in The Futurist (2005) draws a correlation between USCG resources being devoted to US security and a reported rise in IUU off New England. Bernama (2005, p.1) notes how the Malaysian Fisheries Department is active against unsanctioned fishing, smuggling and piracy. In Fishing News International, (2001, p.3), the article ‘Track Pirate Ships’ draws attention to a new multinational action plan to track pirate vessels and their cargo. The term pirate fishing now appears in the shipping press. The article ‘Greenpeace Tries to Stop “Pirate Reefer”’ (Tradewinds 2006, p.7) highlighted how Greenpeace reportedly appealed to Spanish authorities to stop a reefer ship, the *Binar 4*, loaded with ‘a pirate-fish cargo’ from West Africa.

Fishing vessels in the Southern and Pacific Oceans that have ignored fishing regional fishing management and marine conservation conventions have been labelled ‘pirates’ (Pacific Islands Monthly 1999, p.11). Bevan’s (2005, p.1) article in the Sunday Herald

Sun on 11th September, titled ‘Pirate Boat Search’ highlighted that a Cambodian-flagged vessel, the mv *Taruman*, was seized by Australian Customs and Fisheries authorities South of Hobart, Tasmania as it was suspected of ‘pirate fishing’. It was impounded in Hobart, and reportedly had aboard rare and protected Patagonian Toothfish.

Darby (2005, p.10) noted in The Sydney Morning Herald article titled ‘Pirate Boats Slip Legal Nets to Fish with Impunity’ that the Australian patrol ship the mv *Ocean Viking* from the Australian Customs’ National Maritime Patrol and Response Unit, spotted several long-line fishing vessels in March 2005. One was reportedly the Togo- flagged mv *Ros* that, according to Australian authorities, was known to have fished the Southern region over the previous five years using a series of different flags and names (almost mimicking the FOC phantom fleet). Given that Togo was not a part of CCAMLR, Australia authorities were powerless to stop the vessel. Reportedly, the then Australian Fisheries Minister, Ian McDonald stated ‘...We need to change international law so that flag states that don’t control their vessels should be put out of the market.’ This was also reported in The Age, under ‘Pirate Ship Back Under New Name’ (5th March 2005). Tiffany’s (2006), reporting for the Waikato Times, highlighted that a Pago Pago (American Samoa)-registered ‘suspected pirate fishing boat’, with a Korean captain had been escorted back to Rarotonga.

Further institutional acceptance of illegal fishing as piracy is apparent in the actions of the Australian government and radical unionists. Australia has explored the notion of global fisheries authorities and the UN imposing sanctions on the worst offending FOC states that reportedly support ‘pirate fishing’ (Denholm 2005, p.2). This position may be seen as very different to Australia’s positions, which seemingly support FOCs, including reported indifference toward ITF and MUA reports about labour exploitation aboard FOCs and encouraging FOC ships to undertake cabotage routes. Reactions toward FOC vessels that affect Australian marine resources, however, indicate the degree to which the term ‘piracy’ is being applied to the theft of fish. The MUA (2006a), previously noted for associating FOCs with ‘pirate flags’ and the theft of labour power at sea also accepts the environmental definition, noting ‘the link between pirate fishing and the notorious Flags

of Convenience as proof that the FOC system directly threatens our primary fishing industry and our national security.’

A number of other states also consider illegal fishing to be piracy. The political elites within democratic states taken on a moral entrepreneurial stance by being more inclined to attempt to justify actions to their electorates. As states have dealt with piracy (narrowly defined) they have also reacted toward fish-stock securitisation. The debate about whether fishing and whaling that violate ‘rules’ can be regarded as ‘piracy’ takes on greater significance within this context. Nation states too may use this term to justify defence of or authorisation to fish certain areas, as there are an increasing number of examples showing fleets systematically sailing into and exploiting foreign territorial waters. The agents of social control can use the term ‘piracy’ to justify defence of marine resources, even though they too could be overseeing the grabbing of them in their *res nullius* state. Some states have been keen to ensure that the domestic audiences remain supportive of possibly violent, protective action. There have been state-oriented confrontations over fishing, even between friendly, democratic governments as demonstrated by low-level conflict in Europe, the Asia-Pacific Region and the Southern Ocean. These are somewhat similar to the conflicts within these same regions over piracy (narrowly defined) in previous centuries.

The confrontations between the United Kingdom and Iceland over Atlantic Cod in the 1970s commonly referred to as the Icelandic Cod War, form an example of state oriented confrontation (Katz 1973; Archer and Scrivener 1983). It is conflicts such as these that have the potential to escalate, in the view of scientific data such as that presented by Pauly and MacLean (2003) that demonstrates the decline of North Atlantic Fisheries. This conflict originated in the late 19th Century when Northern European fishers began exploiting the North Atlantic using more capable boats and equipment. Since 1893, there have been sporadic conflicts between Iceland and Britain over ‘pirate fishing’. This erupted into a confrontation between the two states in the 1970s, during which they accused each other of illegal fishing (Ingimundarson 2003, p.99-109).

This form of conflict has not been confined to Europe. The reported pirate fishing of stocks and their subsequent depletion are putting pressure on coastal states across the Asia-Pacific region to militarily enforce territorialized declarations to legitimate their extraction of fish. Fishing vessels from Asian littoral states have continued to disregard maritime boundaries (such as those around the contested Spratly Islands), and to venture further from homeports to catch fish. A number of incidents involving various coastal states have highlighted that fish competition, either legitimised or piratical have become a source of problems (Valencia 1997, p.272).

Thai, Taiwanese and Chinese vessels have been caught fishing unauthorised in other territorial waters. Filipino vessels have been apprehended in Malaysian waters and Chinese vessels have been arrested in the Philippine archipelago. Chinese authorities have detained Russian factory ships in the East China Sea. These numerous incidents have the potential to escalate. For example, in 1994 Russia deployed a submarine to halt what it regarded as pirate attacks on its trawlers, while Russia also detained Chinese vessels fishing off Sakhalin Island. The Russians have also detained Japanese vessels that they regarded as poaching off the Kurile Islands and actually sank a boat. By the mid 1990s, the Japan Marine Safety Agency reported that the Russian authorities had impounded 18 Japanese boats (*Japan Times* 1994, p.4; Valencia 1997, p.273). Sino-Chinese relations have also reportedly been strained. In North Asia, China has developed an oceans policy and has paid increased attention to the importance of extending its EEZ and consolidating the living resource industries that exist within it. This has affected China's relationship with neighbouring states (Yann-huei 1989, pp.983-998). In 1993, Chinese authorities detained a Japanese trawler. In addition, a North Korean naval ship fired on Chinese fishing boats in the Yellow Sea (Valencia 1997, p.273).

For generations, Indonesian coastal communities have been sailing southward into sea space territorialized by Australia, which now considers it part of its EEZ. Motivated by both immediate material needs for food and maritime tradition, Indonesian coastal populations have fished in the areas between Indonesia and Australia, reportedly since the 11th Century. This has now highlighted a conflict between marine ecosystems and

coastal economic systems. Now that most creatures of the sea have been commodified and are finite, the Australian state has increasingly regarded these Indonesian fishermen as criminal (Balint 2005). Australia permits traditional fishing using traditional, non-motorised craft, in a delineated area. However, these fishermen who have constructed the ocean as ‘a medium of their survival’ are often caught fishing outside of this area. Indonesian boats are often confiscated and burned by Australian authorities (Cousteau 1991). This is a clear example of the socially constructed nature of rules being applied to ocean space (Steinberg 2001).

Regional fisheries management organisations (RFMO) securitise fishing (Erceg 2006) in a way that conforms to Becker’s (1973) conceptualisation of bureaucratisation and formalisation of state-supported rule enforcement, resulting from interaction with marine industry and scientific advocates. The CCAMLR has acted as a broad-ranging agency in respect to policing fishing the Southern Ocean, by adopting conservation measures based on the advice of its Scientific Committee. Within the area of application of the Convention (south of the Antarctic convergence), the Commission established statistical sub-areas, for which Total Allowable Catches (TACs) are reviewed (CCAMLR 2004) to develop scientifically based quotas.

The Commission's meetings discuss fisheries-management, which includes scientific methodology to assess sustainable yields, incidental catches and inspection methods to accumulate data. The Commission possesses the authority to adopt conservation measures and allocates catch quotas for Antarctic species including the Patagonian tooth fish, of which there has been reported concern, for each statistical area of control (CCAMLR 2004a).

Conclusion

This chapter analyses the introduction and increased acceptance of the postmodern expansion of the piracy definition, used to encompass marine eco-deviance. Charismatic,

direct-action groups have drawn attention to serious debates concerning the depletion rates of marine resources. Claims of Greenpeace and The Sea Shepherd's Conservation Society (SSCS) have occurred within what I argue forms the sixth stage of Nadelmann's (1990) GPPR. Their organisational reports constructed illegal and unsustainable fishing and whaling as marine social problems. They labelled illegal fishing as piracy because as they argue, these behaviours are the theft of resources. They have attempted to convert a rhetorical analogy to a logical analogy because piracy (narrowly defined), IUU fishing and whaling all involve 'theft' at sea.

These EMOs, originally labelled as radicals, act as moral entrepreneurs on a moral crusade and as self-appointed rule enforcers. They present scientific data demonstrating that 'pirates' are depleting stocks at non-sustainable rates. This is an area in which the expansion of the piracy definition could become the salient definition. The expansion of the definition, now even used in book titles (see for example *Hooked: Pirates, Poaching and the Perfect Fish* by Knecht 2006), and by the media shows it is being accepted and is being promulgated to a greater extent than the unionist-ITF use of the term piracy to apply to FOCs. Nation states are becoming aware of the scientific data indicating that fish stocks are depleting and that this may be a future source of conflict. Fishing pirates will be an element within conflicts that states with an interest in marine resource extraction will have to consider. The Icelandic 'Cod Wars' of the 1970s demonstrated that democratic powers could reach physical confrontation over this form of 'piracy'. Asian states have already been in confrontation with fishing pirates and Australia has dealt with Indonesian fishing communities and others in a way that reflects Australia's concern over finite marine resources.

The increasing use of the term 'pirate fishing' to describe IUU fishing has been accepted across an institutional stratum and validates my introduction of a new sixth stage, which can be added to Nadelmann's classifications. This expansion has not received full recognition that would come with incorporation into IMO or IMB classifications of piracy. However, definitions are not static. To the degree that powerful organisations make more frequent use of that term, it will mean that their expansion of the piracy

definition will be increasingly legitimated by the mainstream. Another sign of this is that the Organization for Economic Cooperation and Development (OECD), the ‘club’ of the most powerful countries in the world, has started to use the term piracy to refer to IUU fishing (OECD 2004a, OECD 2006).

The scope to explore policy recommendations about illegal marine resource extraction, resultant conflicts and the provision of detailed analyses of them is largely beyond the extent of this dissertation. However, I do recommend the following:

- Core and peripheral flag and coastal state administrations give serious consideration to the array of findings of the UN’s Independent World Commission on the Oceans (IWCO) (see Abbreviations and Glossary), which have been promoted since its creation in 1995 (Monteiro 1998; Wise 1998, p.4).
- The Intergovernmental Oceanographic Commission (IOC) of the United Nations Educational, Scientific and Cultural Organization (UNESCO) (see Abbreviations and Glossary) is given sufficient resources to continue to improve scientific methodologies to monitor marine stock depletion and promote the social construction of the ocean as a biome under international guardianship.

Chapter Seven

¹ This chapter then also contributed to the emerging area of ‘green’ criminology as raised by Lynch and Stretsky (2003) and South (1998).

² Halberstam (1988, p.270) noted that the mv *Achille Lauro* incident was ‘characterised’ as piracy by several sources. The US Department of Justice ‘obtained arrest warrants charging the hijackers’ with piracy. Additionally, Gooding (1987) had argued that although the *Achille Lauro* hijack was not consistent with the 1958 Geneva Convention of the Law of the Sea, because the hijackers had not used a second vessel nor were motivated by ‘private ends’, it was piracy *jure gentium*. There was legal justification to call this hi-jack ‘piracy’ under customary law and the ‘history of enforcement of the norm against piracy.’ Debate also arose as to whether the ship’s interception was piracy (1987, p.171). Constantinople (1986) noted this incident represented an extension however, to the traditional definition.

³ Blumer’s (1951) social movement cycle consists of four stages.

- The initial stage consists of unfocused protest and development of effective propaganda. (This could evolve from a pre politicized period where groups developing intellectual, vanguard discourse) (2003, pp.149, 150).
- Popular reaction – the moral entrepreneurs have defined the social problem and populist solutions.
- Strategies are developed and coordinated for achieving organisational aims. (This usually involves mass mobilization).
- Finally, these organisational aims become consolidated as the SMO becomes more institutionalised. This also involves ‘processes of adaptation’ as ‘access to the political system open up’ (2003, p.150).

⁴ Certain conventions provide a framework for controlled marine exploitation. Various rules under IMO MARPOL and UNCLOS relate to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, ratified in 1995.

⁵ U.S Newswire (2005) reports that Belize, Honduras, Panama and St. Vincent and the Grenadines have most fishing vessels enlisted on their open registers, and which, according to Denholm (2005, p.2) accommodate 75% of fishing vessels flagged to the top FOC states.

⁶ This action reportedly was based upon information supplied by a conservationist who had researched illegal whaling in 1974. This conservationist had identified ‘suspect ships’ via insurance documentation and bills of lading. The *Sierra*, once of the Dutch whaling fleet, had sailed since 1968 and had changed her name from *The Robert W. Winke*, to the *Run* to the *Sierra*. It was also known to have sailed under Dutch, Bahamian, Sierra Leone, and Somalian and Cypriot flags. The vessel had reportedly violated the law of several states and owners had had to attend court in Bahamas, South Africa and Britain. A report by the British media in 1978 highlighted that a Norwegian bank owned the *Sierra*. However, this ownership again transferred to a company in Liechtenstein. Reportedly, documentation from Spain and Portugal highlighted that a Japanese company, Taiyo Fishing Company, purchased whale meat from the whaler despite the Japan Whaling Commission claiming no knowledge of the *Sierra*. Saboteurs finally sank the *Sierra* in 1980 (Cousteau 1988, p.40; Watson 1994, pp.9-11, 29-35).

⁷ According to Watson (1994, p.254), Professor Alexi Yablokov, a Russian environmentalist claimed in 1994, that the former Soviet Union had falsified whale numbers caught under its whaling programme.

⁸ Since the early 1500s populations of the Faeroe Islands have slaughtered Pilot whales as part of cultural ceremony. The activity started as one of the islanders’ methods for subsistence food gathering but then interestingly the motivation for this activity evolved from one of survival to one of cultural tradition. Increasing living standards in Europe and grants from the EU make the Faeroe claims that this killing is for

food questionable. It seems that it is contradictory that the Faeroes would claim it is a 'tradition' when they use modern equipment in the 'cultural ceremony' to kill Pilot whales (Watson 1994).

⁹ The US Department of National Marine Fisheries estimated in 1990 that 10,000 nm of drift netting was drifting in the N Pacific at that time indiscriminately catching marine wildlife (Watson, 1994; Watson 1994, p.204).

¹⁰ A purse net is drawn together at the top of the net by a fishing vessel and encloses anything in its path. This method invariably traps undersized fish and mammals, as well as the target stock. It is estimated that 6 million dolphins were trapped by this method between 1980 and 1990. However, drift netting is more destructive. A drift net is laid out with one side floated and the other weighted. The net lies dormant in the ocean, not being towed but catches any creature that crosses its path. One ship can pay out astern up to 40 miles long and 45 feet in depth. It had been estimated that 1,000,000 seabirds and 250,000 mammals were caught in these nets while at the height of their operation. Also 35,000 miles of this net were paid out in the Pacific by various fleets every day or over 2,000,000 miles paid out every fishing season. This represented a threat to cetacean and pelagic sea life (Watson 1994).

¹¹ The Sea Shepherd Conservation Society justifies its actions by claiming that its presence at sea is to uphold international environmental legislation. See The World Charter for Nature: UN Doc. A/37/51 (1982).

CONCLUSION

This thesis adopts a new approach to maritime deviance and piracy studies. It is the first social constructionist evaluation of piracy and expands the parameters of social constructionism and academic piracy analysis. It has a symbolic interactionist orientation, focussing largely on the definitions, reporting and societal reaction in relation to piracy. Historically, how and why the label ‘pirate’ was applied depended on strategic considerations and social constructions of ocean-space. Steinberg (2001, p.6) noted that

‘...the contradictions and changes in each period’s construction have been intertwined with contradictions and changes in that period’s political economic structures. The ever-changing uses, regulations and representations of ocean-space have been as much a part of each period’s spatiality as have the spatial constructions of land-space.’

The use of the label ‘pirate’ obviously has had negative, emotive connotations. There is a contrast between the positive labels of ‘buccaneer’ and ‘privateer’, applied to maritime allies, and the negative label ‘pirate’, applied to enemies or marine brigands operating without letters of Marque (Thouless 1964). This labelling increased in importance with the evolution of mercantilist capitalism and the strategic capability of maritime powers, which intensified potential for conflicts. Behaviours, once formally legalised by dominant maritime powers, like privateering and issuing letters of Marque were redefined as illegal in the 19th Century. States with superior strategic power only then re-labelled as ‘pirates’ those who contravened this new legal norm.

I show that social constructionism raises questions about the discursive creation of the piracy definition and the use of language within this globalised regime. The outright ban on maritime piracy was the first truly international, global prohibition regime. Power relations influence the constructed sociolinguistic nature of definitions, their formulation and acceptance. Therefore, I argue that the definition and codification of piracy were inherently political. I show that Nadelmann’s (1990) five historic stages in the development of global piracy prohibition are related to the strategic expansion of hegemonic maritime powers and the evolution of mercantilist and industrial capitalism.

International norms of piracy prohibition have been socially constructed and codified in law as an integral part of global prohibition (Nadelmann 1990, p.487).

I demonstrate that bureaucratic and judicial institutions adopt piracy definitions established through national and international governance. Disseminated reports from the IMO and the IMB are based on piracy reporting that has become integral to the regime. They are written with an authoritative tone, but are often incomplete and tend to underemphasise limitations, such as those caused by diverging definitions, data collection methodologies and the unreliable reporting of the crime.

A review of IMB and IMO reports released between 1990 and 2005, and interviews in Southeast Asia with personnel associated with these organisations show that these institutions are acting as moral entrepreneurial agencies engaged in a moral crusade against this defined social problem. Consideration of IMB and IMO data evaluated within social contexts in which reports are compiled, extend the understanding of piracy. I found that IMB and IMO reporting, and their need to create an image of piracy from specific perspectives, reflect the interests of elite 'transnational moral entrepreneurs' (Nadelmann 1990, pp.480, 482), who support the capitalist *status quo*. I recommend the establishment of a single global reporting procedure, supported by the involvement of INTERPOL, which could conceivably create a maritime crime department and issue data showing, as well as piracy frequency and characteristics, the rate of actual arrests, prosecutions and convictions.

The dissertation shows that western media agencies generally accept the conventional contemporary piracy definition and report piracy frequently highlighting its sensationalist aspects, as one would expect. I found media agencies acting as moral entrepreneurs, disseminated claims uncritically to public audiences via newspapers. This created a somewhat stereotypical social imagery of contemporary pirates. It was shown that some media agencies exhibited elements of moral entrepreneurship in their sensationalist reporting of piracy data. This is apparent in reports, which emphasise that this social problem is worsening by emphasising the reportedly escalating violence and increases in

its frequency. I show that it is useful to consider this in the context of agenda setting theory, moral panic theory, Best's (2001) claims diffusion theory and Loseke's (2003) consideration of the media as primary and secondary claims-makers. Although they constructed elements of moral panic, the media have not, at this time, created a complete moral panic about piracy in Becker's (1973) and Thompson's (1998) terms.

I evaluated some state and private sector reactions to piracy. Nation states, particularly in Southeast Asia, have increasingly securitised territorial ocean-space but have constructed the pirate problem in a way that depends on their politicisation of piracy in the domestic sphere. I also found that private-sector military companies have capitalised on the narrow, conventional construction of the piracy phenomenon. Several private companies responded to piracy reports by selling 'anti-piracy' solutions, which are examples of postmodern flexible accumulation, which influenced the social construction of the political and commercial legitimacy of their operations. This contrasts with the derogatory viewpoint that PMCs are less than legitimate 'mercenaries' capitalising on instability. The notion of private-sector solutions appears accepted in shipping – a fiercely laissez faire industry. However, it was discovered that this was subject to some debate, as Labourite interests expressed concern about private anti-piracy measures. They argue that armed deployment could intensify sporadic conflicts in which the law pertaining to PMC authority may not be clarified and unarmed seafarers could be exposed to more danger. I also recommend various measures for the reporting of anti-piracy measures of PMCs.

Some active organisations have used the term piracy in varying contexts to refer to theft at sea with varying degrees of success. It was found that some members of the International Transport Workers' Federation's (ITF) have used the term piracy in its moral crusade against FOCs, which the ITF labels as facilitating the theft of labour power at sea. The ITF criticises FOC states for lacking political motivation and military means to counter piracy in both the conventional and expanded sense of the term.

The charismatic environmental movement organisations Greenpeace and the SSCS expand the definition of piracy in a postmodern context to include illegal fishing and whaling, which they see as theft and plunder of depleting marine resources. This additional eco-deviant piracy definition, which may contribute to ‘green criminology’ literature, reinforces the emergence of a sixth stage to Nadelmann’s (1990) original five GPPR developmental stages. This new definition is used more frequently as marine resources diminish and the media and even powerful international organisations such as the OECD label illegal fishing as piracy.

This thesis therefore demonstrates that social problems and phenomena occurring in heterotopic ocean space do not develop and evolve in social isolation. The linguistic changes occurring with the term piracy have occurred in the Anglophone world. However, possible similar maritime word changes occurring in other languages provide scope for future social constructionist and sociolinguistic research.

The ways that humans use the oceans are socially constructed by language. For many years the world ‘piracy’ has been powerful in summoning global disapproval and strong reactions against the maritime activities to which this label stuck. The evolution of the meaning of the term is likely to continue influencing humans’ relations with their marine environment.

APPENDICES

Appendix 1

Articles of UNCLOS (1982) relevant to arguments raised in this dissertation (taken from Wang 1992, pp.19-39) -

HIGH SEAS Section1.

General Provisions.

Article 55

Specific legal regime of the exclusive economic zone.

The exclusive economic zone is an area beyond and adjacent to the territorial sea, subject to the specific legal regime established in this Part, under which the rights and jurisdiction of the coastal State and the rights and freedoms of other States are governed by the relevant provisions of this Convention.

Article 56

Rights, jurisdiction and duties of the coastal State in the exclusive economic zone.

1. In the exclusive economic zone, the coastal State has:
 - (a) sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters adjacent to the sea-bed and of the sea-bed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds;
 - (b) jurisdiction as provided for in the relevant provisions of this Convention with regard to:
 - (i) the establishment and use of artificial islands, installations and structures;
 - (ii) marine scientific research;
 - (c) other rights and duties provided for in this Convention.
2. In exercising its rights and performing its duties under this Convention in the exclusive economic zone, the coastal State shall have due regard to the rights and duties of other States and shall act in a manner compatible with the provisions of this Convention.
3. The rights set out in this article with respect to the sea-bed and subsoil shall be exercised in accordance with Part VI.

Article 57

Breadth of the exclusive economic zone.

The exclusive economic zone shall not extend beyond 200 miles from the baselines from which the breadth of the territorial sea is measured.

Article 58

Rights and duties of other States in the exclusive economic zone.

1. In the exclusive economic zone all States, whether coastal or land-locked, enjoy, subject to the relevant provisions of this Convention, the freedoms referred to in Article 87 of navigation and overflight and of the laying of submarine cables and pipelines, and other internationally lawful uses of the sea related to these freedoms, such as those associated with the operation of ship, aircraft and submarine cables and pipelines, and compatible with the other provisions of this Convention.
2. Articles 88 - 115 and other pertinent rules of international law apply to the exclusive economic zone in so far they are not incompatible with this Part.
3. In exercising their rights and performing their duties under this Convention in the exclusive economic zone, States shall have due regard

Article 86. Application of the Provisions of this Part

The provisions of this Part apply to all parts of the sea that are not included in the exclusive economic zone, in the territorial sea or in the internal waters of a State, or in the archipelagic waters of Archipelagic State. This article does not entail any abridgement of the freedoms enjoyed by all States in the exclusive economic zone in accordance with article 58.

Article 87.

Freedom of the High Seas.

1. The high seas are open to all States, whether coastal or land-locked. Freedom of the high seas is exercised under the conditions laid down by this Convention and by other rules of international law. It comprises, inter alia, both for coastal and land-locked States:
 - (a) freedom of navigation;
 - (b) freedom of overflight;
 - (c) freedom to lay submarine cables and pipelines, subject to Part VI;

- (d) freedom to construct artificial islands and other installations permitted under international law, subject to Part VI;
 - (e) freedom of fishing, subject to the conditions laid down in section 2;
 - (f) freedom of scientific research, subject to Parts VI and XIII.
2. These freedoms shall be exercised by all States with due regard for the interests of other States in their exercise of the freedom of the high seas, and also with due regard for the rights under this Convention with respect to activities in the Area.

Article 88

Reservation of the high seas for peaceful purposes.

The high seas shall be reserved for peaceful purposes.

Article 89

Invalidity of claims of sovereignty over the high seas.

No State may validly purport to subject any part of the high seas to its sovereignty.

Article 90

Right of navigation.

Every State, whether coastal or land-locked, has the right to sail ships flying its flag on the high seas.

Article 91

Nationality of ships

1. Every State shall fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory, and for the right to fly its flag. Ships have the nationality of the State whose flag they are entitled to fly. There must exist a genuine link between the State and the ship.
2. Every State shall issue to ships to which it has granted the right to fly its flag documents to that effect.

Article 92

Status of Ships

1. Ships shall sail under the flag of one State only and, save in exceptional cases expressly provided for in international treaties or in this Convention, shall be subject to its exclusive jurisdiction on the high seas. A ship may not change its flag during a voyage or while in a port of call, save in the case of a real transfer of ownership or change of change of registry.
2. A ship, which sails under the flags of two or more States, using them according to convenience, may not claim any of the nationalities in question with respect to any other State, and may be assimilated to a ship without nationality.

Article 93

Ships flying the flag of the United Nations, its specialised agencies and the International Atomic Energy Agency.

The preceding articles do not prejudice the question of ships employed on the official service of the United Nations, its specialised agencies or the International Atomic Energy Agency, flying the flag of the organisation.

Article 94

Duties of the flag State

1. Every State shall effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag.
2. In particular, every State shall:
 - (a) maintain a register of ships containing the names and particulars of ships flying its flag, except those which are excluded from generally accepted international regulations on account of their small size; and
 - (b) assume jurisdiction under its internal law over each ship flying its flag and its master, officers and crew in respect of administrative, technical and social matters concerning the ship.
3. Every State shall take such measures for ships flying its flag as are necessary to ensure safety At sea with regard, inter alia, to:
 - (a) the construction, equipment and seaworthiness of ships;
 - (b) the manning of ships, labour conditions and the training of crews, taking into account the applicable international instruments;
 - (c) the use of signals, the maintenance of communications and the prevention of collisions.
4. Such measures shall include those necessary to ensure:

- (a) that each ship, before registration and thereafter at appropriate intervals, is surveyed by a qualified surveyor of ships, and has on board such charts, nautical publications and navigational equipment and instruments as are appropriate for the safe navigation of the ship;
 - (b) that each ship is in the charge of a master and officers who possess appropriate qualifications, in particular in seamanship, navigation, communications and marine engineering, and that the crew is appropriate in qualification and numbers for the type, size, machinery and equipment of the ship;
 - (c) that the master, officers and, to the extent appropriate, the crew are fully conversant with and required to observe the applicable international regulations concerning the safety of life at sea, the prevention of collisions, the prevention, reduction and control marine pollution, and the maintenance of communications by radio.
- 5. In taking measures called for in paragraphs 3 and 4 each State is required to conform to generally accepted international regulations, procedures and practices and to take any steps that may be necessary to secure their observance.
 - 6. A State, which has clear grounds to believe that proper jurisdiction and control with respect to a ship have not been exercised, may report the facts to the flag State. Upon receiving such a report, the flag State shall investigate the matter and, if appropriate, take any action necessary to remedy their observance
 - 7. Each State shall cause an inquiry to be held or before a suitable qualified person or persons into every marine casualty or incident of navigation on the high seas involving a ship flying its flag and causing loss of life or serious injury to nationals or another State or serious damage to ships or installations of another State or to the marine environment. The flag State and the other State shall co-operate in the conduct of any inquiry held by that other State into any such marine casualty or incident of navigation.

Article 95

Immunity of warships on the high seas.

Warships on the high seas have complete immunity from the jurisdiction of any State other than the flag State.

Article 96

Immunity of ships used only on government non-commercial service.

Ships owned or operated by a State and used only on government non-commercial service shall, on the high seas, have complete immunity from the jurisdiction of any State other than the flag State.

Article 97

Penal jurisdiction in matters of collusion or any other incident of navigation.

1. In the event of a collision or any other incident of navigation concerning a ship on the high seas, involving the penal or disciplinary responsibility of the master or of any other person in the service of the ship, no penal or disciplinary proceedings may be instituted against such person except before the judicial or administrative authorities either of the flag State or the State of which that person is a national.
2. In disciplinary matters, the State which has issued a master's certificate of competence or licence shall alone be competent, after due legal process, to pronounce the withdrawal of ship certificates, even if the holder is not a national of the State which issued them.
3. No arrest or detention of the ship, even as a measure of investigation, shall be ordered by any authorities other than those of the flag State.

Article 98

Duty to render assistance

1. Every State shall require the master of a ship flying its flag, in so far as he can do so without serious danger to the ship, the crew or the passengers:
 - (a) to render assistance to any person found at sea in danger of being lost;
 - (b) to proceed with all possible speed to the rescue of persons in distress, if informed of their need of assistance, in so far as such action may reasonably be expected of him;
 - (c) after a collision, to render assistance to the other ship, its crew and its passengers and, where possible, to inform the other ship of the name of his own ship, its port of registry and the nearest port at which it will call.
2. Every coastal State shall promote the establishment, operation and maintenance of an adequate and effective search and rescue service regarding safety on and over the sea and, where circumstances so require, by way of mutual regional arrangements co-operate with neighbouring States for this purpose.

Article 99

Prohibition of the transport of slaves

Every State shall take effective measures to prevent and punish the transport of slaves in ship authorised to fly its flag and to prevent the unlawful use of its flag for that purpose. Any slave taking refuge on board any ship, whatever its flag shall ipso facto be free.

Article 100

Duty to co-operate in the repression of piracy

All States shall co-operate the fullest possible extent in the repression of piracy on the high seas or in any other place outside the jurisdiction of any state.

Article 101

Definition of piracy.

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:
 - (b) on the high seas, against another ship or aircraft, or against persons or property on board such a ship or aircraft;
 - (c) against a ship, aircraft, persons or property in a place outside the jurisdiction of any state;
- (d) 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;
- (e) any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b).

Article 102

Piracy by a warship, government ship or government aircraft whose crew has mutinied. The acts of piracy, as defined by Article 101, committed by a warship, government ship or government aircraft whose crew has mutinied and taken control of the ship or aircraft are assimilated to acts committed by a private ship or aircraft.

Article 103

Definition of a pirate ship or aircraft.

A ship or aircraft is considered a pirate ship or aircraft if it is intended by the persons in dominant control to be used for the purpose of committing one of the acts referred to in Article 101. The

same applies if the ship or aircraft has been used to commit any such act, so long as it remains under the control of the persons guilty of that act.

Article 104

Retention or loss of the nationality of a pirate ship or aircraft.

A ship or aircraft may retain its nationality although it has become a pirate ship or aircraft. The retention or loss of nationality is determined by the law of the State from which such nationality was derived.

Article 105

Seizure of a pirate ship or aircraft.

On the high seas, or in any other place outside the jurisdiction of any State, every State may seize a pirate ship or aircraft, or a ship or aircraft taken by piracy and under the control of pirates, and arrest the persons and seize the property on board. The courts of the State which carried out the seizure may decide upon the penalties to be imposed, and may also determine the action to be taken with regard to the ships aircraft or property, subject to the rights of third parties acting in good faith.

Article 106

Liability for seizure without adequate grounds.

Where the seizure of a ship or aircraft on suspicion or piracy has been effected without adequate grounds, the State making the seizure shall be liable to the State the nationality of which is possessed by the ship or aircraft for any loss or damaged caused by the seizure.

Article 107

Ships and aircraft which are entitled to seize on account of piracy.

A seizure on account of piracy may be carried out only by warships or military aircraft, or other ships or aircraft clearly marked and identifiable as being on government service and authorised to that effect

Article 108

Illicit traffic in narcotic drugs or psychotropic substances.

All states shall co-operate in the suppression of illicit traffic in narcotic drugs and psychotropic substances engaged in by ships on the high seas contrary to international conventions. Any flag

state which has reasonable grounds for believing that a ship flying its flag is engaged in illicit traffic in narcotic drugs or psychotropic substances may request the co-operation of other States to suppress such traffic.

Article 109

1. All states shall cooperate in the suppression of unauthorised broadcasting from the high seas.
2. For the purposes of this Convention, 'unauthorised broadcasting' means the transmission of sound and or television broadcasts from a ship or installation on the high seas intended for reception by the general public contrary to international regulations, but excluding the transmission of distress calls.
3. Any person engaged in unauthorised transmission may be prosecuted before the court of:
 - (a) the flag state of the ship;
 - (b) the State of registry of the installation;
 - (c) the State of which the person is a national;
 - (d) any State where the transmission can be received or any State where authorised radio communication is suffering interference.
4. On the high seas, a State having jurisdiction in accordance with paragraph 3 may, in conformity with Article 110, arrest any person or ship engaged in unauthorised broadcasting and seize the broadcasting apparatus.

Article 110

Right of visit.

1. Except where acts of interference derive from power as conferred by treaty, a warship which encounters on the high seas a foreign ship, other than a ship entitled to complete immunity in accordance with Article 98 and 96, is not justified in boarding it unless there is reasonable ground for suspecting that:
 - (a) the ship is engaged in piracy;
 - (b) the ship is engaged in the slave trade;
 - (c) the ship is engaged in unauthorised broadcasting and the flag State of the warship has jurisdiction under Article 109; the ship is without nationality; through flying a foreign flag or refusing to show its flag, the ship is, in reality, of the same nationality as the warship.
2. In the cases provided for in paragraph 1, the warship may proceed to verify the ship's right to fly its flag. To this end, it may send a boat under the command of an officer to the suspected

ship. If suspicion remains after the documents have been checked, it may proceed to a further examination on board the ship, which must be carried out with all possible consideration.

3. If the suspicions prove to be unfounded, and provided that the ship boarded had not committed any act justifying them, it shall be compensated for any loss or damage that may have been sustained.
4. These provisions apply *mutatis mutandis* to military aircraft.
5. These provisions also apply to any other duly authorised ships or aircraft clearly marked and identifiable as being on government service.

Article 111.

The right of hot pursuit.

1. The hot pursuit of a foreign ship may be undertaken when competent authorities of the coastal State have good reason to believe that the ship has violated the laws and regulations of that State. Such pursuit must be commenced when the foreign ship or one of its boats is within internal waters, the archipelagic waters, the territorial sea or the contiguous zone of the pursuing State, and may only be continued outside the territorial sea or the contiguous zone if the pursuit has not been interrupted. It is not necessary that, at the time when the foreign ship within the territorial sea or the contiguous zone receives the order to stop, the ship giving the order should likewise be within the territorial sea or the contiguous zone. If the foreign ship is within a contiguous zone, as defined by Article 33, the pursuit may only be undertaken if there has been a violation of the rights for the protection of which the zone was established.
2. The right of hot pursuit shall apply *mutatis mutandis* to violations in the exclusive economic zone or on the continental shelf, including safety zones around continental shelf installations, of the laws and regulations of the coastal State applicable in accordance with this Convention to the exclusive economic zone or the continental shelf, including such safety zones.
3. The right of hot pursuit ceases as soon as the ship pursued enters the territorial sea of its own State or of a third State.
4. Hot Pursuit is not deemed to have begun unless the pursuing ship has satisfied itself by such practicable means as may be available that the ship pursued or one of its boats or other craft working as a team and using the ship pursued as a mother ship is within the limits of the territorial sea, or, as the case may be, within the contiguous zone, or the exclusive economic zone, or above the continental shelf. The pursuit may only be commenced after a visual or auditory signal to stop has been given at a distance which enables it to be seen or heard by the foreign ship.

5. The right of hot pursuit may be exercised only by warships or military aircraft, or other ship or aircraft clearly marked and identifiable as being on government service and authorised to that effect.
6. Where hot pursuit is effected by an aircraft;
 - (a) the provisions of paragraphs 1 to 4 shall apply *mutatis mutandis*,
 - (b) the aircraft giving the order to stop must itself actively pursue the ship until a ship or another aircraft of the coastal State, summoned by the aircraft, arrives to take over the pursuit, unless the aircraft is itself able to arrest the ship. It does not suffice to justify an arrest outside the territorial sea that the ship was merely sighted by the aircraft as an offender or suspected offender, if it was not both ordered to stop and pursued by the aircraft itself or other aircraft or ships which continue the pursuit without interruption.
7. The release of a ship arrested within the jurisdiction of a State and escorted to a port of that State for the purposes of an inquiry before the competent authorities may not be claimed solely on the ground that the ship, in the course of its voyage, was escorted across a portion of the exclusive economic zone or the high seas, if the circumstance rendered this necessary.
8. Where a ship has been stopped or arrested outside the territorial sea in circumstances which do not justify the exercise of the right of hot pursuit, it shall be compensated for any loss or damage that may have been thereby sustained.

Article 112

Right to lay submarine cables and pipelines.

1. All States are entitled to lay submarine cables and pipelines on the bed of the high seas beyond the continental shelf.
2. Article 79, paragraph 5, applies to such cables and pipelines.

Article 113

Breaking or injury of a submarine cable or pipeline.

Every State shall adopt the laws and regulations necessary provide that the breaking or injury by a ship flying its flag or by a person subject to its jurisdiction of a submarine cable beneath the high seas done willfully or through culpable negligence, in such a manner as to be liable to interrupt or obstruct telegraphic or telephonic communications, and similarly the breaking or injury of a submarine pipeline or high-voltage power cable, shall be a punishable offense. This provision shall apply also to conduct calculated or likely to result in such breaking or injury. However, it shall not apply to any break or injury caused by person who acted merely with the legitimate

object of saving their lives or their ships, after having taken all necessary precautions to avoid such break or injury.

Appendix 2

CONVENTION FOR THE SUPPRESSION OF UNLAWFUL ACTS AGAINST THE SAFETY OF MARITIME NAVIGATION

Signed at Rome, 10 March 1988

THE STATES PARTIES to this Convention,

HAVING IN MIND the purposes and principles of the Charter of the United Nations concerning the maintenance of international peace and security and the promotion of friendly relations and co-operation among States,

RECOGNIZING in particular that everyone has the right to life, liberty and security of person, as set out in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, **DEEPLY CONCERNED** about the world-wide escalation of acts of terrorism in all its forms, which endanger or take innocent human lives, jeopardize fundamental freedoms and seriously impair the dignity of human beings,

CONSIDERING that unlawful acts against the safety of maritime navigation jeopardize the safety of persons and property, seriously affect the operation of maritime services, and undermine the confidence of the peoples of the world in the safety of maritime navigation,

CONSIDERING that the occurrence of such acts is a matter of grave concern to the international community as a whole,

BEING CONVINCED of the urgent need to develop international co-operation between States in devising and adopting effective and practical measures for the prevention of all unlawful acts against the safety of maritime navigation, and the prosecution and punishment of their perpetrators,

RECALLING resolution 40/61 of the General Assembly of the United Nations of 9 December 1985 which, inter alia, "urges all States unilaterally and in co-operation with other States, as well as relevant United Nations organs, to contribute to the progressive elimination of causes underlying international terrorism and to pay special attention to all situations, including colonialism, racism and situations involving mass and flagrant violations of human rights and fundamental freedoms and those involving alien occupation, that may give rise to international terrorism and may endanger international peace and security",

RECALLING FURTHER that resolution 40/61 "unequivocally condemns, as criminal) all acts, methods and practices of terrorism wherever and by whomever committed, including those which jeopardize friendly relations among States and their security",

RECALLING ALSO that by resolution 40/61, the International Maritime Organization was invited to "study the problem of terrorism aboard or against ships with a view to making recommendations on appropriate measures",

HAVING IN MIND resolution A.584(14) of 20 November 1985, of the Assembly of the International Maritime Organization, which called for development of measures to prevent unlawful acts which threaten the safety of ships and the security of their passengers and crews,

NOTING that acts of the crew which are subject to normal shipboard discipline are outside the purview of this Convention,

AFFIRMING the desirability of monitoring rules and standards relating to the prevention and control of unlawful acts against ships and persons on board ships, with a view to updating them as necessary, and, to this effect, taking note with satisfaction of the Measures to Prevent Unlawful Acts against Passengers and Crews on Board Ships, recommended by the Maritime Safety Committee of the International Maritime Organization,

AFFIRMING FURTHER that matters not regulated by this Convention continue to be governed by the rules and principles of general international law,

RECOGNIZING the need for all States, in combating unlawful acts against the safety of maritime navigation, strictly to comply with rules and principles of general international law,

HAVE AGREED as follows:

ARTICLE 1

For the purposes of this Convention, "ship" means a vessel of any type whatsoever not permanently attached to the sea-bed, including dynamically supported craft, submersibles, or any other floating craft.

ARTICLE 2

This Convention does not apply to:

a warship; or

a ship owned or operated by a State when being used as a naval auxiliary or for customs or police purposes; or a ship which has been withdrawn from navigation or laid up.

Nothing in this Convention affects the immunities of warships and other government ships operated for non-commercial purposes.

ARTICLE 3

Any person commits an offence if that person unlawfully and intentionally: seizes or exercises control over a ship by force or threat thereof or any other form of intimidation; or performs an act of violence against a person on board a ship if that act is likely to endanger the safe navigation of that ship; or

destroys a ship or causes damage to a ship or to its cargo which is likely to endanger the safe navigation of that ship; or

places or causes to be placed on a ship, by any means whatsoever, a device or substance which is likely to destroy that ship, or cause damage to that ship or its cargo which endangers or is likely to endanger the safe navigation of that ship; or

destroys or seriously damages maritime navigational facilities or seriously interferes with their operation, if any such act is likely to endanger the safe navigation of a ship; or

communicates information which he knows to be false, thereby endangering the safe navigation of a ship; or

injures or kills any person, in connection with the commission or the attempted commission of any of the offences set forth in subparagraphs (a) to (f).

Any person also commits an offence if that person:

attempts to commit any of the offences set forth in paragraph 1; or

abets the commission of any of the offences set forth in paragraph 1 perpetrated by any person or is otherwise an accomplice of a person who commits such an offence; or

threatens, with or without a condition, as is provided for under national law, aimed at compelling a physical or juridical person to do or refrain from doing any act, to commit any of the offences set forth in paragraph 1, subparagraphs (b), (c) and (e), if that threat is likely to endanger the safe navigation of the ship in question.

ARTICLE 4

This Convention applies if the ship is navigating or is scheduled to navigate into, through or from waters beyond the outer limit of the territorial sea of a single State, or the lateral limits of its territorial sea with adjacent States.

In cases where the Convention does not apply pursuant to paragraph 1, it nevertheless applies when the offender or the alleged offender is found in the territory of a State Party other than the State referred to in paragraph 1.

ARTICLE 5

Each State Party shall make the offences set forth in article 3 punishable by appropriate penalties which take into account the grave nature of those offences.

ARTICLE 6

Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 3 when the offence is committed:

against or on board a ship flying the flag of the State at the time the offence is committed; or

in the territory of that State, including its territorial sea; or

by a national of that State.

A State Party may also establish its jurisdiction over any such offence when:

it is committed by a stateless person whose habitual residence is in that State; or during its commission a national of that State is seized, threatened, injured or killed; or it is committed in an attempt to compel that State to do or abstain from doing any act. Any State Party which has established jurisdiction mentioned in paragraph 2 shall notify the Secretary-General of the International Maritime Organization (hereinafter referred to as "the Secretary-General"). If such State Party subsequently rescinds that jurisdiction, it shall notify the Secretary-General. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 3 in cases where the alleged offender is present in its territory and it does not extradite him to any of the States Parties which have established their jurisdiction in accordance with paragraphs 1 and 2 of this article. This Convention does not exclude any criminal jurisdiction exercised in accordance with national law.

ARTICLE 7

Upon being satisfied that the circumstances so warrant, any State Party in the territory of which the offender or the alleged offender is present shall, in accordance with its law, take him into custody or take other measures to ensure his presence for such time as is necessary to enable any criminal or extradition proceedings to be instituted.

Such State shall immediately make a preliminary inquiry into the facts, in accordance with its own legislation.

Any person regarding whom the measures referred to in paragraph 1 are being taken shall be entitled to: communicate without delay with the nearest appropriate representative of the State of which he is a national or which is otherwise entitled to establish such communication or, if he is a stateless person, the State in the territory of which he has his habitual residence; be visited by a representative of that State.

The rights referred to in paragraph 3 shall be exercised in conformity with the laws and regulations of the State in the territory of which the offender or the alleged offender is present, subject to the proviso that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under paragraph 3 are intended.

When a State Party, pursuant to this article, has taken a person into custody, it shall immediately notify the States which have established jurisdiction in accordance with article 6, paragraph 1 and, if it considers it advisable, any other interested States, of the fact that such person is in custody and of the circumstances which warrant his detention. The State which makes the preliminary inquiry contemplated in paragraph 2 of this article shall promptly report its findings to the said States and shall indicate whether it intends to exercise jurisdiction.

ARTICLE 8

The master of a ship of a State Party (the "flag State") may deliver to the authorities of any other State Party (the "receiving State") any person who he has reasonable grounds to believe has committed one of the offences set forth in article 3.

The flag State shall ensure that the master of its ship is obliged, whenever practicable, and if possible before entering the territorial sea of the receiving State carrying on board any person whom the master intends to deliver in accordance with paragraph 1, to give notification to the authorities of the receiving State of his intention to deliver such person and the reasons therefor.

The receiving State shall accept the delivery, except where it has grounds to consider that the Convention is not applicable to the acts giving rise to the delivery, and shall proceed in accordance with the provisions of article 1. Any refusal to accept a delivery shall be accompanied by a statement of the reasons for refusal.

The flag State shall ensure that the master of its ship is obliged to furnish the authorities of the receiving State with the evidence in the master's possession which pertains to the alleged offence.

A receiving State which has accepted the delivery of a person in accordance with paragraph 3 may, in turn, request the flag State to accept delivery of that person. The flag State shall consider any such request, and if it accedes to the request it shall proceed in accordance with article 7. If the flag State declines a request, it shall furnish the receiving State with a statement of the reasons therefor.

ARTICLE 9

Nothing in this Convention shall affect in any way the rules of international law pertaining to the competence of States to exercise investigative or enforcement jurisdiction on board ships not flying their flag.

ARTICLE 10

The State Party in the territory of which the offender or the alleged offender is found shall, in cases to which article 6 applies, if it does not extradite him, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case without delay to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State. Those authorities shall take their decision in the same manner as in the case of any other offence of a grave nature under the law of that State.

Any person regarding whom proceedings are being carried out in connection with any of the offences set forth in article 3 shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided for such proceedings by the law of the State in the territory of which he is present.

ARTICLE 11

The offences set forth in article 3 shall be deemed to be included as extraditable offences in any extradition treaty existing between any of the States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.

If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, the requested State Party may, at its

option, consider this Convention as a legal basis for extradition in respect of the offences set forth in article 3. Extradition shall be subject to the other conditions provided by the law of the requested State Party. States Parties which do not make extradition conditional on the existence of a treaty shall recognize the offences set forth in article 3 as extraditable offences between themselves, subject to the conditions provided by the law of the requested State.

If necessary, the offences set forth in article 3 shall be treated, for the purposes of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in a place within the jurisdiction of the State Party requesting extradition.

A State Party which receives more than one request for extradition from States which have established jurisdiction in accordance with article 7 and which decides not to prosecute shall, in selecting the State to which the offender or alleged offender is to be extradited, pay due regard to the interests and responsibilities of the State Party whose flag the ship was flying at the time of the commission of the offence.

In considering a request for the extradition of an alleged offender pursuant to this Convention, the requested State shall pay due regard to whether his rights as set forth in article 7, paragraph 3, can be effected in the requesting State.

With respect to the offences as defined in this Convention, the provisions of all extradition treaties and arrangements applicable between States Parties are modified as between States Parties to the extent that they are incompatible with this Convention.

ARTICLE 12

State Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of the offences set forth in article 3, including assistance in obtaining evidence at their disposal necessary for the proceedings.

States Parties shall carry out their obligations under paragraph 1 in conformity with any treaties on mutual assistance that may exist between them. In the absence of such treaties, States Parties shall afford each other assistance in accordance with their national law.

ARTICLE 13

States Parties shall co-operate in the prevention of the offences set forth in article 3, particularly by: taking all practicable measures to prevent preparations in their respective territories for the commission of those offences within or outside their territories; exchanging information in accordance with their national law, and co-ordinating administrative and other measures taken as appropriate to prevent the commission of offences set forth in article 3. When, due to the commission of an offence set forth in article 3, the passage of a ship has been delayed or interrupted, any State Party in whose territory the ship or passengers or crew are present shall be bound to exercise all possible efforts to avoid a ship, its passengers, crew or cargo being unduly detained or delayed.

ARTICLE 14

Any State Party having reason to believe that an offence set forth in article 3 will be committed shall, in accordance with its national law, furnish as promptly as possible any relevant information in its possession to those States which it believes would be the States having established jurisdiction in accordance with article 6.

ARTICLE 15

Each State Party shall, in accordance with its national law) provide to the Secretary-General, as promptly as possible, any relevant information in its possession concerning:

the circumstances of the offence;

the action taken pursuant to article 13, paragraph 2;

the measures taken in relation to the offender or the alleged offender and, in particular, the results of any extradition proceedings or other legal proceedings.

The State Party where the alleged offender is prosecuted shall, in accordance with its national law, communicate the final outcome of the proceedings to the Secretary-General.

The information transmitted in accordance with paragraphs 1 and 2 shall be communicated by the Secretary-General to all States Parties, to Members of the International Maritime Organization (hereinafter referred to as "the Organization"), to the other States concerned, and to the appropriate international intergovernmental organizations.

ARTICLE 16

Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation within a reasonable time shall, at the request of one of them, be submitted to arbitration. If, within six months from the date of the request for arbitration, the parties are unable to agree on the organization of the arbitration any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court. Each State may at the time of signature or ratification, acceptance or approval of this Convention or accession thereto, declare that it does not consider itself bound by any or all of the provisions of paragraph 1. The other States Parties shall not be bound by those provisions with respect to any State Party which has made such a reservation.

Any State which has made a reservation in accordance with paragraph 2 may, at any time, withdraw that reservation by notification to the Secretary-General.

ARTICLE 17

This Convention shall be open for signature at Rome on 10 March 1988 by States participating in the International Conference on the Suppression of Unlawful Acts against the Safety of Maritime Navigation and at the Headquarters of the Organization by all States from 14 March 1988 to 9 March 1989. It shall thereafter remain open for accession.

States may express their consent to be bound by this Convention by:

signature without reservation as to ratification, acceptance or approval; or

signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval; or accession.

Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the Secretary-General.

ARTICLE 18

This Convention shall enter into force ninety days following the date on which fifteen States have either signed it without reservation as to ratification, acceptance or approval, or have deposited an instrument of ratification, acceptance, approval or accession in respect thereof.

For a State which deposits an instrument of ratification, acceptance, approval or accession in respect of this Convention after the conditions for entry into force thereof have been met, the ratification, acceptance, approval or accession shall take effect ninety days after the date of such deposit.

ARTICLE 19

This Convention may be denounced by any State Party at any time after the expiry of one year from the date on which this Convention enters into force for that State.

Denunciation shall be effected by the deposit of an instrument of denunciation with the Secretary-General. A denunciation shall take effect one year, or such longer period as may be specified in the instrument of denunciation, after the receipt of the instrument of denunciation by the Secretary-General.

ARTICLE 20

A conference for the purpose of revising or amending this Convention may be convened by the Organization.

The Secretary-General shall convene a conference of the States Parties to this Convention for revising or amending the Convention, at the request of one third of the States Parties, or ten States Parties, whichever is the higher figure.

Any instrument of ratification, acceptance, approval or accession deposited after the date of entry into force of an amendment to this Convention shall be deemed to apply to the Convention as amended.

ARTICLE 21

This Convention shall be deposited with the Secretary-General.

The Secretary-General shall:

inform all States which have signed this Convention or acceded thereto, and all Members of the Organization, of:

each new signature or deposit of an instrument of ratification, acceptance, approval or accession together with the date thereof;

the date of the entry into force of this Convention;

the deposit of any instrument of denunciation of this Convention together with the date on which it is received and the date on which the denunciation takes effect;

the receipt of any declaration or notification made under this Convention;

transmit certified true copies of this Convention to all States which have signed this Convention or acceded thereto.

As soon as this Convention enters into force, a certified true copy thereof shall be transmitted by the Depositary to the Secretary-General of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

ARTICLE 22

IN WITNESS WHEREOF the undersigned being duly authorized by their respective Governments for that purpose have signed this Convention.

**PROTOCOL FOR THE SUPPRESSION OF UNLAWFUL ACTS AGAINST THE SAFETY OF
FIXED PLATFORMS LOCATED ON THE CONTINENTAL SHELF**

Signed at Rome 10 March 1988

THE STATES PARTIES to this Protocol,

BEING PARTIES to the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation,

RECOGNIZING that the reasons for which the Convention was elaborated also apply to fixed platforms located on the continental shelf,

TAKING account of the provisions of that Convention,

AFFIRMING that matters not regulated by this Protocol continue to be governed by the rules and principles of general International law,

HAVE AGREED as follows:

ARTICLE 1

The provisions of articles 5 and 7 and of articles 10 to 16 of the Convention for the Suppression of unlawful Acts against the Safety of Maritime Navigation (hereafter referred to as "the Convention") shall also apply *mutatis mutandis* to the offences set forth in article 2 of this Protocol where such offences are committed on board or against fixed platforms located on the continental shelf.

In cases where this Protocol does not apply pursuant to paragraph 1, it nevertheless applies when the offender or the alleged offender is found in the territory of a State Party other than the State in whose international waters or territorial sea the fixed platform is located.

For the purposes of this Protocol, "fixed platform" means an artificial island, installation or structure permanently attached to the sea-bed for the purpose of exploration or exploitation of resources or for other economic purposes.

ARTICLE 2

Any person commits an offence if that person unlawfully and intentionally:

seizes or exercises control over a fixed platform by force or threat thereof or any other form of intimidation; or performs an act of violence against a person on board a fixed platform if that act is likely to endanger its safety; or destroys a fixed platform or causes damage to it which is likely to endanger its safety; or places or causes to be placed on a fixed platform, by any means whatsoever, a device or substance which is likely to destroy that fixed platform or likely to endanger its safety; or injures or kills any person in connection with the commission or the attempted commission of any of the offences set forth in subparagraphs (a) to (d).

Any person also commits an offence if that person:

attempts to commit any of the offences set forth in paragraph 1; or

abets the commission of any such offences perpetrated by any person or is otherwise an accomplice of a person who commits such an offence; or threatens, with or without a condition, as is provided for under national law, aimed at compelling a physical or juridical person to do or refrain from doing any act, to commit any of the offences set forth in paragraph 1, subparagraphs (b) and (c), if that threat is likely to endanger the safety of the fixed platform.

ARTICLE 3

Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 when the offence is committed: against or on board a fixed platform while it is located on the continental shelf of that State; or by a national of that State.

A State Party may also establish its jurisdiction over any such offence when: it is committed by a stateless person whose habitual residence is in that State; during its commission a national of that State is seized, threatened, injured or killed; or it is committed in an attempt to compel that State to do or abstain from doing any act.

Any State Party which has established jurisdiction mentioned in paragraph 2 shall notify the Secretary General of the International Maritime Organization (hereinafter referred to as "the Secretary-General"). If such State Party subsequently rescinds that Jurisdiction, it shall notify the Secretary-General.

Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 in cases where the alleged offender is present in its territory and it does not extradite him to any of the States Parties which have established their jurisdiction in accordance with paragraphs 1 and 2 of this article.

This Protocol does not exclude any criminal jurisdiction exercised in accordance with national law

ARTICLE 4

Nothing in this Protocol shall affect in any way the rules of international law pertaining to fixed platforms located on the continental shelf

ARTICLE 5

This Protocol shall be open for signature at Rome on 10 March 1988 and at the Headquarters of the International Maritime Organization (hereinafter referred to as "the Organization") from 14 March 1988 to 9 March 1989 by any State which has signed the Convention. It shall thereafter remain open for accession. States may express their consent to be bound by this Protocol by:

signature without reservation as to ratification, acceptance or approval; or

signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval; or accession.

Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the Secretary-General.

Only a State which has signed the Convention without reservation as to ratification, acceptance or approval, or has ratified, accepted, approved or acceded to the Convention may become a Party to this Protocol.

ARTICLE 6

This Protocol shall enter into force ninety days following the date on which three States have either signed it without reservation as to ratification, acceptance or approval, or have deposited an instrument of ratification, acceptance, approval or accession in respect thereof. However, this Protocol shall not enter into force before the Convention has entered into force.

For a State which deposits an instrument of ratification, acceptance, approval or accession in respect of this Protocol after the conditions for entry into force thereof have been met, the ratification, acceptance, approval or accession shall take effect ninety days after the date of such deposit.

ARTICLE 7

This Protocol may be denounced by any State Party at any time after the expiry of one year from the date on which this Protocol enters into force for that State.

Denunciation shall be effected by the deposit of an instrument of denunciation with the Secretary-General.

A denunciation shall take effect one year, or such longer period as may be specified in the instrument of denunciation, after the receipt of the instrument of denunciation by the Secretary-General.

A denunciation of the Convention by a State Party shall be deemed to be a denunciation of this Protocol by that Party.

ARTICLE 8

A conference for the purpose of revising or amending this Protocol may be convened by the Organization. The Secretary-General shall convene a conference of the States Parties to this Protocol for revising or amending the Protocol, at the request of one third of the States Parties, or five States Parties, whichever is the higher figure.

Any instrument of ratification, acceptance, approval or accession deposited after the date of entry into force of an amendment to this Protocol shall be deemed to apply to the Protocol as amended.

ARTICLE 9

This Protocol shall be deposited with the Secretary-General.

The Secretary-General shall:

inform all States which have signed this Protocol or acceded thereto, and all Members of the Organization, of: each new signature or deposit of an instrument of ratification, acceptance, approval or accession, together with the date thereof; the date of entry into force of this Protocol;

the deposit of any instrument of denunciation of this Protocol together with the date on which it is received and the date on which the denunciation takes effect;
the receipt of any declaration or notification made under this Protocol or under the Convention, concerning this Protocol.

transmit certified true copies of this Protocol to all States which have signed this Protocol or acceded thereto.

As soon as this Protocol enters into force, a certified true copy thereof shall be transmitted by the Depositary to the Secretary-General of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

ARTICLE 10

This Protocol is established in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.

IN WITNESS WHEREOF the undersigned, being duly authorised by their respective Governments for that purpose has signed this Protocol.

In accordance with the aforementioned Conventions, signatory states must:

- establish appropriate legal punishments for endangering shipping and human life, despite the possibility of jurisdictions differing about appropriate penalties (Article 5).
- exercise authority against Article 3 offences, irrespective of the ship's flag, its position in state territorial waters and the nationality of alleged offenders, even if they are stateless (Article 6).
- compile evidence and carry out criminal or extradition proceedings consistent with domestic legislation when they detain offenders. They must report findings and legal intentions to other relevant States including justification for detention. Detainees held on suspicion of *endangering navigation* can communicate with the diplomatic office of their state of citizenship or communicate with a person of their State of residence if categorised as stateless (Article 7).
- ensure that a master of a vessel carrying a signatory State flag, (even if an FOC), may deliver to other States' policing agencies any person who allegedly contravened Article 3 offences. This expands on UNCLOS 1982, which makes no such provision for the Captain of a merchantman. The master is obliged to provide evidence to and notify the receiving State his intention to deliver suspects, which must show cause if it refuses to accept a suspect. The receiving State should accept the person, except where this would

contravene its domestic legislation grounds to reject them. The flag State must ensure that ship's masters provide evidence to the receiving State.

- with respect to the above points, if the receiving State requests the ship's flag State to accept the suspect, and it does so (which if in FOC states is unlikely), it shall proceed consistent with Article 7. FOC States, which run shipping registries for financial benefit, may lack logistical capability to accept persons who commit a crime aboard their registered vessels. FOC states could be reluctant to undertake proceedings unless shipping companies contribute legal funds.
- acknowledge that nothing in the Convention will adversely affect international law in terms of the competence of the State to undertake investigations and enforce law aboard ships not flying its flag (Article 9). The judicial agencies that contributed to the Rome Convention acknowledged the world-system consists of nation states of varying socioeconomic, political and strategic power within a system of equal formal national sovereignty (van Fossen 1992, p.1).
- submit the alleged offender (if it does not extradite him), irrespective of the offence location, for trial under domestic law. States must provide fair legal treatment to persons charged with Article 3 offences, and recognise that they are entitled to rights provided by the law of the State which they find themselves in. However, there are likely to be disparities between State agencies, especially between national flag states and FOC states about notional legal 'fairness' (Article 10) in industrial relations and other areas.
- acknowledge that all Article 3 offences are extraditable. If a State Party makes extradition conditional on the existence of a treaty and receives a request for extradition from another State Party with which it has no extradition agreement, the requested State may regard this Convention as legal justification to extradite suspects (Article 11). It is questionable whether FOC jurisdictions would uphold this article.

- regard Article 3 offences as extraditable, consistent with domestic law if they do not have extradition proceedings based on treaty. These offences should be accepted as if they were committed in the place in which they occurred or in within the jurisdiction of another signatory State requesting extradition. A State may receive more than one extradition request simultaneously from different States. If the State decides not to prosecute, it can select the State to which the offender can be extradited. It can consider interests and responsibilities of the ship's flag State. When a signatory State considers an extradition request, the requesting State shall consider whether an offender's rights can be adversely affected in the requesting State. They shall render assistance in extraditing procedures, investigations and evidence collection and meet established agreements about mutual assistance (Article 12).
- implement measures for maritime and judicial agencies to cooperate to prevent Article 3 offences. States are required to exchange all relevant information consistent with national law (Article 13).
- provide to the IMO, member states and other States indirectly involved, relevant information concerning: 1) details of the offence; 2) actions and measures taken against alleged offenders and legal proceedings by the state; 3) decisions of all legal judgements (Article 15).
- accept that disputes between signatory States can be submitted to the IMO for arbitration and later refer the dispute to the International Court of Justice if parties continue to disagree in arbitration negotiations. Each State can accept all parts of the Convention or initially accept only certain provisions (Article 16).

The Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf is relevant as pirates have attacked oil and gas rigs¹ and a number of these are registered in FOCs. Many of the first protocol articles were repeated in this second protocol and applied to fixed platforms instead of ship. It states that Articles 5, 7, and 10 to 16 of the Protocol for... Unlawful Acts Against Maritime

Navigation (see above) are applied to its Article 2 offences committed aboard platforms on continental shelves (Article 1).

This protocol applies if alleged offenders are found in signatory state territory irrespective of the fixed platform's position. It outlaws 1) forceful seizure; 2) control and compromise of safety of a fixed platform; 3) damage or destruction to its equipment; 4) association with offenders, whether criminally or politically motivated (Article 2). Each State is required to exercise authority over offences aboard fixed platforms when positioned on coastal states' continental shelves or within exclusive economic zones (Article 3).

¹ Reportedly the, Mallard Rig 73a fixed platform owned by Shell and operated by Parker Drilling was pirated when in the Nigerian Delta in August 1999. Pirates held four workers hostage and made ransom demands to Parker Drilling. The hostages managed to escape and raise alarm. One American hostage undertook legal action in New York. Parker Drilling blamed Nigeria's political instability and cited that over fifty Shell employees had been kidnapped (British Broadcasting Service 1999). This has raised fears that oil platform workers need more protection against reported piracy (Lloyd's List 2004e, p.11).

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