

# **‘Pirates’, stewards, and the securitisation of global circulation<sup>\*</sup>**

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## **Biographical note:**

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## **Keywords:**

Biopolitics, insurance, risk, security studies, risk management

## **Abstract:**

This article is a contribution to the theorisation of global maritime circulation as a key category of a global biopolitics of security. It seeks to advance knowledge on the ways in which liberal life is promoted and protected by exacerbating global circulation. It focuses on the security effects of a complex maritime insurance apparatus driven by global insurance in which the Joint War Committee of the Lloyd’s Market Association and the International Underwriting Association plays a pivotal role. Through the analysis of the inclusion of the Strait of Malacca in the Lloyd’ War List in 2006 under the argument of heightened piracy, it is argued that global maritime insurance performs a special security role, that of stewardship, in securing the circulation of the high seas.

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Today's global economy is sustained and fuelled through shipping, and the maritime industry is enjoying a period of unprecedented activity. This leads to increasing challenges for the marine underwriter. The recent initiatives taken by the Joint War Committee to address the piracy and terrorism issue, which is a growing maritime risk, is just one example where the initiatives of this committee have proven significant on a global scale (Washbourn 2006).

From the outset, it is suggested in this article that risk management is not an intellectual problem. The problem is the security of liberal life. As such, the problem-space to be analysed through the interrogation of the deployment of risk management technologies refers to the ways in which risk management is expected to protect and promote liberal life. Liberal life cannot of course be taken for granted. The difficulty in defining what it is, however, is that a liberal way of life is not an end-product but the outcome of evolving technologies of governance which materialise by way of constituting political economies. Political economies are here understood, building on Michel Foucault's work, as effects-based forms of governing populations at a distance, the effective result of conducting the conduct of populations (Gordon 1991). Conducting populations, however, differs from affecting the conduct of a mass of people, as Foucault argued at some length (Foucault 2007). A population is already the result of a selection process, speciation Foucault called it, by which individuals are classified based on 'life' features. Populations are therefore the result of governing people as species-life. Hence, the political economies developed to govern the conduct of populations at a distance operate on the specific particularities that define the species around which a population has been constituted. In this way, political economies develop as ways of effecting governance over groups of people although in an individualised way. This article develops the idea further by illustrating a case of a global political economy of risk management that focuses on the securitisation of

global maritime circulation. In particular it analyses how the Strait of Malacca has been securitised through the agency of global maritime insurance markets that operate a rationality of global risk management.

In this way, the article is a contribution to the theorisation of a global biopolitics of security (c.f. Dillon 2007, Dillon and Lobo-Guerrero 2008, Lobo-Guerrero 2007a, Masters and Dauphinee 2007, c.f. Reid 2007). It seeks to advance knowledge on the ways in which maritime insurance as a technology of risk management, governs global maritime circulation. In so doing it argues that the global risk management of maritime circulation escapes the state/legitimate-violence complex that traditional approaches to the discipline of International Relations have dealt with (c.f. Ashley 1987, Campbell and Dillon 1993, Edkins 1999).

Global circulation is presented here as a condition of possibility for the promotion and protection of a liberal way of life that depends greatly on its capacity to globalise trade. Trade implies moving goods, services, and people from place to place and 77% of the total world trade measured in terms of volume is seaborne (MIU 2007). Because of the mobility that defines maritime trade and the shifting conditions under which global shipping operates, the provision of security for global maritime circulation through insurance has seen the development of a complex and highly-adaptive security apparatus. Its objective has been to secure the global circulation of maritime trade by developing a mechanism to facilitate the financial protection of ships travelling the world. Practices involved in marine underwriting, actuarial research, claims adjustment, and an active stewardship role performed by the global maritime insurance industry constitute such apparatus of security.

This article is concerned specifically with the analysis of the stewardship role of this global risk management security apparatus by an institution of the global

insurance market: the Joint War Committee (JWC) of the Lloyd's Market Association (LMA) and the International Underwriting Association (IUA). The effective governance of this committee materialises, for the purpose of the example provided in the article, in the way sovereign states are compelled to behave as part of a global risk management *dispositif*. The effectiveness of the JWC's decisions instantiates a global moral economy which affects the conduct of sovereign national states as well as the complex maritime security ensemble.

The work is divided in three parts. As a means to illustrate the deployment of the security apparatus, the article begins by presenting three cases in which the JWC has influenced the sovereignty of national states. A short description of the recent history of the JWC follows preparing the ground for a detailed analysis of the most recent case, the inclusion of the Strait of Malacca into the JWC's 'War List' in 2006 on the grounds of enhanced risk of piracy.

The second part theorises the role of the JWC as one that securitises circulation as a quasi-transcendental for liberal life. It begins by explaining the decision-making process within the JWC. It then analyses the emergence and treatment of the piracy issue in the Strait of Malacca and introduces an analysis of the securitisation of global maritime circulation through insurance.

The article concludes by offering some reflections on the analysis of security practices through risk management. It offers some ideas for further development in the interpretation of the role of marine stewardship that the JWC is argued to play. It concludes by highlighting the advantage of circumscribing the study of insurance into a wider biopolitical security framework that anchors it to the promotion and protection of liberal life.

## **“A Head” THE BIOPOLITICS OF GLOBAL CIRCULATION AND THE ‘WAR LIST’ OF THE JOINT WAR COMMITTEE**

The core problematic of biopolitics is therefore that of circulation; every aspect of how species being circulates and every circulation that affects the welfare of species being including every conceivable transaction and exchange of by means of which it is capable of being related to every other form of matter both actual and virtual (Foucault 2007, Lecture 1).

The Joint War Committee has a history that goes back at least to the Second World War although no public records are available to trace its evolution.<sup>1</sup> The Committee comprises a group of underwriters from the Lloyd’s Market Association (LMA) and members of the International Underwriting Association (IUA) who write marine policies in various parts of the world. Their remit is to analyse the ‘war’ risks associated with hulls of vessels travelling the world and to produce a list to guide members on geographical regions that pose higher than normal levels of ‘war’ risks. War, however, is widely interpreted as a condition of heightened security risks related to social, political, and economic unrest.

Insurance on vessels comprises policies on marine perils as well as separate policies covering war and related risks. For the latter, the Committee produces ‘the List’ officially labelled the Hull War, Strikes, Terrorism and Related Perils List. As a means to encompass the volatile nature of marine risks, underwriters at the JWC have established a mechanism whereby they can advice members on modifications to policy premiums based on the changing security environment across the world. The List is expected to encompass changes in levels of risk that will affect underwriting decisions and although members are not obliged to follow the Committee’s advice, they regularly do so (Smith and Roberts 2007). The geographical location of vessels

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<sup>1</sup> The archives that contained the historical records of the London Maritime Association of which the JWC is part disappeared in the Iron Mountain fire of the 12 July 2006 in London.

and cargo, in relation to the security environment prevailing, affect the level of risk that a client's shipping represents to the insurer. The marine underwriter is therefore expected to match the right level of risk of a particular shipping activity with the right premium; the List becomes a source of trusted information for this purpose. Because changes in a particular security environment can affect the levels of risk for which war policies are written, underwriters, following certain procedures, can at any time load policies based on the recommendations of the List. This has been the case for war policies covering shipping to Sri Lanka, Pakistan, and the Strait of Malacca as the following examples illustrate.

### **“B Head” Sri Lanka, Pakistan, and the Strait of Malacca... on the List**

On August 6, 2001 the JWC and the War Risks Rating Committee (WRRC) – another LMA committee looking after the interest of cargo- announced a joint decision to increase the level of risk for marine insurance business in Sri Lanka. The announcement followed an attack over Bandaranaike International Airport in Colombo on July 24, 2001 by the Liberation Tigers of Tamil Eelam which destroyed three airliners, eight military aircraft, and damaged three more airplanes for a total loss of US\$0.40 millions. Consequently, war risk surcharges were imposed on all shipping to Sri Lanka, air and seaborne. By the 11<sup>th</sup> of August the Government of Sri Lanka made representations against the negative risk assessment in front of the JWC in London (Sri Lanka 2001, accessed 20 May 2007). The Sri Lankan shipping agents requested their principals to inform the underwriters that the additional premium sought was totally unjustifiable since the security of the port was not compromised by the attack over the airport (Sri Lanka 2001). By that moment Sri Lanka had already appeared in the Lloyd's Market War Risk Trading Warranties for some time together

with Iraq, Angola, Israel, Lebanon, Libya, Eritrea, Somalia, Congo, Sierra Leone and Yugoslavia. The enhanced risk assessment represented additional war surcharge payable by exporters/importers, reduction in the traffic of vessels, increased freight rates, reduction in containers' transshipment, uncompetitive exports, and general economic compromise (Sri Lanka 2001). Following a meeting on the 17<sup>th</sup> of August between the Sri Lankan High Commission in London and the Lloyd's Market Association, a statement was made anticipating that 'rating improvements may become available to ship-owners in respect of vessels calling at Sri Lankan ports' (Lloyd's 2001). That same day 'the Sri Lankan government agreed to pay a bond of US\$50 million against any claims that might be lodged for damage to vessels heading for or in Sri Lankan waters' (Kokna 2004, accessed: 2 May 2007).

In October 2001 Pakistan was included in the List. The JWC decided to impose surcharges on shipments to and from Pakistan because it feared they could become targets of reprisals by Islamic radicals (BBC 2001). The Pakistani Government's immediate reply was that 'the extra charges were 'totally uncalled for and unjustified as Pakistan is not at war' (BBC 2001). The statement was followed by an announcement that government officials were seeking an urgent meeting with Lloyd's of London to ask its member firms to abstain from imposing loaded charges (BBC 2001). Presenting the United States as its ally, the government argued that if anything, 'Pakistan's ships are safer than before because they are protected by the presence of US naval ships in the Arabian Gulf' (BBC 2001). Officials in the government recalled that even at the height of the 10-year Soviet invasion of Afghanistan when Pakistani ports and airports were under imminent threat of being bombed, the country was never declared a war zone by the JWC (DAWN 2001, accessed: 16 May 2007). Mr. Neil Smith, chairman of the JWC, replied that

everywhere else there were higher rates due to the 9/11 circumstances and Pakistan was not an exception. He explained that after the September events Pakistan was categorised as needing ‘trading warranties’ which meant that ‘shippers had to inform their underwriters of every cargo rather than relying on annual insurance cover’ (BBC 2001). Nonetheless, on the 16<sup>th</sup> of October the JWC met with the Pakistani London’s ambassador and stated that ‘there [was] an understanding of each other’s positions’ (BBC 2001). Arguing Pakistan’s economic reliance on exports, the minister of communications and railways later announced that the government ‘was thinking of giving a sovereign guarantee to all the ships visiting Pakistan’ (BBC 2001). This was indeed the case.

In June 2006 Singapore was added to the List.<sup>2</sup> Prime Minister Mr. Lee Hsien Loong expressed his concerns to Lord Levene, chairman of Lloyd’s of London, over the JWC’s decision to include the Strait of Malacca on its List. Complaints from Singapore were echoed by Indonesia and Malaysia who also pushed for the removal of the straight from the List. On the 20<sup>th</sup> of June, after having implemented a new risk assessment system provided by a private security consultancy, the Committee decided that the Malacca region exceeded an enhanced risk benchmark determined by the external consultants (JWC 2005). Earlier that year, the International Maritime Bureau announced in a yearly report that the Malacca Strait recorded 138 pirate attacks in 2004 (IMB 2005, accessed: 25 March 2007). This information was taken into consideration by the consultant to feed its risk assessment model.

As means of clarifying the JWC’s position, its chairman attended a meeting with representatives from the maritime industry in Singapore and agreed that if alternative information proved the heightened risk assessment to be inaccurate such

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<sup>2</sup> For a description of piracy in relation to Singapore, see (Glass 2003)

information could be taken into consideration (AFP, 2005). The Singapore Maritime Foundation then commissioned a report by the London-based International Institute for Strategic Studies on 'the threat of maritime terrorism in the Malacca Strait'. The report suggested that 'for piracy, the trend globally is falling numbers and in particular, the Malacca Strait is likely to show a falling number of incidents, though pirates are relatively better armed and organised' (Chen). According to Jeffrey Chang, the report suggested that 'the JWC had overestimated the potential of a terrorist threat and concurrently under-appreciated the wide range of measures undertaken by littoral states to improve security in the Malacca Straits' (Chen). The report was sent to the JWC for review in December 2005 (FP 2005). Meanwhile on the 2nd of August 2005 Indonesia, Malaysia and Singapore signed an agreement in Kuala Lumpur to expand their co-ordinated naval controls in the Strait by introducing air assets to the security scheme (Jane's 2005). On early August 2006 Malaysia conducted a network-centric-warfare exercise on its Exclusive Economic Zone with the use of P4 ATM, a video and communication tool, to integrate the operations of 1500 naval personnel and 1000 airmen, 20 naval vessels and 25 fighter-jets' (MIMA 2006).

As a response to this activity, on the 9<sup>th</sup> of August 2006 the JWC announced that '[t]he Committee is now of the opinion that the evidence has shown that not only has the situation improved within the area, but the measures are long-term' (Malacca Straits Removed from War List, 2006). Consequently, the Malacca Strait was removed from the Lloyd's War Risk List of sea lanes with high risk rating. The JWC announced that its decision followed efforts by the straits' bordering states, Singapore, Indonesia, and Malaysia to resolve 'the long-standing security threat in the area' (Malacca Straits Removed from War List, 2006).

## **“B Head” The making of the List**

The making of the List, as will be elaborated below, is in itself the result of the negotiation between two major conflicts. The first is related to what Foucault referred to as the ‘governmentalisation of the state’ (c.f. Foucault 1994: 221). The governmentalisation of the state is a continued reassertion of the role of the state through, for example, forms of regulating markets. The second is a tension between competing commercial interests within the industry. These tensions become evident in discussions about the kind of information used for making JWC’s decisions and the provider of this information. A tender by the JWC in 2004 to select an independent professional security consultancy as the provider of security information was an attempt to settle-down the two conflicts. Aegis Defence Services Ltd. was the selected consultant. The rationale behind such reform was to institutionalise a system that would provide fairness and transparency in the eyes of regulators and objective professional advice in a competitive market environment.

Prior to the 2006 procedural reform the Lloyd’s Market Association had a process in place that allowed for issuing ‘general notices of cancellation’ whenever the List was published. The purpose of such instrument was to cancel all marine hull war policies currently in place allowing for a seven-day expiration period after which the policy cover would re-attach automatically with the implications of the new List (Smith and Roberts 2007). This procedure resulted from a previous agreement with the London Market Brokers Association (LMBA) which stipulated that the List had to be processed in exactly the right format and exactly the right timings. The advantage was that the new List would automatically apply to existing insurance contracts. However, because the Lloyd’s marketplace is under scrutiny in regards to competition law, questions were levelled by the LMA’s legal advisers as to whether that process

was still legally acceptable under current regulations (Foucault 1994). The scheme was therefore examined and the following statement accompanied the List of the 20 June 2005:

The Joint War Committee has been reviewing the use of procedures in relation to amendments to war risk areas utilised on marine hull war risk contracts. As a result of these deliberations, and being cognisant of the legal and commercial aspects, the JWC has adopted the following approach:

The JWC will, in conjunction with an independent third-party security consultant, publish, from time to time, a list of areas of perceived enhanced risk in relation to hull war, strikes, terrorism and related perils. Port, places and coasts which feature on the list will have been assessed by the independent consultants to exceed an enhanced risk benchmark established by them. This list will be published on the LMA and IUA websites and will be freely accessible to all (JWC 2005).

A clear objective of the reform was to instil transparency to the process. As stated by Neil Smith, the fact that the information gets published on the Internet allows anybody around the world to access it (Smith and Roberts 2007). Whether if the loaded premiums suggested in the List apply to a specific policy or not is a matter of negotiation between the client and the particular underwriter. The effect of the reform, however, is that under pressure from state regulation, in this case under the form of competition law, decisions from the JWC became governmentalised. However, such governmentalisation does not imply a state-interference in the JWC's decision-making processes. Its effect is directly related to guaranteeing market fairness within the industry.

The second conflict, the tension between competing commercial interests within the industry, gave rise to the development of a knowledge regime premised upon independent professional security advice. Before 2005, the JWC would make decisions based on the information shared by members. Members would have been briefed by their own independent security advisers. As described by Smith, 'members

sitting in the Committee would have their own private security analysts so whenever they came to the meetings they had already been briefed on the latest developments in terms of marine security worldwide' (Smith and Roberts 2007). A member would request a report from its security advisor about a specific area or risk concern and then inform the Committee on the outcome. However, as Smith also explained, such scheme proved to be quite problematic.

Since marine underwriters run an international business and are in competition with each other, member's involvement and interests in some places differed from each other and affected the global risk perceptions of the Committee.

This brought difficulties with regards to the ways in which members saw particular problems. Discussions about the local, regional, or global implications of certain facts depended on the involvement of members of the JWC in that area. The criticism that arose from this practice was that the Committee was operating in a reactive mode and could only respond by including regions in the List once events had taken place. The process became very cumbersome and required a more solid procedure. The kind of information provided would also proceed from different sources and this made it difficult to compare like-with-like (Smith and Roberts 2007).

These tensions were negotiated through the decision to hire an independent advisor at the service of the Committee. A tender process was established in 2004 seeking to identify the optimum security analysis provider on a list of specific concerns for the JWC (Smith and Roberts 2007). According to Smith, all tendering companies had significant experience in various areas of the world and had developed expertise on specific risks by having worked for various clients on these regards for a period of time. They were all well-established security consultancies selling information products to businesses around the world. Such expertise was taken into consideration as part of the selection criteria.

Aegis Defence Services Ltd. was the selected consultancy. Its role is to provide the Committee with a regular updated listing of the areas they regard as more volatile than others in terms of security risks. Their knowledge is not only technical

but supported by a range of senior expertise in the military and political sectors. The senior executive and non-executive level of the company is comprised of high-ranking personalities including retired officers of the British armed services, a member of the British Parliament, and a former National Security Adviser to President Reagan in the United States (c.f. [www.aegisworld.com/management.htm](http://www.aegisworld.com/management.htm)). Aegis's advice is reviewed by the Committee to generate the updated List which is made publicly available on the Lloyd's Market Association website (<http://www.the-lma.com>).

Part of Aegis's remit has been to monitor the world on a daily basis and provide the JWC with specific information that can lead towards accurate timely hull risks underwriting (Smith and Roberts 2007). As part of the agreed methodology, Aegis was specifically charged with the responsibility of developing and implementing a risk assessment model. The objective was to provide a system that would allow for worldwide levels of risk comparisons, a common base-line for decision-making at the Committee (Smith and Roberts 2007).

The existing model responds to the competing commercial interests of members of the industry by ensuring transparency. Based on the information provided through the model, the Committee meets with the consultant on a quarterly basis to discuss the latest analysis on areas of concern. The contract contemplates, however, the possibility of having short-notice meetings if an event concerning the soundness of the List arises (Smith and Roberts 2007).

The 2005 reform has been an attempt towards the legitimization of the role of the Committee as a fair and neutral entity seeking to enhance the soundness of the global maritime insurance industry worldwide. Such contribution comes in the form

of advising members on of the LMA and the IUA on guidelines to achieve the right premium for the right level of risk.

## **“ A Head” MALACCA, THE JWC, AND THE SECURITY OF GLOBAL CIRCULATION**

Decision-making within the Committee is the result of intense negotiations within members and the evidence provided by the security consultancy. Decisions are reached by consensus. As put by its chairman,

the List is not produced to make media headlines or to ‘stir-things-up’. There is always a very tractable basis for decisions. Because it is politically sensitive and because the JWC knows that decisions affect the trade of countries, all efforts are done to assess the real risks as accurately as possible. We are in the business of supporting trade. We are not in the business of adding areas to the List unless it is particularly necessary. We have to go through a very robust sort of process which involves lots of discussion and negotiation within the Committee before decisions to add or even remove areas from the List (Smith and Roberts 2007).

Decisions by the JWC have an immediate global reach due to the networked nature of international trade. The impact, however, is also a complex one.

Historically, whenever the JWC has added an area to the list there has been local resentment because of the political, economic, and social impact that derives from these actions. The List is a categorisation of risks that brings people, governments and traders all kinds of difficulties. When an area is added the local authorities would invariably suggest that the circumstances that led to the inclusion were misunderstood. Governments usually state that there is no such state of ‘war’ that would justify a heightened risk and that the Committee lacks a local and regional understanding of the issues. This was indeed the situation with Sri Lanka, Pakistan, and the littoral states of the Malacca Straits. The JWC replied to these comments by arguing that the strategic environment since 9/11 has shifted. War risks are not necessarily related or caused by specific situations in one country but within a

complex international system. The 2006 reform of the Committee's decision-making process, as explained before, has sought to encompass such criticisms by disclosing the evidence upon which the List is compiled. From an underwriting point of view this pressure towards an evidence-based decision making process has led underwriters to undertake much more risk analysis and advise themselves expertly before offering quotes. It is no longer acceptable to offer standard rates until the regional security environment has been normalised.

In practice, as was the case of the inclusion of the Malacca Strait into the List, there was a consensual view that the increase in piracy posed a significantly enhanced risk that had to be charged for accordingly (Smith and Roberts 2007). However, 'it was clear from the outset that criticism deriving from this decision would be received due to the strategic importance of this area for global and particularly Asian trade' (Smith and Roberts 2007). Consequently, it did not come as a surprise that the littoral states would concert actions to cope with the fact that there was indeed a heightened security risk that affected the security of hulls and cargo. 'When the Committee was approached by government representatives the decision was comfortably explained because of the thought-processes that the Committee and Aegis had gone through' (Smith and Roberts 2007).

### **“B Head” The piracy issue**

The problem surrounding piracy that supported the listing of the Malacca Strait was related to three issues.<sup>3</sup> First, the conceptualisation of piracy. Second, the measurement of piracy as a risk factor. And third, the potential interconnectedness of piracy with other forms of international crime and terrorism (c.f. Murphy 2007). It is

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<sup>3</sup> For a detailed description of the issue of piracy in Southeast Asia, see: (Johnson and Valencia 2005, Young 2007)

argued in this section that the problematisation of criminality in the Malacca Strait waters as piracy was not politically neutral. It was the result of encompassing the situation through a wider security apparatus operationalised through global maritime insurance. In fact, such a problematisation of regional maritime crime as piracy operated as the condition of possibility for a technology of global insurance to affect the security environment of the region.

Article 101 of the United Nations Convention on the Law of the Sea defines piracy as acts of violence or detention committed for private ends by the crew or passengers of a private ship, against another vessel, or against persons and property on-board such vehicles. Acts of piracy under this definition take place outside the jurisdiction of any state (UNCLOS 1982, article 101). However, this definition escapes the operational requirements of the criminal environment of the Malacca Strait since all so-called pirate actions have taken place within the territorial waters of the littoral states. In this respect, criminal activities in these waters fall within these states' domestic law. To encompass the shortfall of the legal definition, the International Maritime Bureau (IMB), a subsection of the International Chamber of Commerce's Commercial Crime Services, understands piracy as 'an act of boarding or attempting to board any ship 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'. The IMB has a Piracy Reporting Centre (PRC) based in Kuala-Lumpur where a record of all declared acts of piracy falling within this definition are kept. The PRC is a key piracy statistics provider and influences policy-making and insurance decision-making around the world. The decision by the JWC to include the region of the Strait of Malacca in its List was heavily influenced by PRC statistics.

The piracy that the PRS records, however, has a recent history.<sup>4</sup> It is not the romantic history of adventures and one-legged, parched-eye, hand-hooked men storming the high seas. According to Stefan Eklöf, piracy reappeared in the Malacca Strait region in the 1990s after having been all but extinct for over a century (Eklöf 2005: 12). This re-emergence of criminal activity in the chokepoint waters has posed a difficult political problem to the littoral governments. It over-stretches existing police and military capabilities and also adds to the existing insecurity of territorial waters. As Eklöf explains, the situation of Indonesia illustrates the case:

with a coastline twice as long as the circumference of the earth, and with no more than a few dozen operating vessels to patrol its territorial waters, there are a range of more important problems for the Indonesian navy and maritime police to tackle. Many of these, including the smuggling of people and goods, illegal fishing and degradation of the maritime environment due to human activity, have grown to alarming proportions in recent decades (Eklöf 2005: 12).

Piracy as a phenomenon has been analysed from a criminological perspective by scholars like Eric Fréçon and Caroline Liss who have investigated the how and why of the perpetrators. 'It is, by and large, a sadly familiar and not very romantic story of socially and economically disadvantaged young men making the most of criminal opportunities in fast-changing and socially unstable regions' (Eklöf 2006: 29). Contemporary piracy, as indeed could be argued for other forms of historical piracy, is an economic activity that seeks to deprive others from their property. Be it in the dessert, roads, or sea lanes, criminologists constantly remind policymakers of the social nature of the problem (c.f. Chalk 1997, c.f. Chalk 1998, 2000, Liss 2003, Vagg 1995). However, criminal activity in the Malacca waters, for the very

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<sup>4</sup> For a description of the long-standing history of piracy in the region before the 20<sup>th</sup> century, see for example (Velthoen 2005), p. 8; and, (Antony 2005)

geopolitical nature of the site, has been constituted into an international security concern.

With an annual transit of over 50,000 vessels the Malacca Strait is a strategic maritime chokepoint that links the oil fields of the Middle East with the growing production economies of East Asia. Since disruption of maritime circulation in this region would seriously affect the security of the whole Asia Pacific, a militarization of the problem was initially explored. Since the 1990s Japan favoured the creation of a multinational force to patrol the area. In 1999 prime minister Keizo Obuchi called for a regional coast guard body (Ward and Hacket 2004: 2). In late 2001 and early 2002 the US and Indian navies conducted joint anti-piracy exercises with some of the regional state's security forces (Ward and Hacket 2004: 2). In 2004 US Admiral Fargo, commander in chief of the US Pacific Command, revealed that the Pentagon 'was formulating a Regional Maritime Security Initiative to combat piracy, maritime terrorism and sea-trafficking in people and narcotics' (Ward and Hacket 2004: 2). Such initiative was openly supported by Singapore but opposed by Malaysia and Indonesia who argued that security was the responsibility of the coastal states (Ward and Hacket 2004: 2). Some forms of cooperation have been explored around the American initiative.

Military initiatives to jointly police the Malacca waters met considerable political resistance by the regional states. Issues of sovereignty and conflicts of economic and political interests in the exclusive economic zones made it increasingly difficult to reach an agreement on how to tackle the issue and indeed to develop the regional military capabilities to face the challenge. However, in 2003 an alternative treatment of the issue began to take place. Rather than approaching criminality in the Strait as a geopolitical problematic, the issue began to be problematised as an issue of

risk management. The conditions of possibility that facilitated such an approach were already present. As a norm in problematisations of this kind (c.f. Lobo-Guerrero 2007a), it all began with the provision of sanctioned statistics. In October that year the IMB's quarterly report highlighted a 'spate of attacks on small tankers by heavily armed pirates using fast craft as well as fishing vessels, and suggested that separatist rebels from the Free Aceh Movement (GAM) were often behind the attacks in the Malacca Strait' (Ward and Hacket 2004: 1).

During February and March 2003, marauders armed with assault rifles attacked three chemical tankers in the Strait. In one case, they disabled the ship's radio, took the helm and apparently experimented with steering the vessel at various speeds. In another particularly serious incident in August 2003, pirates claiming membership of GAM attacked a fully laden oil tanker 19km from Port Klang in Malaysia, forcing the vessel into Indonesian waters and taking its captain and other crew members as hostages (Ward and Hacket 2004: 1).

On that same document, the IMB reported that attacks on ships in the Malacca Strait increased from 16 in 2002 to 28 in 2003. Attacks in the region that year accounted for roughly one-third of the worldwide total (Ward and Hacket 2004: 1).

A second element in the problematisation of maritime crime as piracy was an active process of securitisation; in this particular case, the profiling of piracy through political discourse.<sup>5</sup> The narrative of the problem was heavily circumscribed within the rhetoric of the War on Terror (c.f. Engels 2007). Later on it was further securitised as 'maritime terrorism' (c.f. Greenberg et al. 2006). In October 2003, the defence minister of Singapore warned that terrorists might turn 'supertankers, LPG [liquid petroleum gas], LNG [liquid natural gas], or chemical carriers into floating bombs' (Ward and Hacket 2004: 1). Another Singaporean minister spoke about the 'almost military precision' of the attacks (Ward and Hacket 2004:1). As always, such securitisations are not politically neutral. Statements by high level Singaporean

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<sup>5</sup> Securitisation is being used following the work of Ole Wæver. c.f. (Wæver 1995)

officials, as will be evident later on, responded to an alignment of the city-state's security with the American interest in patrolling the area.

The third element in the problematisation of the issue and its further securitisation within the context of the wider War on Terror was related to technical authorisation. In 2005, a report prepared by Aegis for the JWC stated that there was a potential close link between piracy in the Malacca region and terrorist activities. It argued that the *modus operandi* and weaponry employed resembled those by used by Islamist organisations in the area. 'Pirates in the Strait are now largely indistinguishable from terrorists in terms of tactics employed, as well as their potential to cause significant damage to shipping' (Jakarta-Post 2005, accessed: 29 November 2007). It explicitly identified the Strait as a potential target for the Jemaah Islamiah as having shown interest in the traffic of the Strait. The report concluded that sinking or damaging vessels in this sea-lane will seriously disrupt global maritime trade with significant economic and political consequences for the global economy (Jakarta-Post 2005).

The Aegis report, supported by IMB statistics, provided sanctioned knowledge that could potentially be translated into the evidence-base required to support a defensible inclusion of the whole of the Malacca Strait region into the List, as indeed happened in June 2005. As noted in the previous section, the shift towards an evidence-based decision-making process supported by professionally-produced authoritative knowledge contributed towards the legitimisation of the process in the eyes of competition law and rival insurers. The problematisation of maritime crime as a piracy issue and its translation into an actuarial rationality of insurance, an underwriting prerogative, allowed for the problem to be operated upon by the inclusion of the Malacca region in the List. Maritime crime in the Strait was therefore

absorbed by a global security apparatus of risk management, in this case operated through maritime insurance.

### **“B Head” The securitisation of ocean-space through maritime insurance**

In postmodern capitalism, capital denies the existence of the sea as a distinct place or environment (even as its actual use of the sea continues to grow). The spatial ideology of postmodern capital is one of flexibility, speed, and global coverage, and the ocean has a special place within this spatial ideology as a seemingly friction-free surface across which capital can move without hindrance (Steinberg 2001: 165).

The role of the JWC in securitising Malaccan maritime crime as a risk management problem should be analysed, it is suggested, within the context of a deeper security problematic of our time: the security of global circulation. Circulation is here taken not simply as a descriptor for a flow; it is a ‘quasi-transcendental’ for life. This category is clearly opposed to a Kantian ‘transcendental’ which denotes a teleology of human nature (Kant 1965), a category of a teleological unity of reason that presupposes ‘an organised totalisation of truths’.<sup>6</sup> A quasi-transcendental, instead, operates as an enabler for life that does not predetermine a destination or a horizon. It helps to describe an ongoing process that ‘makes life possible’. Life is of course understood as a non pre-determined venture.

As noted in the introduction, because of the changing character of liberal life, it is not possible to define it in a conceptual way. Following Nietzsche’s postulate that only that without history can be defined (Nietzsche 2000: 516), the study of liberal life has to take place through the analysis of the practices that produce it. It is however possible to unearth the conditions of possibility and indeed operability of the

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<sup>6</sup> I borrow this expression from Jacques Derrida, (Derrida 2005), p. 128

technologies through which those practices proceed. It is known that liberal life is heavily dependent on its capacity to exacerbate trade. The circulation of global trade is one of the necessary conditions for the promotion and protection of a liberal way of life. The security of circulation is in this respect a biopolitical category of analysis that helps understand the deployment of alternative security practices different to those of, for example, defence and diplomacy. This is precisely the case of the use of maritime insurance as a means to operationalise a problematisation of piracy as a risk management challenge. Methodologically speaking, contemplating the security of circulation as a biopolitical category of analysis falls within what Michel Foucault called, doing the ‘history of the present’.<sup>7</sup>

The use of maritime insurance to securitise global maritime circulation is not fortuitous. Its usefulness relies on the fact that both insurance as a technology, and circulation as a quasi-transcendental for liberal life, are understood by resorting to spatio-temporal analysis. Insurance is a technology of risk that operates on spatio-temporal dimensions presented as *events*. Contrary to what the lay person might assume insurance is a security technology that does not seek to securitise assets. Insurance operates on the security of events which are interpreted always *in relation to* insurable interests; that which is insured (c.f. Lobo-Guerrero 2007a, 2007b). These events are spatially and temporally enframed and their formulation demands precise descriptors as to what constitutes their location and time.<sup>8</sup> Of course, the definition of the insurable interest is highly problematic, not to speak about the challenged conceptions of temporality and spatiality involved (Lobo-Guerrero 2007b).

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<sup>7</sup> This phrase is of course Foucault’s. See (Foucault 1991), p. 31. For a useful description of this phrase see, (Campbell 1992), pp. 5-6.

<sup>8</sup> There is a discussion to be had in respect to the space constituted through insurance, particularly in relation to maritime insurance. The heterotopias constituted by the ship as space, as noted by Foucault (Foucault 1986) provides a rich thought to begin with. I am grateful to an anonymous referee for pointing this out.

The deployment of maritime insurance is therefore aimed at securing circulation as *event*. The security of a hull is circumscribed to its function as mobile vessel for goods and people, but also as the depiction of a transportation service required for maritime trade. Any obstruction to maritime transport services constitutes an event of circulation (in)security. Inadvertently, then, the security of maritime circulation as event becomes the security of a quasi-transcendental of liberal life that materialises places and periods of time.

However, when insurance technologies are deployed to tackle the security of circulation in the ocean, ocean space cannot be taken for granted. If maritime insurance practices operate upon spatio-temporally defined events, then ocean space needs to be understood as a space for circulation. Of course such a statement needs to be circumscribed to the operation of maritime insurance. It follows then that maritime insurance practices perform ocean space as a global security site. The ocean is the materialisation of spaces of circulation. Ocean space becomes a biopolitical security site and the JWC plays an active securitising role. This role, as will be explained later, is that of a global maritime stewardship.

The JWC has been successful in problematising ocean-space as a space for circulation prone to be managed through technologies of risk. This problematisation entails an understanding of the ocean as a resource, a circulation resource. The ocean is taken to be a space that connects nodes within a global trading network. Indeed 77% of the world's volume according to the Lloyd's Maritime Association is transported by sea. Hence, ensuring maritime circulation becomes a strategic imperative. What maritime insurance does through the services of the Joint War Committee is problematise ocean-space under a rationality of risk. Under such

rationality any obstacle to maritime circulation will be subject to management through technologies of risk; maritime insurance in this case.

Philip Steinberg, in *The Social Construction of the Ocean* provided a groundbreaking analysis of different *constructions* of ocean-space. He argued ‘that each period of capitalism, besides having a particular spatiality on land, has had a complementary –if often contrapuntal- spatiality at sea, with specific interest groups during each period promoting specific constructions of ocean-space’ (Steinberg 2001: 6). What he elaborated as the construction of ocean space is understood in this essay as *problematizations* of ocean space. The difference is not only semantic but epistemological. Whereas a problematisation seeks to make ‘facile gestures difficult’, a construction focuses on the actor/social-agency relationship and aims at explaining phenomena as the result of intended actions. If the output of the latter is an object, the outcome of the former is a problem-space. A problem space is here seen as the result of challenging the integrity of the social and the individual. The subject of forms of life is already a power/knowledge construct.

Steinberg argued that throughout the industrial capitalist era, ‘the ocean was idealised as the antithesis of land-space’ (Steinberg 2001: 113). Based on classical and neo-classical doctrines of the period it was believed that ‘nations should seek power not by controlling trade but by wisely investing the resources for which they possessed a comparative advantage’ (Steinberg 2001: 113). If nations could trade freely amongst themselves wealth and happiness would follow (Steinberg 2001: 113). Ocean-space was then idealised ‘as an empty transportation surface, beyond the space of social relations, and projection of power in the deep sea was perceived as legitimate only when applied toward the end of destroying obstacles to free navigation’ (Steinberg 2001: 113). ‘The sea was constructed, like money or markets,

as without social ‘roots’ –beyond society, politics, or other ‘artificial’ social constructs that could interfere with the ‘natural’ free flow of capital’ (Steinberg 2001: 114).

The construction of ocean-space changed in the post-industrial capitalist era. Steinberg provides some in-depth analysis of the context under which this happens but his main point is that it is now *incessant circulation* what defines spaces of all kinds (Steinberg 2001: 114). Speed is characteristic of this era.

In their effort to identify, create, and satisfy new consumer identities in specific world-regions and in specific, globally dispersed social strata, enterprises have developed increasingly sophisticated transportation, communications and logistical systems for rapidly transmitting capital, information, components and products among far-flung production facilities and markets (Steinberg 2001: 160).

As argued by him, this makes it difficult to accept ‘the great void idealisation of transportation/communication space as an asocial, formless surface traversed by goods and information, generated in the static places of ‘society’’ (Steinberg 2001: 201). However, his thesis is that postmodern capitalism, ‘for all its outward differences from industrial capitalism, maintains a spatiality on land and on sea not unlike that of the industrial era’ (Steinberg 2001: 162). ‘Places are important as locations for fixed investments. Movement of goods (and money and information) between these places is important as well. To a greater degree than ever before, the speed of this movement also is critical’ (Steinberg 2001: 162). What radically changes, however, is the degree of intensification in the identification of special spaces of stewardship, spaces suitable for ‘systemic regulation but to be insulated from state appropriation and territorial enclosure’ (Steinberg 2001: 163). However, this article would like to argue that a change within this process is as well the

emergence of stewardship roles from non-state to non-international organisation actors such as the JWC.

Marine stewardship is not a new security practice. In its contemporary form it is an application of the Roman understanding of the concept. As described by Steinberg,

the Romans constructed the Mediterranean as a space within their sphere of influence, but they never deigned actually to claim it as the territory of the state. Indeed, they emphasised this distinction by governing the sea according to *jus gentium* (common law, or the law of the peoples) as opposed to Roman civil law, which applied only in the land-space of the empire (Steinberg 2001: 65).

In effect, Rome constructed the Mediterranean as a 'force-field', a place-less surface that belonged to no one but upon which powerful states could intervene so as to steward its resources for the national interest. Since the sea primarily was used as a surface for the movement of troops and goods, interventions in this space centred on ridding the space of pirates and other oppositional forces that could impede the flow of goods and people (Steinberg 2001: 66).

The role of the JWC, as described in the cases provided in the first part of the article, is to perform a novel form of stewardship which securitises ocean-space as a circulation resource, a resource that enables the connectivity of various nodes within a highly complex networked capitalist economy. Building on Steinberg's insightful work, the suggestion of this article is that this is clearly not a construction of ocean-space. It is a biopolitical problematisation of spaces of circulation as a necessary condition for the liberal way of life. Such problematisation provides the possibility for intervening in the promotion and protection of a liberal form of life.

The stewardship performed by the JWC is a site of interrogation for students of global politics. It adds towards Steinberg's interpretation of contemporary stewardship under conditions of incessant circulation. In fact, the real conditions are more accurately described as exacerbated circulation which demand the provision of

active and highly adaptive forms of security. Whereas Steinberg's postmodern marine stewardship concerns relate mainly to natural resources (c.f. Steinberg 2001: 176-180), the role of the JWC illustrates an active role of stewardship in the securitisation of global circulation through the problematisation of ocean-space as a circulation resource. The intricacies of this role and of the form of security it performs, however, exceed the aim of this article and will be the material for a later publication.

### **“A Head” CONCLUSION: INSURANCE, BIOPOLITICAL SECURITY, AND RISK MANAGEMENT**

Michael Dillon has argued that risk is as much an opportunity for profit as it is an occasion for danger (Dillon 2007: 16). As an occasion for danger problematisations of phenomena 'as risk' lead towards strategies aimed at minimising the probabilities of an event taking place and at isolating the objects of protection from the negative impacts of such event. As an opportunity for profit, risk management seeks to transform an apparently negative order into one that enables the creation of value. Whereas the former assumes risks as threats, the latter sees risk as the conditions of possibility for profit-making. Profit, however, is not circumscribed to money. It is here understood as the advancement of the conditions of possibility for a form of life.

This article has offered an analysis of the role of the JWC as falling into the second category of risk. By definition, the insurance industry operates under conditions of uncertainty; a certain world would not require the development of insurance. For the JWC and its stakeholders global insecurity in the seas is a challenge that means business. Insurance technologies have historically been developed to cope with the uncertainties related to specific activities and changes in forms of life (c.f. Lobo-Guerrero 2007b). The re-emergence of 'piracy' in the

Malacca Strait in recent years does not pose a threat to insurers. Quite the contrary. It represents the possibility of developing better ways of affecting the environment and in so doing reducing the financial exposure of member companies.

It has been argued towards the end of the article that the role of the JWC is one of marine stewardship. This stewardship proceeds through a non-territorial securitisation of ocean-space. When the JWC included the Strait of Malacca in its List it was not aiming at exercising sovereignty over the littoral states. Instead, the desired effect was precisely to get the sovereign littoral states to effectively police and patrol their waters. This could of course be analysed as a conspiracy of the market upon the sovereign. However, the problem space that results from the role of the JWC is much more complicated and interesting than that.

The JWC's role as marine steward is giving away a complex reality. Liberal security practices exceed the state/legitimate-violence complex. Security practices are not solely circumscribed to the national state. Security practices are not restricted to military and police operations. Private security practices are not the privilege of private military corporations. Liberal security practices, instead, are to be explored in the everyday technologies that make liberal life possible. Insurance is a case in point and the same could be argued for any technology of risk. What is interesting, however, is that the conditions of possibility for liberal life exceed the rigid conditions of statehood established for example in the Montevideo Convention, and yet, the state as security provider is still required within a global political economy of risk management.

Security practices aimed at providing the security of global circulation are demanding the deployment of ever-more complex security technologies. The degree of sophistication of these technologies is only visible through the effects they

generate. For example, achieving through insurance what the United States and Japan could not do from a sovereign perspective, indicates the relevance of conducting deeper studies into insurance practices. However, the analysis runs the 'risk' of becoming a study of the technological rationality under which, allegedly, insurance operates. The way out is to circumscribe insurance practices into a biopolitical security framework that immediately relates them to the study of the promotion and protection of a liberal way of life.

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