

PIRACY AND ANTI-PIRACY MEASURES

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1. Under UNCLOS 1982 (Article 100) piracy is defined as an illegal act “on the high seas or in any other place outside the jurisdiction of any state”. Thus, strictly legal speaking, “piracy” is different from “armed robbery” or “sea robbery” which takes place inside area under national jurisdiction, which supposedly include an illegal act in the contiguous zone and in the EEZ.
2. While there is an “obligation or duty” to cooperate internationally on eliminating piracy (Article 100), there is no such a clear obligation to cooperate in fighting against armed robbery or sea robbery which is regarded as within national sovereignty and jurisdiction. It is not prohibited however, for states to seek cooperation with other countries in fighting against armed robbery or sea robbery in the area under its jurisdiction.
3. Under UNCLOS (Article 107) only “warship or military aircraft or other ship or aircraft clearly marked and identifiable as being on government services and authorized to that effect” that can seize pirate ships on the high seas. It would appear that other ships or aircrafts on government services can seize pirate ships only if they are “clearly marked and authorized” to do so. However, the rules in areas under national jurisdiction maybe different.
4. Piracy on the high seas or armed robberies in Indonesian waters or in coastal areas is a serious crime under Indonesian Criminal Law punishable by up to 15 years imprisonment or even death penalty or life imprisonment if the crime resulted in death of the person or persons in the pirated ships.
5. Indonesia is a large maritime and archipelagic state in the world. It controls about 3 million square kilometers of archipelagic waters and territorial sea, plus another 3 million square kilometers of EEZ and contiguous zone. It also controls several important sea lanes for the communications between the Pacific and the Indian Ocean and between the mainland Asia and Australia. While these extensive maritime zones offer enormous economic potentials for the development of the country, they also bring with them enormous task of protecting them as well as in maintaining law and order at sea and the national unity of Indonesia.
6. Thus, Indonesia requires an enormous amount of law enforcement as well as defense capabilities at sea. It has been estimated that it requires more than 370 vessels, large and small, to protect its maritime space and resources as well as its ports. In addition, it requires plenty of trained human resources and technology for that purpose. Yet, so far, it has only about 115 vessels and out of this, there are only about 25 vessels that are operating at sea at a particular moment.
7. Recently, the maritime security issues of Indonesia have also involved other factors. They are, for instance:

- a. To prevent conflicts between the provinces and between the districts as the result of the Law No. 22/1999 and Law no 34/2004 on Regional Autonomy, particularly regarding the exploitation and management of the living resources of the sea.
 - b. To prevent armed robberies in Indonesian waters as well as piracy at sea. Indonesia is fully aware that the armed robberies and piracies are still the problems in some waters under its jurisdiction. Therefore, it has attempted to promote cooperation bilaterally and regionally on this matter.
 - c. To prevent illegal fishing which are rampant in Indonesian waters, particularly by foreign fishing vessels which are depleting the resources of the Indonesian seas as well as depriving Indonesian government and its people of their legitimate income.
 - d. To protect and patrol Indonesian archipelagic sea lanes, particularly after the establishment of 3 North-South archipelagic sea lanes by Government Regulation No. 37/2002 of June 30, 2002.
 - e. To prevent the use of Indonesian maritime zones for illegal acts at sea, including for the purpose of illicit traffic in drugs, armed smuggling, smuggling of various commodities, maritime terrorism, illegal human and refugees transit to third country, etc.
 - f. There may also be the problems of maritime security in South East Asia as the results of armed conflicts or confrontation of states in the region whether or not involving major foreign powers; but I would hope that this would not be the case now or in the future. We must continue to be careful, however, with regard to the South China Sea situation, particularly with regard to the conflicting territorial claims in the area.
8. Indonesia would require enormous resources to protect its vast maritime zones. Yet, at this moment it does not have enough of the financial resources. Indonesia could spend only about 0.78% of its GDP for defense purposes, and this is much lower than the countries in the region and outside. For example, the US spent 3.3% (before the Iraq war) of its GDP for defense.
 9. Piracy and armed robberies have arisen significantly in recent years, most of them have taken place in the Indian Ocean. Indonesia is therefore attempting to deal with these problems in cooperative manner with its neighbors. As a result piracy and armed robberies in the Straits of Malacca and Singapore have reduced significantly in recent years.
 10. It should be noted that under UNCLOS (Article 43) cooperation between the users of the straits and states bordering a strait, is required in order to improve international navigation as well as to prevent, reduce and control pollution from ships. Yet, until recently only Japan that has shown some willingness to help the 3 coastal states, namely Indonesia, Malaysia, and Singapore to promote safety of navigation in the Straits of Malacca in Singapore. Lately, however, some other users in the Straits of

Malacca and Singapore have shown willingness to cooperate with the coastal countries in implementing Article 43 of UNCLOS within the Cooperative Mechanism in Cooperation with IMO.

11. While Article 43 is related to straits used for international navigation, there is no reason not to apply it also to archipelagic sea lanes if the archipelagic state concerned so requires.
12. While Indonesia needs help to maintain law and order at sea and to protect its maritime resources and national unity, it would not welcome the initiative of maritime countries to escort their vessels by their coastguards or navies in navigating Indonesian waters, or the policy of the maritime powers to arm their commercial or cargo vessels as well as tankers when navigating Indonesian waters or to station their navies or marines in the Straits.
13. Like in other countries, there are plenty of agencies that are involved in the enforcement activities at sea. In Indonesia, they are being coordinated by Bakorkamla. Practices indicated, however, that it had not been easy to coordinate the activities of the various law enforcement agencies. Currently, a number of proposals are being discussed to promote the effectiveness of the law enforcement activities at sea.
14. While each countries in South East Asia is strengthening their own respective enforcement agencies, Indonesia is also developing cooperation with its neighbours on these matters:
 - a. There was the Indonesia-Singapore Agreement (1992) to coordinate patrols and hot pursuit to combat piracy and armed robbery at sea.
 - b. There was similar arrangement between Indonesia and Malaysia under the auspices of the General Border Committee which was established in 1992 and which include also strategies to deal with maritime issues arising out of the common border. The two countries also coordinate their maritime patrol operations in the Strait of Malacca.
15. In addition to bilateral efforts, Indonesia has also taken and participated in a lot of initiatives in combating piracy and armed robberies in ASEAN seas and waters. The ASEAN work program adopted in Kuala Lumpur in 2002, included Agreement to cooperate in eliminating piracy in the region. In fact, the Bali Concord II, adopted by the 9th ASEAN Summit in Bali on October 7, 2003 has declared that maritime issues and concerns are trans-boundary in nature, and therefore shall be addressed regionally in holistic, integrated and comprehensive manner. The Plan of Action of ASEAN Security Community included recommendations to cooperate and coordinate border patrols to combat terrorism, smuggling, and piracy (point II.2.6 of the Plan of Action of ASEAN Security Community).
16. Recently, under the Japanese initiatives, 16 countries in the Asia Pacific region, have also established regional cooperation agreement on Anti-Piracy (ReCAAP).

17. Other institutions, such as EU – ASEAN experts group meeting on maritime security as well as the ARF have also begun to take up the issues of piracy in their discussions.
18. The South China Sea workshop process to manage potential conflicts in the area have also taken up the piracy issues within the context of promoting safety of navigation, shipping and communication in the South China Sea. In fact, the Technical Working Group on this matter has agreed to promote cooperation to combat piracy, illicit drug trafficking and problems of refugees at sea. The workshop has also recommended various suggestions on this matter.
19. It is clear that to combat piracy and armed robbery at sea:
 - a. The efficiency and effectiveness of law enforcement must be increased. Yet, here lies the problems of human resources, budget, materials as well as an effective methodology and management. Most of these elements are weak in many developing countries, including in Indonesia at the present time.
 - b. The promotion of border cooperation between and among neighboring countries is also very important. In this context, the clear delimitation of maritime boundaries, territorial seas, contiguous zone, or EEZ and continental shelf between and among South East Asian countries would be necessary.
 - c. Various efforts, either formal or informal, at regional level to promote understanding and cooperation in this area should be supported.
 - d. The users, either states or other stakeholder of the straits and waters of South East Asia should help the South East Asian countries, in increasing their law enforcement and defense capabilities, particularly Indonesia as the largest and most strategic countries in the region, along the line of Article 43 and 100 of UNCLOS regarding the obligation of all states “to cooperate to the fullest extent in the repression of piracy”.