

August 2021

PIRACY IN SOUTH EAST ASIA: INDONESIAN & REGIONAL RESPONSES

Hasjim Djalal
MPR RI, h.djalal@gmail.com

Follow this and additional works at: <https://scholarhub.ui.ac.id/ijil>

Recommended Citation

Djalal, Hasjim (2021) "PIRACY IN SOUTH EAST ASIA: INDONESIAN & REGIONAL RESPONSES," *Indonesian Journal of International Law*: Vol. 1: No. 3, Article 1.

DOI: 10.17304/ijil.vol1.3.399

Available at: <https://scholarhub.ui.ac.id/ijil/vol1/iss3/1>

This Article is brought to you for free and open access by the Faculty of Law at UI Scholars Hub. It has been accepted for inclusion in Indonesian Journal of International Law by an authorized editor of UI Scholars Hub.

Piracy In South East Asia: Indonesian & Regional Responses*

Hasjim Djalal)**

Piracy yang terjadi di laut lepas, menimbulkan permasalahan tersendiri karena tidak ada yurisdiksi khusus yang mengaturnya. Masalah ini jatuh pada universal jurisdiction yang artinya setiap Negara berhak untuk mengambil tindakan penegakan hukum untuk masalah tersebut. Di lain pihak, tidak cukup ada instrumen internasional yang mewajibkan negara-negara untuk bekerja sama mengatasi piracy. Kedua hal tersebut tidak menjadi penghalang untuk mengatasi piracy. Kerja sama antar negara bahkan sampai pada tataran regional (ASEAN dan Asia Pasifik) telah dilakukan sebagai upaya mengatasi piracy. Indonesia sebagai salah satu negara yang terlibat dalam kerja sama tersebut memiliki kendala dalam hal sumber daya manusia, anggaran, dan fasilitas yang berakibat pada lemahnya penegakan hukum di wilayah laut Indonesia. Akibat ini meluas terhadap daerah sebelah barat wilayah Indonesia yang menjadi pusat aktivitas piracy yaitu Selat Malaka, Selat Singapura, Selat Karimata, dan Laut Cina Selatan.

UN Law of the Sea Convention on Piracy

According to article 100 of UNCLOS 1982¹, piracy is an illegal act "on the high seas or in any other place outside the

* A Paper presented to the CSIS Conference on Maritime Security in Asia, Honolulu, 18- 20 January 2004.

***) Beliau dikenal oleh kalangan luas sebagai diplomat yang handal dan pakar hukum laut (internasional). Pendidikan diplomasi beliau peroleh dari Akademi Dinas Luar Negeri. Kemudian beliau memperoleh gelar Master of Arts (MA) di bidang Ilmu Politik Internasional (1959) dan Philosophy Doctor (Ph.D) di bidang Ilmu Hukum Laut Internasional (1961) dan University of Virginia, USA. Beliau pernah menjabat sebagai perwakilan RI di luar negeri termasuk sebagai Duta Besar RI di PBB-New York (1981-1983), Kanada (1983-1985), dan Jerman (1990-1993). Kepiawaian beliau di bidang hukum laut dibuktikan dengan pernah dipercayanya beliau menjadi Presiden Pertama International Seabed Authority (ISBA) di Kingston, Jamaica (1995-1996) dan Duta Besar Keliling Indonesia untuk Masalah-Masalah Hukum Laut dan Kelautan (1994-2000). Saat ini beliau aktif sebagai Wakil Indonesia pada ISBA, anggota Dewan Maritim Indonesia (DMI), penasehat ahli dan Kepala Staf TNI Angkatan Laut RI dan Menteri Kelautan dan Perikanan, serta anggota Komisi Konstitusi MPR RI.

jurisdiction of any state". The act of "piracy" which takes place in waters under national jurisdiction, therefore, is not an act of "piracy", but an act of "armed robbery" or "sea robbery" which should be dealt with exclusively by national State under the principle of coastal states sovereignty and national security.

Looking into this definition and taking into account Article 86 of UNCLOS², and without prejudice to the freedoms of navigation and overflight in the EEZ, it would appear that the act of "piracy" within the EEZ would also be understood to be within national jurisdiction since the notion of "high sea" is generally understood to be an "area outside" of the EEZ. Yet, since the freedom of navigation is assured in the EEZ in accordance with article 58 paragraph 1 and article 87 paragraph 1a of UNCLOS 1982³, it would appear that an act to prevent "armed robbery" in the EEZ could also be the subject of cooperation between states since the armed robberies could interfere with the freedom of navigation.

It is not very clear, however, what is the meaning of the term in "any other place outside the jurisdiction of any state", except perhaps an area of the seabed or continental shelf beyond the 200 miles EEZ; it would be difficult, however, to contemplate an act of piracy in the bottom of the ocean, except an act of depredation against property of another state in the ocean bottom (see Article 101 (a) ii of UNCLOS). With regard to the piracy itself, article 100 of UNCLOS obliges "all states to cooperate to the fullest possible extent in the repression of piracy". Article 101 defined "piracy" as:

- a. any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passenger of a private ship or a private aircraft, and directed:
(1) **on the high seas**, against another **ship or aircraft**, or against **persons or property** on board such ship or aircraft;

¹ Article 100 of UNCLOS 1982 deals with the duty to cooperate in the repression of piracy.

² Article 86 of UNCLOS 1982: "The provisions of this part apply to all parts of the sea that are not included in the exclusive economic zone,..."

³ Article 58 paragraph 1: In the exclusive economic zone, all states,....enjoy,...the freedoms referred to in article 87 of navigation and overflight...

- (2) against a **ship, aircraft, persons or property in a place outside the jurisdiction of any state;**
- b. any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;
- c. any act of inciting or of intentionally facilitating an act described in paragraph (a) or (b).

If the act of piracy is committed by a **warship or government ship** controlled by the crew which has mutinied, the warship or the government ship would be regarded as a private ship which has committed piracy and therefore would be subjected to the rules of piracy (Article 102)

A ship or aircraft would be considered a **pirate ship or pirate aircraft** if it is dominated by persons who have the intention to use the ship to commit act of piracy (Article 103)⁴. The ship may retain its nationality, although it has become a pirate ship, depending upon the law of the state which has granted its nationality in the first place. A pirate ship on the high seas or in any other place outside the jurisdiction of any States, the pirates, and the property on board maybe seized. The penalties to be imposed as well as action to be taken with regard to the seized pirate ship would be determined by the court of the state which carry-out the seizure (Article 105).⁵ Yet, if it can be proven that the seizure has been effected without adequate grounds, the states making the seizure shall be liable for any loss or damage caused by the seizure (Article 106).⁶

A seizure on account of piracy may be carried out only by **warship or military aircraft**, or other ship or aircraft clearly marked and identifiable as **being on government service and authorized to that effect** (Article 107).⁷ It appears from this article

⁴ Article 103 of UNCLOS 1982 is an article regarding the definition of a pirate ship or aircraft.

⁵ Article 105 of UNCLOS 1982 : "... 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..."

⁶ Article 106 of UNCLOS 1982 concerns liability for seizure without adequate grounds.

⁷ Article 107 of UNCLOS 1982 concerns ships and aircraft which are entitled to seize on account of piracy.

that warship or military aircraft are allowed to carry out the act of seizing pirate ship on the high seas simply by the fact that they are warship or military aircraft without need for further authorization, while other ships or aircrafts being on government services can only do so if they are authorized to do so by the flag state.

The risk of piracy and armed robberies are also getting bigger and more dangerous while they are bad crimes in themselves, endangering the safety of human lives. The act of armed robberies also endangers the navigation of the ships, particularly the danger of collision or grounding if the ships are forced to navigate under abnormal condition. At the same time, the danger to marine environment is also increasing sharply if the act of armed robbery or piracy involves oil tankers, particularly the big one. These dangers are multiplied in the area of the Straits of Malacca and Singapore and the South China Sea where more than 600 ships navigate a day, many of them continue to or come from the South China Sea area.

Indonesian Situation

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 (Article 438, 439, 440 of the Criminal Law) or even death penalty or life imprisonment if the crime resulted in death of the person/persons in the pirated ships (Article 444).⁸

Indonesia is a large maritime and archipelagic state in the Asia Pacific region. It controls about 3 million square km of archipelagic waters and territorial sea, plus another 3 million square km of EEZ and Continental Shelf. It also controls several important sea lanes for the communications between the Pacific and the Indian Oceans. While these extensive maritime zones offer enormous economic potentials for the development of the country, they also bring with them enormous tasks of protecting them as well as in maintaining law and order at sea and the national unity of the archipelagic

⁸ See article 438, 439, 440 and 444 of KUHP (Criminal Law) for further reading.

country. According to some studies, Indonesia requires more than 300 vessels, large and small, to protect its maritime space and resources, as well as plenty of port facilities, human resources and technology for that purpose. So far it has only about 115 vessels, and out of these there are only about 25 vessels that are operating at sea at a particular moment. The current political, economic and financial crises in Indonesia have aggravated the problem of law enforcement at sea as well as of maintaining maritime order to prevent the disintegration of Indonesia as a unitary and as an archipelagic state. Consequently, there have been substantial slackening recently in the law enforcement and security at sea. This problem is more acute in the EEZ of Indonesia.

The major maritime problems of Indonesia at the moment, however, are **(a) to prevent conflicts between the provinces and between the districts as the results of 'territorializing' the jurisdiction of the provinces up to 12 miles and the districts up to 4 miles from the shore by the Law No. 22/1999 on Regional Autonomy, (b) to prevent armed robberies at sea and to promote cooperation with the neighboring countries to fight against armed robbery and piracy, (c) to prevent illegal fishing by foreign vessels which are depleting the resources of the Indonesian seas as well as depriving Indonesian government of its legitimate income (it was estimated that about 5.000 foreign fishing vessels are operating illegally in Indonesian waters and its EEZ, causing Indonesian Government to loose an estimated USD 5 billion a year). (d) to protect and patrol Indonesian archipelagic sea lanes, particularly after the establishment of 3 North-South archipelagic sea lanes by Government Regulation No. 37/2002⁹ which are so important for regional and global maritime and military strategy, especially in time of regional and global crisis, (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 (including for the purpose of helping separatist movements in the vast archipelagic countries), smuggling of**

⁹ Government Regulation No. 37/2002 on The Rights and Duties of Foreign Ships and Aircrafts and The Enforcement of The Right of Archipelagic Sea-Lanes Passage.

various commodities (particularly illegal logging, illegal mining, and other illegal trade), **maritime terrorism, illegal human and refugees transit to third country, etc.**

Indonesia would require enormous resources to protect its maritime zones. Yet, at this moment it does not have enough of the financial resources. As an example, Singapore, a country of less than 700 km², spent US\$ 4.2 billions for military spending in 1999 or roughly 24.9% of the total government spending at that time, while Indonesia, a country of about 8.000.000 km² of territory and maritime zones, spent only US\$ 1.5 billion in 1999, or roughly 5.9% of the total government spending at that time. While Indonesia could spend only about 0.8% of its GDP for defense purposes, other countries, including in the region, could spend much more. For example, Japan spent 1.2% of its GDP for defense purposes, Australia 1.8%, Germany 1.5%, France 2.4%, UK 2.5%, and the US 3.3% (before the Iraq war). Indonesian defense spending is still among the lowest in the region, either in terms of dollar value or in relation to the GDP.

Indonesia is fully aware that piracy and armed robberies have arisen significantly in 2000 and 2002 in comparison with 1999. Most of the armed robberies in 2000-2002 in South East Asia occurred in the Indonesian waters, particularly in the archipelagic waters between Singapore and the Java Sea, in the Malacca Straits, and in the South China Sea. Within the first half of 2003 alone, it has been reported that out of 234 incidents worldwide, 64 have taken place in Indonesia, or more than 25%. These incidents include 43 ships were boarded, 4 were hijacked, and attempted attacks were made against 17 ships (Jakarta Post, July 24, 2003).

- With regard to the western waters, particularly the approach to Singapore through the Karimata Straits, there has already been a plan to strengthen Indonesian law enforcement capabilities in the area particularly by increasing surveillance and monitoring system as well as response capabilities. The study indicated that it would cost Indonesia about 38,5 million US\$ for anti piracy command and control center between Strait of Singapore and Jakarta.

Unfortunately, Indonesia, particularly at this moment, does not have the fund for that purpose, especially since now it is already accumulating billions of dollars in foreign debt.

- With regard to **the Straits of Malacca and Singapore**, Indonesia, Malaysia, and Singapore have been cooperating to promote safety of navigation with the support of Japan within the last 20 years. The cooperation have resulted in improved navigational aids and hydrographic charts as well as other safety measures. The three coastal states, through bilateral mechanism, have also cooperated and coordinated their patrol to deal with illegal acts at sea particularly armed robberies. Yet, more need to be done to promote safety of navigation and the protection of marine environment in those waters, including better efforts to prevent armed robberies at sea in order to protect and promote international navigation.
- With regard to **the South China Sea**, Indonesia together with other littoral authorities have taken the initiative to promote cooperation on safety of navigation, shipping and communication as indicated in the activities of the Workshop on Managing Potential Conflicts in the South China Sea (see below).

It should be noted that article 43 of UNCLOS¹⁰ stipulates cooperation between users states and states bordering a strait, (a) “in the establishment and maintenance of necessary navigational and safety aids or **other improvements in aid of international navigation**, (b) for the prevention, reduction and control of pollution from ships”. So far only Japan that has cooperated with the three coastal states with regard to installing navigational aids, hydrographic survey, and other means to promote safety of navigation in the Straits of Malacca and Singapore. Yet, not much cooperation or assistance have been forthcoming from the user states to prevent, reduce, and control pollution from ships.

¹⁰ Article 43 UNCLOS 1982 concerns navigational and safety aids and other improvements in aid of international navigation, and the prevention, reduction and control of pollution from ships.

Moreover, practically no help or cooperation is forthcoming from other users states to help the coastal states, particularly Indonesia, to fight against piracy and armed robberies in the area, despite the fact that these measures could be regarded as "other improvements in aid of international navigation". In addition, although article 43 deals with the promotion of safety of navigation and control of pollution in 'straits used for international navigation', there is no reason not to apply it to archipelagic sea-lanes as well if the archipelagic state concerned so requires.

There is no doubt that Indonesia needs help to maintain law and order at sea and to protect its maritime resources and national unity. It is my understanding, however, that **Indonesia would not welcome the initiative of maritime countries to escort their vessels by their Coastguards or Navies in navigating Indonesian waters. Neither Indonesia would welcome the policy of the maritime powers to arm their commercial or cargo vessels as well as tankers when navigating Indonesian waters.** These acts could create problems and complications in the field rather than solution. On the other hand **Indonesia would welcome initiative from the user states as well as other stake holders: (a) to assist Indonesian law enforcement and security apparatus at sea to maintain and strengthen their capabilities either through providing aids, equipments and trainings, or (b) to help organize and coordinate cooperative efforts and linkages with other regional or other interested parties, as well as (c) to intensify training program for law enforcement and security officers at sea.**

In Indonesia there are plenty of Agencies involve in the enforcement activities at sea, although they are being coordinated during the last couple of years by the *Bakorkamla*, a Coordinating Agency for Security at Sea, commanded by the Commander of the Armed Forces. Practices indicated, however, that it had not been easy to coordinate the activities of the various law enforcement Agencies. Lately, there have been a lot of discussions reviewing the efficiency and effectiveness of *Bakorkamla*, particularly since the separation of the Police from the Armed Forces. A number of proposals have been made, such as the division of the function of

maintaining "national security" (which should be the responsibility of the TNI=Indonesian Armed Forces and the "law enforcement" at sea which should be the responsibility of the Police), and a proposal to delegate the function to the Coast Guard (so far Indonesia has no Coast Guard as such). None of these proposals have yet been approved, and studies and discussions are continuing to seek a **proper and effective institutional mechanism** to deal with the matters of law and order at sea.

Regional Approaches

In **Malaysia**, there are seven Agencies that are authorized to enforce the various maritime legislations, namely the Royal Malaysian Police (Marine), the Fishery Department, the Royal Customs and Excise, the Marine Department, the Royal Malaysian Navy (RMN), the Department of Environment, and the Immigration Department. All these Agencies, except the RMN who only give assistance, are principal guardians of specific legislation and conduct their own operation in their own designated area of responsibility. The RMN and the Royal Malaysian Air Force, however, are responsible for the conduct of operations and surveillance over the Malaysian EEZ while other Agencies are responsible for the areas closer to the coastal areas within the territorial sea. Since 1985, Malaysia has established a Maritime Enforcement Coordinating Center (MECC) under the National Security Division of the Prime Minister's Department. The MECC monitors all maritime activities and compiles information for distribution to relevant maritime enforcement agencies. It does not, however, exercise any command or control function over any of the Agencies.

In **Thailand** there have been a number of armed robberies in the Gulf of Thailand and in the Andaman Sea, although the number is not as widespread as in other areas in Southeast Asia. The Royal Thai Navy, in addition to defending the country, also protecting the country's maritime interests and aiding other Agencies in implementing their respective areas of responsibility. The Royal Thai Navy has established the **Coast Guard Command** for the

purpose of law enforcement and aiding people in its territorial sea and contiguous zone.

While each country in Southeast Asia is strengthening their own respective enforcement Agencies, they have also been cooperating with each other such as:

- a. The 1992 **Indonesia-Singapore Agreement** on coordination of patrols and hot pursuit to combat piracy and armed robbery at sea. This Agreement has been very instrumental in reducing the armed robbery in the Strait of Singapore, at least until the economic crisis in Indonesia in 1998. The experience has also indicated that for the Agreement to be more effective, there is a need to intensify Police activities on land in view of the fact that the armed robbers or pirates are based on land.
- b. There has been similar arrangement between **Indonesia and Malaysia** under the auspices of the General Border Committee (GBC) which was established in December 1992, which has also established an operational coordinating border arrangement (Maritime Operation Planning Team) to discuss and map-out strategies to deal with maritime issues arising out of the common border. This has also enhanced bilateral cooperation between the two countries in combating illegal activities. The coordinated maritime patrol operations carried-out by Malaysia and Indonesia in the Straits of Malacca in order to deal with armed robberies and other illegal acts at sea have been instrumental in promoting the efforts for this purpose.
- c. Between **Malaysia and the Philippines**, the Malaysia-Philippines Border Patrol Coordinating Group (MPBPCG) has also been established in which or through which the enforcement Agencies of Malaysia and the Philippines conduct border patrol operations in the maritime areas for the prevention of armed robbery and illegal activities at sea. Under the arrangement, all border patrol operations carried-out shall be in accordance with the laws and regulations of

the respective countries and in conformity with International Law. The coordinated/combined operations have proven to be able to curb cross border illegal activities and armed robberies between the two countries.

There has also been similar cooperation between **Malaysia and Singapore** in which the Police Department of the two countries provide a forum to share and discuss maritime issues and criminal activities affecting both countries. The Royal Thai Navy has also tried to build-up good relations with its neighbors for the purpose of protecting mutual interest at sea. **The RTN and the RMN** have conducted join patrols along their sea boundaries, both in the Gulf of Thailand and Andaman Sea, to prevent armed trafficking and other illegal acts at sea. With **Vietnam**, Thailand has also reached maritime boundary Agreement which has helped to solve problems facing the two Navies in the past. With **Myanmar and Cambodia**, there have not been much progress in this regard.

ASEAN Efforts

ASEAN itself has taken a lot of initiatives in attempting to combat piracy and armed robberies in ASEAN seas and waters. The ASEAN work program to implement the ASEAN Planned of Action to Combat Transnational Crimes adopted in Kuala Lumpur on May 17, 2002, included Agreement on seas piracy to work together on information exchange, on legal matters, on law enforcement matters, on training, on institutional capacity building and on extra regional cooperation. Specifically, the Agreement includes commitments to:

- a. Establish a compilation of national laws and regulations of ASEAN Member Countries pertaining to piracy and armed robbery at sea leading towards establishing a regional repository of such national laws and regulations within a certain time frame to be made available on the ASEANWEB.
- b. Exchange of information and enhance cooperation with the specialized UN agency – the International Maritime Organization (IMO) – as well as with other bodies involved in combating piracy and armed robbery at sea such as the International Maritime Bureau (IMB), Federation of

ASEAN Ship-owners Association (FASA) and ASEANAPOL.

- c. Compile national studies to determine trends and “modus operandi” of piracy in South-east Asian waters.
- d. Consider the feasibility of developing multilateral or bilateral legal arrangements to facilitate apprehension, investigation, hot pursuit, prosecution and extradition, exchange of witnesses, sharing of evidence, inquiry, seizure and forfeiture of the proceeds of the crime in order to enhance mutual legal and administrative assistance among ASEAN Member Countries.
- e. Enhance programs for anti-piracy coordinated patrols
- f. Enhance cooperation and coordination in law enforcement and intelligence sharing of piracy and armed robbery at sea activities and that of other unlawful transnational crimes.
- g. Enhance and seek training programs within ASEAN and ASEAN Dialogue Partners to equip Maritime, Customs, the Police, Port Authorities and other relevant officials on the prevention and suppression of sea piracy and other maritime crimes.
- h. Strengthen and enhance the existing cooperation among National Focal Points of ASEAN Countries involved in combating and suppressing piracy and armed robbery at sea.
- i. Seek technical assistance from ASEAN Dialogue Partners, users of the waterways and other relevant specialized agencies of the United Nations and international organizations, particularly with regard to training and acquisition of effective communication equipment and assets. This would be in consideration of Article 43 of the UN Convention on the Law of the Sea 1982.
- j. Financial assistance for increased patrolling of particular vulnerable sea areas and assistance in terms of training programs for law enforcement officials at sea and agencies concerned.

Other Initiatives:

Under the **Japanese initiatives**, 16 countries in the Asia Pacific region have also attempted to draft Regional Cooperation Agreement on Anti-Piracy (ReCAPP). These countries are Bangladesh, Brunei Darussalam, Cambodia, China, India,

Indonesia, Japan, (South) Korea, Laos, Malaysia, Myanmar, The Philippines, Singapore, Sri Lanka, Thailand, and Vietnam. Some countries in the region, particularly Malaysia, Singapore, South Korea and Indonesia are now competing to become the location of the 'Information Sharing Center' (ISC) of the arrangement. Yet, after the 4th meeting of the initiative in Seoul in July 2003, a lot of problems still need to be settled and agreed upon before the agreement could be finally concluded.

In its dialogue with the European Union in the EU – ASEAN Experts Group Meeting on Maritime Security, the issue of piracy has also pictured significantly in the discussion. Both sides emphasized the need for cooperation to combat piracy as well as other trans-national crimes, including trans-national/maritime terrorism. Similarly, the ASEAN Regional Forum (ARF) has also begun to take up the issues of piracy in its discussion within the context of fighting against trans-national crimes.

The South China Sea Workshop Process

There have been several attempts to look into this matter regionally. One of them has been the attempt by the **Workshop on Managing Potential Conflicts in the South China Sea**, which had begun to look into the matter since the 1st Workshop in Bali in 1990 within the context of promoting safety of navigation, shipping and communication in the South China Sea.

In the Second Workshop in Bandung in July 1991, it was agreed that the areas of cooperation in the South China Sea "may include cooperation to promote safety of navigation and communication, to coordinate search and rescue, **to combat piracy and armed robbery**, to promote the national utilization of living resources, to protect and preserve the marine environment, to conduct marine scientific research, and to eliminate illicit traffic in drugs in the South China Sea". Following the meeting in Bandung in 1991, during the 3rd Workshop in Yogyakarta in 1992, it was decided that the problems of safety of navigation should be further discussed within a Technical Working Group on Safety of Navigation, Shipping and Communication (TWG-SNSC) in order

to study the problems more carefully so that the possibilities for cooperation in the various areas identified during the 1st and 2nd Workshop could be advanced.

Due to several technical difficulties in organizing the meeting of the TWG-SNSC, the First TWG-SNSC could only be held in Jakarta in October 1995. Several topics were discussed in this meeting, particularly:

- a. Exchange of information and data on safety of navigation, shipping and communications, including improvements to radio beacon system and weather information and networking;
- b. Education and training programs for mariners;
- c. Development of contingency plans and SAR network;
- d. Cooperation in hydrographic and oceanographic surveys;
- e. **Cooperation to combat piracy, illicit drug trafficking and problems of refugees at sea.**

There were agreements in the Workshop since 1995 on the following points:

- a. Cooperation on the SNSC is desirable and possible despite unresolved territorial and jurisdictional issues;
- b. UNCLOS 1982 and IMO Conventions provide a useful framework and basis for efforts to deal with the complex navigational, shipping and communications issues in the South China Sea.
- c. Governments in the South China Sea region should accede to IMO Conventions and Agreements pertaining to SNSC;
- d. South China Sea states should adopt Tokyo MOU on Port State Control in the Asia Pacific region;
- e. Priorities such as training and improving the competence of seafarers, the corresponding development of ships regional facilities and implementation of information system require further discussion;
- f. To hold a specialized meeting of experts in the field of training of mariners to discuss the points presented at the Workshop pertaining to cooperation and coordination in the training of seafarers among the South China Sea states and Workshop participants;

- g. There is a need to enhance multilateral cooperation and coordination among SAR agencies in the South China Sea;
- h. To urge relevant authorities to delimit their respective area of SAR responsibilities which in some cases do overlap, with a view to enhancing the efficacy of a coordinated and well-linked SAR operations in the South China Sea;
- i. That the authorities in the South China Sea consider the possibility of establishing a **regional ship reporting system** and **transponder system** for locating the position of ships in the interest of safety of navigation;
- j. That the relevant authorities draw up a SAR Plan for the South China Sea taking into account the proposals made at the SAR Meeting in Tokyo in December 1986;
- k. Enforcement officials of the South China Sea Workshop participants should discuss how to deal more effectively with piracy issues and whether and in what way the TWG-SNSC can facilitate such cooperative ventures.
- l. The following participants were assigned the task of preparing initiatives or studies as follows:
 - **Singapore** for Education and Training of Mariners
 - **Malaysia** for Unlawful Activities at Sea and SAR
 - **Chinese-Taipei** for Exchange of Hydrographic Data and Information
 - **China** for Contingency Plans of Pollution Control.

The results of the TWG-SNSC was reported to and discussed at the 6th Workshop in Balikpapan in October 1995 which endorsed them and agreed to convene the Second TWG-SNSC to continue the work in this field.

The 2nd TWG-SNSC was held in Bandar Seri Begawan in October 1996. The Meeting further discussed the topics identified in the 1st TWG-SNSC, particularly the 4 assignment identified above. On Unlawful Activities at Sea and SAR, the 2nd TWG-SNSC agreed as follows:

- a. Unilateral efforts should be continued and strengthened where both unlawful acts and SAR are concerned;
- b. Bilateral cooperation should also be continued and enhanced;

- c. Experts Meeting should be convened to address regional arrangements on both SAR and Unlawful Activities at Sea;
- d. The possibility of holding a regional forum on SAR with the support of the appropriate authorities should be discussed;
- e. The exchange of data and information on **Unlawful Acts at Sea should be enhanced in the region**. This may be done in cooperation with the IMB-RPC in Kuala Lumpur as the focal point for the collection of information regionally;
- f. A meeting should be held to consider how to operationalise the following suggestions:
 - SAR training exchanges;
 - Exchange of officers;
 - Exchange of SAR operating manuals;
 - Possibility of joint exercises;
 - Exchange of visits by SAR officials;
 - Possibility of devising multilateral or bilateral SAR Agreements;
 - Possibility of acceding to maritime SAR Convention 1979

The 3rd Meeting of the TWG-SNSC was held in Singapore in October 1998, following the decision of the 8th Workshop in Puncak, Indonesia in December 1997. The Singapore Meeting agreed to recommend to the 9th Workshop in 1998 that a GEM (Group of Experts Meeting) on **SAR and Unlawful Acts at Sea** be established and convened to discuss, among others, the issues enumerated in the Second TWG-SNSC.

The Singapore Meeting noted the existence of a **trilateral agreement between Indonesia, Malaysia and Singapore to eradicate piracy and armed robbery as well as illegal acts at sea in the Southwest part of the South China Sea**. It also noted that this effort has significantly reduced the illegal acts in that area at least before the economic crisis in East Asia. The Meeting requested the participants from the three Authorities to prepare a briefing note on the modalities of the arrangements so that the

Authorities concerned can consider the possibility of developing similar arrangements in other parts of the South China Sea. The Meeting also considered establishing contact with the IMB-RPC office in Kuala Lumpur. The Singapore Meeting recommended to the 9th Workshop that two meetings be convened in 1999 on this matter, namely the 3rd Meeting of the GEM-Hydrographic Data and Information Exchange (HDI) and the GEM on SAR and Unlawful Acts at Sea.

The 9th Workshop in Ancol, Jakarta, in December 1998 approved the recommendation. The GEM on SAR and Unlawful Acts at Sea was held in Kota Kinabalu, Sabah, Malaysia in June 1999. In this Meeting, the topics enumerated in the previous TWG-SNSC, as indicated above, were further discussed with a view to looking for and devising cooperative efforts in those fields in the South China Sea. In addition, it was hoped that Indonesia, Malaysia and Singapore could brief the meeting on the **tripartite arrangement** against illegal acts at sea in the Straits of Malacca and Singapore, and the outcome of developing contact and networking with IMB-RPC office in Kuala Lumpur.

The 1st Meeting of the Group of Experts on SAR and Illegal Acts at Sea in the South China Sea at Kota Kinabalu, Sabah, among others:

1. Urged participating Authorities around the South China Sea to become party to the relevant IMO Conventions, particularly the **1976 International Convention on Maritime Search and Rescue** and the **1988 Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (SUA Convention)** in which most of the Southeast Asian countries participated (point 10b of the Kinabalu Statement).
2. Encouraged participating Authorities to take measures to implement the provisions of the UNCLOS 1982 regarding Search and Rescue and Illegal Acts at Sea, particularly article 98 on SAR, articles 100,105,107 and 110 on **Piracy**; article 108 on **Illicit Trafficking in Drugs**; and article 99 on the **prohibition of transportation of slaves**. (point 10h of the Kinabalu Statement).

3. Encouraged the participating Authorities to identify clearly their enforcement Agencies at the local level for reporting acts of piracy and other illegal acts at sea, with a view to expediting and facilitating measures against illegal acts at sea (point 10.i of the Statement).
4. Recommended that the 4th Technical Working Group on Legal Matters examine the **Draft Regional Agreement on Cooperation in Combating Acts of Piracy and Armed Robbery Against Ship**, contained in Annex 5 of the Report of the IMO Regional Seminar and Workshop on Piracy and Armed Robbery Against Ship, held in Singapore in February 1999 and consider its relevance to the South China Sea region (point 10j of the Statement)
5. Requested the South China Sea Informal Working Group (SCS-IWG) in Vancouver and the Center for Southeast Asian Studies in Jakarta to obtain more information with regard to illegal acts at sea from the International Maritime Organization and the International Maritime Bureau, to be circulated to all participants (point 10k of the Statement)
6. Recommended to the 10th Workshop on Managing Potential Conflicts in the South China Sea that the 2nd Meeting of the Group of Experts on SAR and Illegal Acts at Sea be convened in 2000 to assess the progress achieved on the above recommendations as well as to discuss further means to promote cooperation on this matters in the future. (point 10.l of the Statement).

The 4th Meeting of the Technical Working Group on Legal Matters in the South China Sea, held in Koh Samui, Thailand, September 27-28, 1999, discussed the Recommendations of the 1st Meeting of the Group of Experts on SAR as requested above and agreed to recommend to the 11th Workshop that "a Group of Legal and Technical Experts be convened to examine the **ASEAN-SAR Agreements, the IMO 1999 SAR Convention, the pertinent provisions of the UN Convention on the Law of the Sea, 1982, and Annex 5 of the Report of the IMO Regional Seminar and Workshop on Piracy and Armed Robbery Against Ship**, held in

Singapore in February 1999, and to consider their relevant to the South China Sea region". (point 15c Koh Samui Statement).

The 10th Workshop in Bogor, December 5-8, 1999 discussed and endorsed the reports and recommendations of the Kinabalu Meeting and agreed to give priority to the GEM on SAR and Illegal Acts at Sea to deal with the problems of **combating piracy and armed robbery against ships**, and enhancing SAR arrangements in the South China Sea region (point 11 of the Bogor Statement). In fact, the 10th Workshop agreed that the 2nd Meeting of the Group of Experts on Search and Rescue (SAR) and Illegal Acts at Sea on the suppression of piracy and armed robbery at sea and SAR be held in 2000. Unfortunately, however, due to budgetary problems and pressure of activities the 2nd Meeting of the GEM on SAR and Illegal Acts at Sea as well as the Group of Legal and Technical Experts to examine the existing Conventions as requested by the 4th TWG-LM in Koh Samui, have not yet been convened.

Conclusions

In my observation any effort to intensify law enforcement, whether on land or at sea, would have to consider **several factors**:

- a. **The law itself must be clear** and should not give rise to various conflicting interpretations. Various legislations in various fields of activities in maritime issues should not be contradictory to each other. The conflicting regulation is very common in some countries and therefore is difficult to implement by the law enforcement agencies.
- b. **The law enforcement agencies and officials** must have sufficient and thorough knowledge of the laws and regulations which they are going to enforce and all of them must be **clean** of corruption and graft. Otherwise no matter how clear the law is, the law enforcement activities would not work if the law enforcement agencies do not understand what the laws are, especially if they are corrupt.
- c. There must be a **clear line of command and responsibility** in the law enforcement agencies so that accountability could be provided as to what level a disregard for law enforcement would or could be attributed. Under Indonesian legal

system, apparently inherited from the old Dutch legal system, a public prosecutor may 'shelve', or 'deponering' in Dutch, a case if he considers that the continuation of the case may affect public interest. In some cases, this could lead to corruption without clear accountability.

- d. If in certain countries the law enforcement activities involve a number of government agencies, the **division of authority and the coordination of activities** must be clearly outlined and well understood by the respective agency so that there would not be overlapping jurisdiction in certain cases or denial of jurisdiction in other cases. In many cases, this is the problem of Bakorkamla in Indonesia, particularly since the Agency was basically coordinating in nature and lack enforcement capacity. More over, inter-agency rivalries are also frequent.
- e. As in many other governmental activities the effective law enforcement activities, including at sea with regard to piracy and other illegal acts, would depend to a great extent to the availability of the 5Ms, namely **Man, Money, Materials, Methodology, and Management**. If one of these Ms is missing, then the law enforcement activities would in reality be difficult to implement. In fact, lack of all these resources are the main problems of Indonesia and many developing countries at this moment, particularly in fighting crimes at sea.
- f. The **support of the people** is also essential in implementing any law and regulation. If the law and regulation is contrary to common sense and the general sense of justice and appropriateness of the people, the law and regulation would be difficult to implement, even if the law enforcement agencies are strong. In fact the Government and the law enforcement Agencies could be regarded as "dictatorial" or "totalitarian" by the common people if the laws and regulations themselves do not reflect the sense of justice of appropriateness.
- g. The laws and regulations to be implemented should not be against the **spirit of good neighborly relations** and should observe the **rules of International Law**, including the law of the sea. The law enforcement agencies should also

therefore understand and take into account the rules of international law and the various Regional and International Conventions applicable or dealing with those particular issues. Otherwise the rules and regulations to be enforced could be challenged by other states.

The challenges in developing cooperative security and enforcement policy regarding the piracy in our region include:

- a. How to promote and strengthen the **ability of national governments** to effect a timely and continued response against the perpetrators of piracy and armed robberies at sea. Due to current economic crisis in Southeast Asia, particularly in **Indonesia**, the need for support to Indonesian law enforcement agencies to strengthen their capabilities is therefore paramount. The supports could be regional or international or from the countries which have direct and specific interest in the matter. The increasing possibility of maritime crimes and international terrorism in South East Asian waters, will further necessitate support to coastal countries and the need for regional cooperation.
- b. The **promotion of border cooperation between and among neighbouring countries** is also very important. The efforts to promote solution and agreement on **maritime boundaries delimitation** between and among Southeast Asian countries therefore should be intensified so that the activities and the area of operation of the various national law enforcement Agencies as well as bilateral and regional cooperation could be clearer and being better implemented.
- c. Various efforts at regional level to promote regional understanding and cooperation in this area should be supported, either formal or informal. Formally, the draft of Regional Agreement on Cooperation in Combating Acts of Piracy and Armed Robbery Against Ships, formulated under the IMO auspices, should be properly studied and finalized as soon as possible in a way that would be acceptable to the countries in Southeast Asia and the South China Sea.

Informally, the initiatives and activities of the **South China Sea Workshop process**, particularly the activities and works of its Group of Experts on Illegal Acts at Sea **should be supported**. For 10 years (1990-2000), the South China Sea Workshop process was supported by Canada through the University of British Columbia in Vancouver and the Center for South East Asian Studies in Jakarta. Now, the support has terminated. The South China Sea Workshop process is now therefore meeting with some difficulties in continuing the process of managing potential conflicts in the South China Sea through dialogue, confidence building, and promoting cooperative efforts. It should be noted that the efforts have been lauded world-wide as a constructive informal mechanism in the area. Perhaps the American CSIS could develop cooperative relations with the center for South East Asian Studies in Jakarta to continue the efforts to manage the potential conflicts in the South China Sea, including the efforts to fight against piracy and promote law and order in the South East Asian waters.

- d. Finally, within the context of implementing Articles 43 and 100 of UNCLOS 1982 regarding the **obligation** of all states "to cooperate to the fullest extent in the repression of piracy", the coastal states of Southeast Asia and the South China Sea should cooperate with the user states and the relevant Regional and International organizations, such as IMO, to formulate and take anti-piracy policies and activities and other states, including the European states, should extend support in this regard.