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COMBATING PIRACY: THE INDONESIAN CASE

ABSTRACT

Piracy at sea has been a threat to international navigation ever since the sea traverse by ships from west to east and north to south. Threat to international trade has resulted to various efforts in combating piracy regionally as well as internationally. International law has differentiated between piracy and sea-armed robbery, while the first requires regional or international cooperation due to universal jurisdiction, the second will directly fall under the jurisdiction of coastal state. Strait of Malacca has been used by international navigation and very fragile to the threat of piracy or even appropriately called as sea armed robbery since most of the time happened in the part of Indonesian territorial sea. Various efforts to combat piracy have been carried out by Indonesia including to cooperate with Malaysia and Singapore. This article discuss about piracy at sea, its legal definition and effort to combat piracy.

Key Words: Piracy, International Law, Universal Jurisdiction

Abstrak

Pembajakan di laut merupakan ancaman bagi pelayaran internasional sejak laut dilayari oleh kapal-kapal dagang dari barat ke timur dan utara ke selatan. Ancaman terhadap perdagangan ini membuat banyaknya upaya untuk menumpas pembajakan di laut, baik secara regional maupun internasional. Dari sudut pandang hukum internasional, pembajakan di laut dibedakan dari perampokan di laut, dimana yang pertama memerlukan kerjasama regional maupun internasional karena sifatnya yang tunduk pada "universal jurisdiction" sementara yang kedua jatuh di bawah yurisdiksi Negara pantai dimana kejahatan itu terjadi. Selat Malaka sebagai selat yang digunakan untuk pelayaran internasional sangat rawan terhadap pembajakan di laut, meskipun secara definisi lebih tepat disebut sebagai perampokan di laut karena sebagian besar terjadi di Selat Malaka bagian laut territorial Indonesia. Berbagai upaya telah dilakukan oleh Indonesia termasuk bekerjasama dengan Malaysia dan Singapura. Tulisan ini menyoroti mengenai pembajakan di laut, definisinya secara hukum dan upaya untuk mengatasinya.

Kata Kunci: Pembajakan, Hukum Internasional, Yurisdiksi Universal

I. INTRODUCTION

Piracy has always been a threat to international shipping and inevitably to international trade. Nations have been encountering difficulty in their endeavors to combat piracy since it always relates to the economic condition of people and the lawless area of the sea (Human Cost of Maritime Piracy 2012)

Off the coast of Somalia, pirates are regularly demanding and receiving million-dollar ransom payments and are becoming increasingly aggressive and assertive (Roger Middleton, "Piracy in Somalia: Threatening Global Trade, Feeding Local Wars," <http://www.chathamhouse.org/sites/default/files/public/Research/Africa/1008piracysomalia.pdf>, retrieved October 7, 2011, at 3pm.).

Piracy is defined by the United Nations Convention on the Law of the Sea (UNCLOS) as:

Piracy consists of any of the following acts:

- a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:
 - i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;
 - ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;
 - b) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;
- any act inciting or of intentionally facilitating an act described in sub-paragraph (a) or (b).

The number of piracy incidents is growing at an alarming rate and threatens to drastically disrupt international trade. It provides funds that feed the vicious war in Somalia and could potentially become a weapon of international terrorism or a cause of environmental disaster (A United Nations report and several news sources have suggested that piracy off the coast of Somalia is caused in part by illegal fishing. According to the DIW and the U.S. House Armed Services Committee, the dumping of toxic waste in Somali waters by foreign vessels has also severely

constrained the ability of local fishermen to earn a living and forced many to turn to piracy instead). Yet, Somali piracy is a relatively recent phenomenon that has surged in the last decade.

In the Straits of Malacca, piracy has presented a serious challenge to littoral states for years. The waters of Indonesia and the Straits of Malacca have become a “hot spot” of pirate activity (piracy) and sea robbery (armed robbery against ships). This strait is an international shipping route traversed by more than 50,000 ships annually. Sovereignty in these waters lays in three littoral States, namely Indonesia, Malaysia and Singapore. Indonesian archipelagic waters were once crowned as “the world’s top piracy hot spot,” which was then followed by the Straits of Malacca in second place. Many other areas are considered piracy risk zones such as Nigeria, Somalia, the Arabian Gulf, the Red Sea and the Gulf of Guinea, the South China Sea, the Sulu islands, and Mindanao.

Piracy off the coast of Somalia has been a threat to international shipping since the second phase of the Somali Civil War in the early 21st century (The Economic Cost of Somali Piracy 2012" a working paper presented by Ocean Beyond Piracy).

. With the collapse of the central government, the Somali Navy ceased to exist as a fighting force. Precise data on the current economic situation in Somalia is scarce but with an estimated per capita GDP of \$600 per year, it remains one of the world’s poorest countries (CIA, “CIA World Factbook: Somalia,” <https://www.cia.gov/library/publications/the-world-factbook/geos/so.html>, retrieved October 7, 2011).

Millions of Somalis depend on food aid and in 2008, according to the World Bank, as much as 73% of the population lived on a daily income below \$2 (World Food Programme (a), “Somalia – Overview,” http://www.wfp.org/country_brief/indexcountry.asp?country=706, see also: World Bank, “Somalia – Country Brief,” <http://go.worldbank.org/79I6OT3500>, retrieved October 7, 2011). These factors, and the lucrative success of many hijacking operations, have drawn a number of young men toward gangs of pirates, whose wealth and strength often make them part of the local social and economic elite (Abdi and Pelton, 2012)

With Somali waters undefended, foreign fishing trawlers began illegally fishing in Somali waters, and ships from big companies began dumping waste off Somalia, killing fish. This led to the erosion of the fish stock. Local fishermen started to band together to protect their resources (Najad Abdullahi, “Toxic Waste Behind Somali Piracy,” <http://english.aljazeera.net/news/africa/2008/10/2008109174223218644.html>, retrieved October 7, 2011).

Although most of these early defensive forays went unreported, the first recorded incident of modern piracy off the coast of Somalia occurred on May 10, 1991 near Mombasa, when Somali Patriotic Movement (SPM) militiamen hijacked a vessel belonging to the Somali Police Force that was transporting refugees to safer shores.

Among major issues relating to piracy which will be discussed in this paper are : (1) what is piracy and how to differentiate it with sea robbery; 2) what are the impact of piracy and how it influences the international trade; 3) how States or international community respond to the act

of piracy, and 4) how Indonesia and other ASEAN Countries handle the issue of piracy in Strait of Malacca.

II. DISCUSSION

A. PIRACY AS A THREAT

The pirates are very good at what they do. They treat the ship, its cargo and its crew as hostages and hold them for ransom. They use some of this money to fund future operations - more powerful weapons, bigger, faster boats and more sophisticated equipment. Accordingly, they run sophisticated operations using the latest hi-tech equipment such as satellite phones and GPS. They are also heavily armed with rocket-propelled grenades and AK-47s. The pirates are known to receive tip-offs from contacts at ports in the Gulf of Aden. They use speedboats with powerful outboard motors to approach their target. Sometimes the speedboats are launched from much larger "mother ships" on the high seas. To actually hijack the ships, the pirates first use grappling hooks and irons - some of which are even rocket-propelled - and climb aboard using ropes and ladders. The pirates have also on occasion fired at the ships to scare them into stopping, so it is easier for them to board the vessel. The pirates then sail the hijacked ship to the Somali pirate hub town, Eyl. There, pirates usually take the hostages ashore where they are normally well-looked after until a ransom is paid (BBC News, 2011)

However, the pirates move extremely quickly and often at night and so it is often too late before the crew has realized what has happened. Once the pirates have taken control of a ship, military intervention is complicated because of the hostages on board (Allesi, 2012)

. The pirates are using around eight so-called mother ships, far out to sea - large captive vessels with hostages onboard that allow them to stay in business during the violent monsoon winds (BBC News (b), "The Losing Battle Against Somali Piracy," <http://www.bbc.co.uk/news/world-europe-12412565>, retrieved October 7, 2011.)

1. Types of Piracy

In modern piracy, the economic motive is very clear due to the redeemed money asked by the vessel owner/operator to release hostages. Generally, the vessels are released with other crew members, while the most important persons on the vessel (such as the captain and the chief engineer) are kept hostage as it is believed that the vessel owner/operator is more likely to be willing to pay a high amount of ransom for them. This modus is entirely different from previous piracy movement where the vessel was taken under control, the crew was killed or thrown into the sea, the vessel was re-painted/modified and had its name changed, and then the cargo was sold in the free market where the fielder was being set. This is referred to as the "phantom ship phenomenon" in the shipping world because commonly the pirates are generally equipped with global positioning device, forged registration documents and bill of lading to facilitate their operations (The role of port state is very crucial here in being very careful in allowing any foreign

vessel to transit in its port. There should be close investigation of the documents of foreign vessels).

History has recorded that not only huge commercial vessels are being attacked by pirates, but also private vessels and fishing vessels. Observers distinguish two types of piracy, namely as follows:

1. stealing piracy, which has an economic aspect;
2. well planned piracy, which contains other motives, e.g political motive (Some observers assumed that Gerakan Aceh Merdeka (Aceh Liberation Movement) had also been involved in piracy around the Straits of Malacca, for both economic as well as political motives, yet proof was scarcely given) (in Somalia and Sri Lanka) and terrorism (in the Philippines).

Piracy incidents are further aggravated by the vessel owners' hesitance to report the piracy involving their vessel due to many reasons, generally, to maintain their business reputation. This situation needs to be addressed properly, because only with immediate reporting and defense can piracy activities be combated effectively (IMO has made certain endeavors in combating piracy, such as issuing some resolutions and circulars which aim to give initial warning to the ship owner or operator for avoiding sea piracy, including sponsoring the "Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, 1988")

What is the difference between piracy and sea/armed robbery? International law differentiates between those two terms due to the ensuing legal consequences. The general definition of piracy is as follows:

1. robbery committed at sea (the American Heritage Dictionary of the English Language, 2000);
2. an act of robbery especially on the high seas, specifically: an illegal act of violence, detention or plunder committed for private ends by crew or passengers of a private ship or aircraft on the high seas or in place outside the jurisdiction of any state (Merriam-Webster Dictionary of Law, 1996); and
3. Robbery on the high seas; taking a ship away from the control of those who are legally entitled to it (Wordnet 2.0. Princeton University, 2003).

The United Nations Convention on the Law of the Sea (1982 UNCLOS 1982) provides the definition of piracy in article 101, according to which piracy can be:

1. any illegal acts of violence or detention or any act of depredation, committed for private ends by the crew or the passengers of a private ship or aircraft and directed: (i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft; (ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any state,
2. any act of voluntary participation in the operation of a ship or of an aircraft with the knowledge of facts making it a pirate ship or aircraft; and
3. any act inciting or of intentionally facilitating an act described in sub paragraph (a) or (b).

The above mentioned definitions are clearly giving the line to categorized piracy if it occurs on the high seas or beyond state jurisdiction, which means beyond the harbor and the territorial sea of a state. However, what happens if it occurs in a contiguous zone or in the Economic Exclusive Zone of a state? Should it be considered as piracy as defined by the 1982 UNCLOS, or a sea/armed robbery as the term is defined if it occurs in internal waters, archipelagic waters, and the territorial sea of a state? The Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP Agreement) draws a clear distinction between those two terms.

The Global Security Organization defines piracy as an international crime consisting of illegal acts of violence, detention, or depredation committed for private ends by the crew or passengers of a private ship or aircraft in or over international waters against another ship or aircraft or person and property on board. "International waters" are considered to be high seas, economic exclusive zones and contiguous zone (<http://www.globalsecurity.org/military/world/para/pirates.html>) Meanwhile, IMB defines 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 several definitions quoted above clearly illustrate two main ideas which have developed, namely the general idea of piracy; any attack activities against vessels at sea, regardless of whether they are conducted on high seas or in a certain state jurisdiction (as provided in the American Heritage Dictionary of the English Language, 2000). This is the general term which has been known publicly in society. Another term concerns the legal idea adopted by the 1982 UNCLOS. Actually, the difference between these two terms is related to the authorities taking action against the crime of piracy, namely who is responsible, who has the right to punish the pirates, in other words, who has jurisdiction over such piracy, and which law is to be applied.

Piracy, as defined in the 1982 UNCLOS is a universal jurisdiction, which means that any warship or Government ship of any state has the right to capture and to arrest pirate vessels, crew and cargo or vessel controlled by the pirates. The state court also has the right to investigate and to decide the case by issuing a sentence, including measures to be taken against the pirated vessel, by keeping in mind third parties acting in good faith (Art. 105-107 1982 UNCLOS) (The Alondra Rainbow, which was pirated in October 1999 after leaving Kuala Tanjung, Sumatra, had been arrested by Indian Navy and was then brought before the Court in Mumbai, India. The pirates had been sentenced for 6 to 7 months in prison) At the same time, in the event of a sea armed robbery, the coastal state concerned has the right to take action against piracy committed within its area of jurisdiction.

Accordingly, in terms of piracy occurring in the Straits of Malacca, distinction needs to be made as to whether it occurs in internal waters, in archipelagic waters, in the territorial sea of the littoral state, or beyond those areas. Nonetheless, regardless of the location in which piracy occurs, action needs to be taken and appropriate punishment must be imposed. Existing records

worldwide indicate that most of piracy / sea robbery occurs in states with general political instability, compromised law enforcement and a high volume of unprotected shipping. Indonesia has been categorized as such state, although the Indonesian Government has been denying it. However, denial does not answer the problem, and Indonesia must demonstrate a strong political will to secure its jurisdiction, particularly at sea, because as an archipelagic state, Indonesia has a larger sea territory as compared to its land territory.

2. The Impact of Piracy

Piracy in the Indian Ocean has taken an alarming turn recently, getting increasingly lucrative and violent. According to the International Maritime Bureau (IMB), so far this year, at least 80 commercial cargo ships have been attacked in the 2.8 million square kilometer Gulf of Aden, with 19 successful hijackings. In 2008, there were 111 ships attacked and there were 42 successful hijackings (The National Defense University Library, "Piracy off the Coast of Somalia," <http://merln.ndu.edu/index.cfm?type=section&secid=263&pageid=35>, retrieved October 7, 2011).

The IMB says there was an "unprecedented increase" in Somali pirate activity in the first nine months of 2009. So far, there have been 147 incidents in the waters off the Somali coast and in the Gulf of Aden, compared with 63 in the same period last year. A total of 533 crew members have been taken hostage. The IMB also says the pirates appear to have extended their reach, threatening not only the Gulf of Aden and the east coast of Somalia, but also the southern region of the Red Sea, the Bab el Mandab Straits and the East Coast of Oman. Pirates have greatly expanded the areas in which they operate in recent years.

Furthermore, Piracy has also affected the world economy. It has impeded the delivery of shipments and has increased shipping expenses, costing an estimated £10 billion a year in global trade. According to the German Institute for Economic Research (DIW), a veritable industry of profiteers has also risen around the piracy. Insurance companies, in particular, have profited from pirate attacks, as insurance premiums have increased significantly. Unless they are involved in the shipping industry, the main effect is higher prices. Shipping companies pass on the increased costs - security, higher insurance premiums, ransoms and extra fuel for longer routes - in their fees and so it eventually finds its way onto the high street. Piracy is estimated to have cost the world an estimated \$60 - \$70 million in 2008 (BBC News)

3. International Response

Since 2005, many countries and international organizations have expressed concern over the rise in acts of piracy, although there has been a general and complete arms embargo against Somalia since 1992. Combined Task Force 150, a multinational coalition task force, took on the role of fighting Somali piracy by establishing a Maritime Security Patrol Area (MSPA) within the Gulf of Aden (Combined Maritime Forces Public Affairs, "Combined Task Force 150 Thwarts Criminal Activities". US Africa Command, <http://www.africom.mil/getArticle.asp?art=2137>,

retrieved October 7, 2011). The European Union has established a mission under the ESDP (European Security and Defense Policy) to provide a coordination cell (EU NAVCO) for the fight against piracy.

On October 5, 2008, the United Nations Security Council adopted resolution 1838 (United Nations Security Council Resolution S-RES-1838 on 2008-10-07) calling on nations with vessels in the area to apply military force to repress the acts of piracy (Agence France-Presse, "New Somalia Piracy Resolution Adopted at UN," <http://afp.google.com/article/ALeqM5jxzBM8B5jScl8Wir-b9gP7aMZ-A0g>, retrieved October 7, 2011). In mid-December 2008, the UN Security Council approved a resolution allowing countries to pursue Somali pirates on land as well as at sea - an extension of the powers countries already have to enter Somali waters to chase pirates.

The increasing threat posed by piracy has also caused concern in India since most of its shipping trade routes pass through the Gulf of Aden. The Indian Navy responded to these concerns by deploying a warship in the region on October 23, 2008. At the 101st Council of the International Maritime Organization, India called for a United Nations peacekeeping force under unified command to tackle piracy off Somalia (Times of India, "India Calls for UN Force to Deter Pirates off Somalia," http://timesofindia.indiatimes.com/India/India_calls_for_UN_force_to_deter_pirates_off_Somalia/articleshow/3710102.cms, retrieved October 7, 2011).

On January 14, 2009, a community of like-minded nations and international organizations convened in New York to launch a coordinated effort to halt pirate attacks that emanated from Somali waters. This initiative was called the Contact Group on Piracy off the Coast of Somalia. The diplomatic, official coordination, and information-sharing efforts of the Contact Group on Piracy off the Coast of Somalia, are complemented by the following international counter-piracy forces, which provide naval and aerial forces to protect shipping that transits this region: (US Department of State, "Counter Piracy and Maritime Security (PM/CPMS)," <http://www.state.gov/t/pm/ppa/piracy/index.htm>, retrieved October 7, 2011)

- EUNAVFOR Operation Atalanta;
- Combined Maritime Forces Combined Task Force 151;
- NATO Operation Ocean Shield;
- National Counter-Piracy Missions (China, India, Japan, Malaysia, Russia, Saudi Arabia, South Korea, Yemen).

As long as Somalia continues to exist without an effective government, many believe lawlessness within the country and off its lengthy coast will only grow (BBC News (a), *loc.cit.*) The problem is that the Somali government has not gone after pirates because pirate leaders currently have more power than the government. Thus, on April 23, 2009, international donors pledged over \$250 million for Somalia, including \$134 million to increase the African Union peacekeeping mission from 4,350 troops to 8,000 troops and \$34 million for Somali security forces ("Piracy in Somalia," http://en.wikipedia.org/wiki/Piracy_in_Somalia, retrieved October 7, 2011)

B. THE INDONESIAN EXPERIENCE

1. Piracy and Armed Robbery at Sea in The Straits of Malacca

In 2010, following the arrest of a group of terrorists from Aceh, there was news from the Singapore Shipping Association (SSA) that the Singapore Navy had become aware of the existence of a terrorist group's plan to attack tankers in the Straits of Malacca. The Indonesian Navy had been prepared in the form of the Maritime Security Task Force and Marine Combat. The Straits of Malacca is among the world's busiest shipping lanes which is used by many countries including terrorists' target that is the United States, hence the Straits of Malacca has been a strategic target for terrorists in crippling the country's economy. The Indonesian Army (TNI) subsequently conducted a Combined Joint Exercise (*Latgabma Darsasa*) in order to prepare themselves to face the terrorist threat, on April 2 to 8, 2010. The *Latgabma* agreement was the result of a meeting between the respective Defense Ministers of Indonesia and Malaysia on "General Border Committee" in Kuala Lumpur. *Latgabma* itself has been conducted on a regular basis, once in every three years since 1984. This has increasingly opened the eyes of the three littoral states to the fact that security threats can never be totally eliminated from the Straits of Malacca, therefore it should still be guarded from time to time.

The Straits of Malacca is one of the world's most strategic straits bordering three countries, namely Indonesia, Malaysia, and Singapore. This strait connects the Indian Ocean, the South China Sea and the Pacific Ocean. Judging from the flow of trade, the Straits of Malacca is the shortest sea route that can be taken by merchants around the Persian Gulf and markets in Asia, especially China, Japan, South Korea, and the Pacific region. The Straits of Malacca is a "chokepoint" in Asia, and it is estimated that around 15 million barrels of oil a day pass through it (2006). As many as 50,000 ships per year transit the Straits of Malacca. If the Straits of Malacca was closed to international shipping, about half of all ships sailing in the world would have to turn towards Indonesian archipelagic waters through the Strait of Lombok (located between the islands of Bali and Lombok), or through the Sunda Straits (located between Java and Sumatra). In 2007, Malaysia and Indonesia, in cooperation with oil companies from Saudi Arabia, tried to offer an alternative route in order to reduce the density in the Straits of Malacca. All three signed a contract worth \$7 billion to build a pipeline under the sea along the northern region of Malaysia to the south of the border with Thailand in order to reduce 20% the density of ship traffic in the Straits of Malacca.

Indonesian archipelagic waters and the Straits of Malacca have become hot spots for piracy activities and sea/armed robbery (<http://www.icc-ccs.org/prc/piracyreport.php>). This Straits, which has been an important international sealane for centuries, is passed by more or less 50,000 vessels per year. Three states - Indonesia, Malaysia and Singapore - claim sovereignty over different areas of the Straits. One might therefore ask why Indonesian archipelagic waters are singled out as the world's top piracy hot spot, with the Straits of Malacca only in second place.

The International Chamber of Commerce established the ICC International Maritime Bu-

reau (IMB) in 1981 (<http://www.icc-ccs.org/imb/overview.php>). as a focal point to combat all forms of criminal acts at sea that can threaten international trade, considering that the majority of world trade is using sea transportation. In view of the increasing number of sea piracy starting in the 1980s (after the golden era in the middle of the century), the IMB Piracy Reporting Centre was established in 1982, domiciled in Kuala Lumpur, Malaysia. This Piracy Reporting Centre has the function of reporting every single piracy activity occurring in the world, identifying areas which are considered as a hot spot for piracy activities, and building cooperation with coastal States where piracy occurs, with the aim of dealing with, decreasing and stopping such incidents. Due to the IMB reports, Indonesia and the Straits of Malacca have been tagged as dangerous areas. Subsequently, shipping cost in this area increased due to the cost of insurance, particularly for shipping companies with ships calling in Indonesian ports (http://en.wikipedia.org/wiki/Piracy_in_the_Strait_of_Malacca). However, according to The Coordinating Agency on Maritime Security (*Bakorkamla*), there had been a decline in the number of crime at sea, particularly by sea pirates, due to the cooperation among Indonesia, Malaysia and Singapore.

After peaking in 2003-2004, piracy and sea/armed robbery in the area declined drastically because of the Indian Ocean Tsunami of December 2004. The number of reported incidents have sloped down compared with 38 (thirty-eight) cases in 2004 or even 75 (seventy-five) cases in 2000 (<http://balita.ph/2008/11/24/southeast-asia-succeeds-in-fighting-piracy-in-malacca-straits>). The main reason has been the increased cooperation of the three littoral States in combating piracy in these areas.

2. Action Taken

The United States' intention which raised great polemics several years ago was to provide assistance to secure the Straits of Malacca based on their plan, the Regional Maritime Security Initiative (RMSI), which was announced by Admiral Thomas B. Fargo, Commander in Chief in the US Pacific Command before the US House of Representatives in March 2004 (See Piracy and Maritime Terror in Southeast Asia (<http://www.iiss.org/stratcom>)). Principally, the United States has a major interest to cut off the Jemaah Islamiyah and Al Qaeda networking in Asia. Yet the littoral states have the right to combat terrorism within their territory, as maritime terrorism is a threat to any state. RMSI is not only about "closer intelligence-sharing" with Southeast Asian Countries, but it includes US navy deployment in the region, which has been strongly rejected by Indonesia and Malaysia)

This proposal was not unrelated to the prevailing opinion among them that pirates in the Straits of Malacca were controlled by Transnational Organized Crime, possibly the Al-Qaeda Terrorism network; others expressed the view that they were controlled by the Aceh Liberation Movement. Singapore, as a state which has a huge dependency on international trade, particularly through shipping, strongly supported this idea, unlike Indonesia and Malaysia. Indonesia has been totally against this idea, by refusing to grant any tolerance for the presence of a Foreign

Army in the Straits of Malacca, and so has been Malaysia. As straits bordering states, both states have the right to take full responsibility for safe shipping in the Straits of Malacca as regulated in the 1982 UNCLOS. This is a form of state jurisdiction and state sovereignty, therefore there is not a single state which can enter with force to the safe Straits of Malacca without consent from the three bordering states.

The question is, however, until when can this standpoint be maintained if piracy keeps occurring, particularly in the Straits of Malacca beyond the territorial sea of the littoral States? The strength of this position lies in the acts of the three littoral States taken either individually, or by working together to maintain their jurisdiction, namely whether those States are capable to secure their sea territory as envisaged by the 1982 UNCLOS (Article 43 of 1982 UNCLOS states that littoral states have to cooperate in securing international strait for international navigation. Thus, the three bordering states in the Straits of Malacca are obliged to cooperate in establishing maritime security in that area).

Indonesia, in cooperation with two other littoral States, has announced a program called “Latma Malsindo” (*Latihan Bersama Malaysia-Singapura-Indonesia*), a joint training between Malaysia, Indonesia and Singapore to secure the Straits of Malacca against piracy and terrorism. This program has contributed to a decrease in the frequency of threat on shipping security in the Straits of Malacca. However, the question is: to what extent can this program be implemented or maintained, and how often? Malaysia subsequently agreed to enhance cooperation with the United States through intelligence exchange and joint training, but still rejecting to have a joint patrol unless it is conducted with Indonesia or Singapore. Indonesia has built a center for controlling piracy in the Navy pier at Batam, which has been equipped with vessel monitoring system facility, in cooperation with the Ministry of Marine Affairs and Fisheries of Indonesia. However, all of this has not been sufficient; there is a need for clear and well-planned action to combat piracy if the three littoral states intend to maintain sovereignty and exclusive jurisdiction in these areas in dealing with shipping security problems.

Discourse on cooperation in this field began with the involvement of Japan in the supervision of the Straits of Malacca. As one of the nation’s largest ship owners in the world, Japan has been greatly interested in the safety of shipping along the Straits of Malacca. Around 1960, the owners of fishing vessels and oil hydrography were conducting surveys in the Straits of Malacca and Singapore. Japan also tried to negotiate with third countries bordering the Straits of Malacca (Indonesia, Malaysia, and Singapore) to participate in supervising the Straits of Malacca. This proposal was immediately rejected by the three countries because they had previously stated that the Straits of Malacca was part of their territorial sea. However, the three coastal states responded to the Japanese proposal to form the Straits of Malacca Council in 1969. Furthermore, in the same year a survey was also conducted by Indonesia, Malaysia, and Singapore with assistance from Japan. From October through December 1970, another survey was conducted which found a low 37 points with a depth that could endanger large oil carrier cruise ships (VLCC). To prevent this,

the three coastal states designed a Traffic Separation Scheme (TSS).

Further development occurred on February 24, 1977 when an Agreement with Three-Party Safety related Shipping in the Straits of Malacca and Singapore was signed. The agreement was signed in Manila by Indonesia, Malaysia, and Singapore. This Agreement constitutes the final result of the Japanese proposal related to the importance of issuing a valid TSS in the Straits of Malacca and Singapore. All three coastal States responded to the proposal by issuing a joint statement stating that all the settings related to shipping in the Straits of Malacca were the interest of the three countries. In the joint statement it was also declared that the safety of shipping in the Straits of Malacca would be their responsibility. At the end the Three Party Agreement was accepted by the three States because the treaty was able to accommodate the interest of coastal states and international shipping interests.

The next important development occurred in January 1995 marked by the Showa Maru ship accident in the Straits of Malacca. Showa Maru is a Japanese tanker with the capacity of 244,000 DWT, which departed from Buffalo Rock in the territory of Indonesia towards the Straits of Singapore. Due to the magnitude of the impact of the Showa Maru accident, the Minister of Foreign Affairs of Indonesia, Malaysia, and Singapore took the initiative to formulate an agreement on cooperation in the field of shipping safety and the monitoring of marine pollution in the Straits of Malacca and Singapore at ministerial level. This cooperation was also assisted by a group of experts formed to discuss measures to prevent and cope with the danger to the safety of shipping and marine pollution. This agreement also generated new TSS and mechanisms for limiting the size of large tankers passing through the Straits of Malacca. Related to the size of ship, an Under Keel Clearance (UKC) was adopted as a measure of vessel size. The second agreement, the Treaty Parties and TSS Tigs, adopted by the IMO on November 14, 1977 based on Resolution No. a. 375/Res. 375 (x) with the title "Sailing through the Straits of Malacca and Singapore". TSS entered into force in May 1980 with the additional agreement of "Revolving Funds for Combating Oil Spill from Ships on the Straits of Malacca and Singapore".

Malaysia and Indonesia also proposed an alternative route around the waters of eastern Bali and the island of Borneo through the Straits of Lombok and Makassar for large tankers carrying goods. However, only a few, and in fact almost no tanker owners followed this alternative route. All tankers, regardless of whether or not they were carrying oil, tended to use the Straits of Malacca and Singapore because these two straits are the fastest route that can be taken by large tankers from the Arabian Gulf to East Asia. In addition, there were also various additional facilities provided by the Port of Singapore, such as for example low taxes, competitive prices, inexpensive ship fuel, and flexible rules.

Furthermore, in particular there was a suggestion to revise and review the validity of the TSS which was considered as becoming outdated. However, the research conducted revealed that the accident had not occurred due to any shortcomings in the TSS arrangements. The data also suggested that as many as 90% of the accidents had been caused by collisions between ships rather

than as a result of faulty instructions. Furthermore, it can be stated that the main fault was not related to the presence of hazard to shipping, but it was due to the lack of coordination by the captain of the ship.

a. Tripartite Technical Experts Group and The Traffic Separation Scheme

In 1971, the governments of Indonesia, Malaysia, and Singapore issued a joint statement related to the safety of shipping in the Straits of Malacca. There are three main points in the said statement, namely that the safety of shipping is to be the responsibility of the three countries; the need for cooperation from third parties; and that an agency as a place of cooperation would be established shortly. Based on the said joint statement, the Technical Experts Group was formed by three countries (Tripartite Technical Experts Group) / TTEG with the primary task to study the usefulness of UKC and the possibility of TSS for shipping in the Straits of Malacca and Singapore.

In 1975, a Safety Board Sailing and Marine Pollution Control was established at the ministerial level by Indonesia, Malaysia, and Singapore. In 1976, the Agency made several proposals, including proposals related to TSS and minimum UKC standards. In 1977, the Ministers of Foreign Affairs of the three states signed the Treaty Safety Sailing in the Straits of Malacca and Singapore, containing recommendations to improve the safety of shipping in the Straits of Malacca and Singapore.

This recommendation was then inserted into the IMO, so that in November 1977 the IMO adopted a resolution called "Sailing through the Straits of Malacca and Singapore" (res. A. 375 (X)). The IMO Resolution contains a new route system, including TSS, deep sea routes, special provisions relating VLCCs. This provision was subsequently amended in 1979 by Res. A 476 (XII) on the basis of proposals from the three States. This route system came into effect in 1981. In 1994, TTEG made a proposal to review all the provisions in force in the Straits of Malacca. This proposal was subsequently approved by the three states.

b. Further Developments

In regards to maritime safety infrastructure and regulatory mechanisms in the Straits of Malacca and Singapore, the three states have enhanced the safety of navigation, vessel traffic flow and the overall management of the Straits as an international sea lane. The Singapore Vessel Traffic Information Service (VTIS) has been operating since 1990. This is a comprehensive radar and vessel traffic system that includes computer-based Straits of Singapore and can indicate the position of up to 1,000 ships at a time. Malaysia also has a radar and vessel traffic monitoring system, which has been in operation since 1998 and covers the entire Straits of Malacca. In 1998, DGPS stations were installed by Singapore and released for commercial use, official Singapore ENCs, which fully meet international standards. A DGPS station was installed in 2001 by Malaysia in Lumut, Perak but was later dismissed. However, Malaysia has established a Broadcasting

Station in Kuantan, Bagan Datuk, Melaka and Kuala Besar. Malaysia also installed about 16 AIS stations through the Strait coast parallel to the TSS. Indonesia plans to install a DGPS and AIS facility on the coast of Sumatra.

Under the Mandatory Ship Reporting System, STRAITREP, which came into force on December 1, 1998, ships used to report via VHF radio voice communication to the authorities while transiting in the Straits of Malacca and Singapore. Ships entering the operational area also include a report that contains information such as the name of ship, its call sign, IMO identification number (if available), position, presence or absence of hazardous cargo and cargo ship shortage that could affect the safety of shipping. The Straits of Malacca and Singapore STRAITREP are divided into nine sectors, each using a VHF channel. STRAITREP provide information to ships on the specific and critical situation on the movement of traffic that could potentially cause problems, as well as other relevant information on the security of navigation.

Although the infrastructure and the current regulatory mechanism have improved maritime safety in the Straits of Malacca and Singapore, in particular by reducing the frequency of ship collisions, incidents have occurred occasionally in recent years, such as the container ship ANL INDONESIA and Singapore Navy ships collision in January 2003, and the Panama-California MV which collided with the RO a Korean ship, the MV SINOKOR Seoul on March 24, 2006.

Indonesia expects assistance from the four related states, particularly the U.S., in the form of providing facilities and infrastructure to enhance the ability of the state that became part of the trade world pathway, certainly including the route to Indonesia, which means that marine safety duties are delegated to the countries concerned. Indonesia certainly does not wish to see any foreigners enforcing security in the sea area in the Straits of Malacca Indonesia, either on behalf of foreign governments, or the foreign private sector, such as "maritime piracy suppression" in the form of "armed security escort" as being offered by various private foreign parties currently.

The "The Eyes in the Sky" program which involves air surveillance along with Thailand also limits patrol from the air to be conducted within three miles of the border region. The same lack of trust has hampered the country's intelligence officials in sharing intelligence data. The United States, by having "the war on terrorism", tried to increase naval presence in the region. Malaysia and Indonesia firmly rejected it. Two years later, the United States proposed a Regional Maritime Security Initiative, which would involve joint patrols - including the presence of U.S. troops with high-speed ships. Once again Indonesia and Malaysia rejected the presence of foreign forces in the Straits of Malacca. Southeast Asian countries became even more suspicious of China's military presence in the region. One of the reasons for the rejection of foreign troops has been to keep the straits from intervention of a great power that could threaten the sovereignty of littoral states. Although they continue to be rejected, the United States, China, Japan and India will continue to seek ways to participate in maintaining the security of the Straits of Malacca - for the benefit of anti-terrorism, geopolitical and commercial purposes. Moreover, China has started seeking alternative routes to growing energy needs.

Then, in 2010, Indonesia decided to conduct joint patrols with the Indian Navy in the Straits of Malacca in the border area between Indonesia and India. Although the joint patrols involve India, the area of operations is still the boundary between the two countries in relation to the Straits of Malacca. Accordingly, it does not mean that India is allowed to conduct surveillance or patrols in the Straits of Malacca sea route guarded by Indonesia, Malaysia, and Singapore. The patrol referred to as the India-Indonesia Coordinated Patrol (Corpet Indido) had been implemented since March 5, 2010 for a month, patrolling the area around the islands of Andaman-Nicobar, India, and Weh Island, Indonesia. The Indonesian Navy continued to push ahead the cooperation with Thailand Malaysia and Singapore in the Strait of Malacca.

3. Current Indonesian Cases

The issue of sea piracy that has been going on for centuries, especially in areas that are often passed through by international shipping, is a homework that has never been completed, including sea piracy occurring in the territorial waters of Somalia and recently involving the vessel MV Holy Light, an Indonesian flag carrier owned by PT Samudera Indonesia. The crew had been taken hostage with ransom, and the fate of these hostages was hanging in the middle of ongoing negotiations. The Indonesian Government then took military action to release the hostages after a long national debate among Indonesian officers and academicians as to whether the Government was supposed to take military action. The basic consideration for such action can be looked at from several points of view.

Firstly, piracy at sea cannot be justified for any consideration whatsoever, regardless of whether it is committed for economic reasons or for political reasons. This crime has been going on since the sea transportation routes have been in existence for the world community; even the British had launched efforts to combat pirates hundreds of years ago, when pirates were still using wooden ships with a distinctive black flag with skull ornament. The Law of the Sea then split the authority in putting piracy down, depending on the place where piracy had occurred. If committed on the high seas, it was definitely considered to fall under the authority of any country wishing to deal with it. Even though the states are obliged to work together to crack down on piracy, if piracy occurs in the territory of a state, in particular in its territorial sea, it is certain that the coastal state concerned has such authority. In the case of piracy in Somalia, the State of Somalia should have the jurisdiction to put it down; however, it has been proven that the Somali government has not been able to tackle this problem. Eventually, several Security Council Resolutions of the United Nations (Security Council Resolution) were issued, starting from No. 1814 of 2008 to 1976 Year Number 2011 (April 11, 2011) which in essence call for international cooperation to combat piracy in Somalia taking into account the inability of the Government of Somalia to combat piracy in its own territory. A series of resolutions emphasize the following: (1) urges States whose naval and military aircraft operate on the high seas and airspace off the coast of Somalia to be vigilant to acts of piracy and armed robbery and encourages States using the commercial mari-

time routes off the coast of Somalia to increase and coordinate their efforts to deter acts of piracy and armed robbery” (Security Council Resolution No. 1816-2008); (2) “calls on all States, including States in the region, to criminalize piracy under their domestic law and favorably consider the prosecution of suspected, and imprisonment of convicted, pirates apprehended off the Coast of Somalia” (Security Council Resolution No. 1918-2010); (3) “re-authorizes States, Regional Groups to intervene at sea in the case of Piracy and Armed Robbery off Somalia’s coast” (Security Council Resolution No. 1950-2010), (4) “calls upon States to cooperate as appropriate on the issue of hostage taking” (Security Council Resolution No. 1976-2011”. The Government of Indonesia as a member of the UN has the obligation to implement this resolution, especially when the incident involves its very own flag ship and its citizens.

Secondly, on several occasions the Indonesian mass media reported statements made by the shipping company and the government about negotiations between the company and the hijackers for redeeming the hostages, and that the ransom money was to be borne by insurers. It is doubtful that the payment of ransom money would solve the problem of piracy in Somalia or elsewhere in this hemisphere, despite of it being borne by the insurer. This will only solve the problem on a case-by-case basis rather than in a comprehensive manner. The best thing to do now is find a way of creating a deterrent effect for the perpetrators of piracy. If that means a systematic assault on the hijackers, why not? After all, the problem of piracy is not as simple as ransom payment. If it is allowed to resolve piracy by ransom payments, the negative impact will become double-fold. First, of course, the hijackers would be tempted to try again because they believe that they would be paid; second, each vessel will be competing through insurance and insurers will apply high cost insurance given the risk to be borne. This would mean indirectly letting piracy to continue occurring and would further raise the cost of shipping, which would consequently affect the selling price of goods so that international trade would be inevitably disrupted, as it would become inefficient and costly.

Third, under international law, every State has jurisdiction, including jurisdiction over their nationals wherever they are, both active nationality jurisdiction (in which citizens commit a crime), as well as passive nationality jurisdiction (in which citizens become victims of crime). The “exercise” of such jurisdiction varies in each state. There are countries, like the United States and Australia, that always prioritize the protection of their citizens wherever they are, either as criminals or victims of crime. The attacks carried out by the United States to some point against terrorists or countries that are considered “dangerous” are an extension of its jurisdiction to protect the interests of its citizens or legal subjects wherever they are. In various cases, Indonesia has appeared to have exercised its jurisdiction half-heartedly to protect its citizens.

All of the above mentioned reasons were considered by the Government of Indonesia when taking steps to resolve the case of the Somali piracy. To crack down on piracy at sea, or at least to create a deterrent effect (“deterrent effect”) to the pirates, the Government of Indonesia was actually advised to send out its troops to pursue and capture the pirates, if necessary, bring them

to Indonesia for trial, because Indonesia has jurisdiction over their acts. Moreover it was supported by UN Security Council resolutions. In doing so, Indonesia could have “called upon” the cooperation of other countries that share the same interests, namely that the international shipping lanes are safe from attack by pirates so that international trade can run properly. Settlement by way of merely paying “ransom”, even if it comes from insurance funds, should not be the only option to address these issues. This would mean allowing international crime to occur without punishment, especially those that have an impact on Indonesian legal subjects, and even worse, encouraging similar events to occur again in the future, as the pirates have never been proven guilty. In actual fact, Indonesia has done exactly all of the above; moreover, it failed to bring the Somali pirates to trial in Indonesia.

III. CONCLUSION

1. Piracy is a threat to international navigation especially those of international trades. International law differentiates between piracy and sea armed robbery as well as the applicable laws accordingly.
2. International cooperation is the only answer to combating piracy in international navigation, especially in international trade waterways such as the Straits of Malacca and off the coast of Somalia.
3. Although the international community must recognize that only a political solution in Somalia can offer a long-term solution to the issue of piracy, it is also crucial to understand that certain measures can be taken to improve the situation while efforts continue towards a political settlement. Set out below are a number of options that could be considered by the international community, the African Union and Somalia’s neighbors to reduce the risks of piracy in the Gulf of Aden and off the coast of Somalia. It may be that elements from each option could be adopted, such as (1) organize shipping into a safe lane, (2) provide a coastguard for Somalia, (3) a large naval presence, (4) pay no ransoms, or even (5) do nothing (Roger Middleton, *op.cit.*, p 10-12.) Whatever the international community decides to do, it must not be at the expense of efforts to secure a political solution inside Somalia. The most powerful weapon against piracy will be peace and opportunity in Somalia, coupled with an effective and reliable police force and judiciary. Containing or ignoring Somalia and its problems is not an option that will end well. The international community cannot view the issue of Somali piracy as a sideline issue. The danger that international shipping will avoid the Gulf of Aden and that the subsequent increased costs will be passed on to consumers should be of grave concern during a time of economic uncertainty. The potential environmental damage from a botched attack could be catastrophic and long-lasting.
4. Challenges faced in implementing maritime security cooperation in Southeast Asia in particular are as follows: (1) limited funding for maritime activities in several states of Southeast Asia, including Indonesia, (2) inadequate synchronization of maritime doctrine among states, (3) a

wide gap in maritime technology, (4) a high level of suspicion between states, (5) there have not been many extradition treaties between countries in Southeast Asia. Those handicaps certainly need to be overcome in order to create optimal cooperation aimed at securing the maritime area in Southeast Asia.

5. In Indonesia, there are at least three different institutions which have the mandate to watch the sea territory, namely the Indonesian Navy, the Water and Air Police, and Civil Servant Investigators (PPNS) from different ministries depending on their respective mandates. Thus, coordination among them is another issue which needs to be addressed carefully by the Indonesian Government. A coordinating agency has been established (BAKORKAMLA), yet a lot of home work remains to be done before this agency can fulfill its obligations in an uninterrupted manner. The choice for Indonesia right now is whether to prepare itself to be ready in handling maritime security in its own waters as well as in regional waters, or just stay in its spot ignoring any threats coming its way.
6. In Article 100 of UNCLOS it is stated that there is need for cooperation among countries to combat piracy at sea. This of course also means that in order to maintain security in the sea area bordering the territory of another state, a state can also engage in regional cooperation more effectively and more efficiently.
7. Indonesia needs to develop a thorough understanding and change of paradigm of the status of the State of the Republic of Indonesia as an archipelagic State. Such status brings the responsibility for Indonesia to uphold rights and obligations as stipulated in UNCLOS 1982 as the legal basis for archipelagic state regime. This means bringing the consequences of strong and reliable maritime defense. In realizing that, Indonesia needs a robust fleet. It is therefore of utmost urgency for Indonesia to enhance the strength of its Navy, and to integrate marine patrol programs, so that the various parts of Indonesia and international cruise lines can be maintained properly and safe from terrorism and pirates. By doing so, "foreign intervention" can be avoided and the sovereignty of the State can be maintained. Intensive efforts need to be made in order to develop a partnership based on mutual respect and benefit among states in Southeast Asia, including the development of common perceptions and doctrine, competitive force and bringing the extradition treaty to become "workable".

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